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MARKUP OF:

H.R. 4775, OZONE STANDARDS IMPLEMENTATION

ACT OF 2016; AND

H.R. 4979, ADVANCED NUCLEAR TECHNOLOGY

DEVELOPMENT ACT OF 2016

THURSDAY, MAY 12, 2016

House of Representatives,

Subcommittee on Energy and Power,

Committee on Energy and Commerce

Washington, D.C.

The subcommittee met, pursuant to call, at 10:00 a.m., in Room 2123 Rayburn House Office Building, Hon. Pete Olson [vice chairman of the subcommittee] presiding.

Members present: Representatives Olson, Barton, Shimkus, Harper, McKinley, Pompeo, Kinzinger, Griffith, Johnson, Long, Elmers, Flores, Mullin, Hudson, Upton (ex officio), Rush,

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McNerney, Tonko, Engel, Green, Capps, Doyle, Castor, Sarbanes, Welch, Yarmuth, Loeb sack, and Pallone (ex officio).

Staff present: Gary Andres, Staff Director; Will Batson, Legislative Clerk, Energy and Power, Environment and the Economy; Mike Bloomquist, Deputy Staff Director; Allison Busbee, Policy Coordinator, Energy and Power; Rebecca Card, Assistant Press Secretary; Karen Christian, General Counsel; Paige Decker, Executive Assistant; Giulia Giannangeli, Legislative Clerk, Commerce, Manufacturing, and Trade; Tom Hassenboehler, Chief Counsel, Energy and Power; A.T. Johnston, Senior Policy Advisor; Peter Kielty, Deputy General Counsel; Mary Neumayr, Senior Energy Counsel; Tim Pataki, Professional Staff Member; Graham Pittman, Legislative Clerk; Annelise Rickert, Legislative Associate; Chris Sarley, Policy Coordinator, Environment and the Economy; Dan Schneider, Press Secretary; Peter Spencer, Professional Staff Member, Oversight; Dylan Vorbach, Deputy Press Secretary; Gregory Watson, Legislative Clerk, Communications and Technology; Andy Zach, Counsel, Environment and the Economy; Jeff Carroll, Minority Staff Director; Elizabeth Ertel, Minority Deputy Clerk; Jean Fruci, Minority Energy and Environment Policy Advisor; Caitlin Haberman, Minority Professional Staff Member; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; John Marshall, Minority Policy Coordinator; Dan Miller, Minority Staff Assistant; Alexander Ratner, Minority

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Policy Analyst; Tim Robinson, Minority Chief Counsel; Andrew Souvall, Minority Director of Communications, Outreach and Member Services; and Tuley Wright, Minority Energy and Environment Policy Advisor.

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Mr. Olson. The subcommittee will come to order. At the conclusion of opening statements yesterday, the chair called up H.R. 4979 and the bill was open for amendment at any point.

[The Bill H.R. 4979 follows:]

\*\*\*\*\*COMMITTEE INSERT 1\*\*\*\*\*

Mr. Olson. Are there any bipartisan amendments to the bill?  
Are there any other amendments? Okay. The question now occurs  
on forwarding H.R. 4979 to the full committee.

All those in favor say aye.

All those opposed say nay.

The ayes appear to have it. The ayes have it and the bill  
is favorably reported.

The chair calls up H.R. 4775 and asks for the clerk to report.

[The Bill H.R. 4575 follows:]

\*\*\*\*\*COMMITTEE INSERT 2\*\*\*\*\*

The Clerk. H.R. 4775, to facilitate efficient implementations of ground-level ozone standards, and for other purposes.

Mr. Olson. Without objection, the first reading of the bill is dispensed with and it will be open for amendment at any point, so ordered. Are there any bipartisan amendments? Are there other amendments?

Mr. Rush. Mr. Chairman.

Mr. Olson. The gentleman from Chicago is recognized for five minutes.

Mr. Rush. Mr. Chairman, I have an amendment at the desk and as I noted in my opening statement yesterday, Mr. Chairman.

[The Amendment offered by Mr. Rush follows:]

\*\*\*\*\*INSERT 3\*\*\*\*\*

Mr. Olson. The clerk will report the amendment.

The Clerk. Amendment to H.R. 4775 offered by Mr. Rush.

Mr. Olson. Without objection, the reading of the amendment is dispensed with, and the gentleman from Illinois is recognized for five minutes in support of his amendment.

Mr. Rush. Thank you, Mr. Chairman. As I noted in my opening statement yesterday, I cannot support H.R. 4775 because it stacks the deck in favor of an industry over public health concerns and it would permanently weaken the Clean Air Act as well as future air pollution health standards for all criteria pollutants.

Mr. Chairman, in its latest report entitled, "State of the Air," 2016, the American Lung Association gives Cook County, the county in which I live, Cook County, Illinois, in the south side of Chicago, a grade of F for its ozone ring. The ALA also reports that there are currently over 371,000 cases of adults with asthma and close to 99,000 cases of pediatric asthma in Cook County alone.

Mr. Chairman, before using the new ozone standard of 75 per billion, EPA pored over an extensive inventory of scientific research and found that ozone inflames the lungs and causes asthma attacks. These attacks frequently lead to emergency room visits, hospitalizations and premature deaths, and a growing body of research indicates that ozone may also lead to central nervous system harm and may harm developing fetuses.

Mr. Chairman, the new standard that the EPA originally issued

already represents a measured approach that seeks to balance both public health impacts as well as the rule's overall cost-benefit even though this is not a prerequisite of the Clean Air Act.

Mr. Chairman, on the other hand, H.R. 4775 represents the exact opposite of a measured approach as it unabashedly tips the scales in favor of industry over public health. Mr. Chairman, in fact many of the nation's health organizations aggressively lobbied for a more productive level than the 70 parts per billion that the EPA recently issued based on current health-based scientific data.

So Mr. Chairman, instead of moving this legislation forward as drafted, I am offering an amendment that would strip some of the more nefarious provisions from the bill if those sections would have a negative impact on public health. Specifically, Mr. Chairman, my amendment would allow the EPA administrator in consultation with the Clean Air Scientific Advisory Committee to determine if exempting preconditioned, permanent applications would lead to negative health implications.

This amendment would require the EPA and the Clean Air Scientific Advisory Committee to examine health conditions including asthma attacks, respiratory disease, cardiovascular disease, strokes, heart attacks, babies born with low birth weight and impaired fetal growth, neurological damage, premature mortality, or other serious harms to human health. My amendment

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would also require that special attention is paid to our most vulnerable populations such as pregnant women, children, the elderly, outdoor workers, and low income communities.

Mr. Chairman, if there is a determination that means adverse health impacts would be exacerbated new to the provisions called for in Section 2, then that section would cease to apply.

Mr. Chairman, this is a common sense amendment that seeks to put the interest of the public above the interest of industry and I urge all of my colleagues to support it. And thank you, and with that I yield back the balance of my time.

Mr. Olson. The gentleman yields back. The chair strikes the last word and recognizes himself for five minutes in opposition to the amendment.

My friend's amendment would allow the administrator to nullify one of the central provisions of this bill. Section 2(a) would allow the state to fully implement the 2008 ozone standards which EPA only issued the regulations to implement them in 2015 before turning to 2015 standards. Regarding the 2015 standards EPA projects, and this is a quote, the vast majority of U.S. counties will meet the 2015 ozone standard by 2025 just with the rules and programs now in place or underway, end quote.

So this bill will also ensure these hundreds of counties the EPA projects are already on track to meet the 2015 standards can come into compliance without being subjected to additional

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regulatory burdens, paperwork requirements and restrictions which will do not anything, nothing to improve public health.

Since 1980, ozone levels have declined by 33 percent, and EPA projects air quality, another quote, will continue to improve over the next decade as additional reductions in ozone precursors from power plants, motor vehicles, other sources are realized. Nothing in this bill prevents these improvements to air quality from being realized. I urge a no vote on this amendment. I yield back.

The chair recognizes the gentleman from New Jersey, Mr. Pallone, ranking member.

Mr. Pallone. Thank you, Mr. Chairman. I am obviously in support of the Rush amendment. Mr. Chairman, the bill's supporters argue that the purpose of Section 2(a) is merely to give states enough time to implement EPA's 2015 ozone standard. But the American public has waited far too long for adequate protection from high levels of ozone, and the promise of the Clean Air Act's air quality standards is healthy air for the entire nation.

The previous ozone standards has fallen short and since 2008 it has been weaker than the science and the law would allow, so last fall, EPA rightly strengthened the ozone standard based on yet another exhaustive review of the scientific evidence. EPA's stronger ozone standard would help avoid a litany of adverse

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health impacts from asthma attacks in children to missed school days and premature deaths, and EPA estimates that the benefits associated with the new ozone standards range from 2.9 to \$5.9 billion annually, outweighing the cost by approximately 1.4 billion. But this bill would essentially say that the negative consequences of ozone pollution and the benefits of cleaner air don't matter. Section 2(a) of the bill would block EPA from implementing their updated ozone standard jeopardizing the health and safety of all Americans. During the legislative hearing on this bill, proponents stated that it is not intended to roll back any of the existing health protections afforded in the Clean Air Act, but I think that claim is essentially laughable for a bill that radically changes numerous provisions of the law that ensures we all breathe safe air.

But if the Republicans want to claim that this bill is not an attack on the Clean Air Act and the public health, there shouldn't be any objection on their part to Mr. Rush's amendment. His amendment simply states that implementation of EPA's 2015 standard would not be delayed if the EPA administrator determines that doing so causes serious harm to human health including asthma attacks and other respiratory disease, heart attacks, birth defects, brain damage, or premature death.

Swift implementation of the new ozone standard has meaningful real-world benefits. These public health benefits

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and air quality protections are especially important for the most vulnerable among us -- babies, kids, seniors -- and they all would be needlessly blocked by this bill. I think Americans rely on EPA to hold polluters responsible for cleaning up their pollution. It is just common sense. If you stop EPA from doing its job the public health is going to suffer.

So if you don't want to block efforts to clean up air pollution that is contributing to asthma attacks, heart attacks, lung disease, birth defects, neurological damage, and premature death then support this amendment. An adoption of Mr. Rush's amendment will make it perfectly clear that EPA can continue to clean up air pollution that causes serious health effects, and so for that reason I urge my colleagues to support the amendment. And I yield back.

Mr. Olson. The gentleman yields back. Is there further discussion on the amendment? The chair recognizes Ms. Castor from Florida for five minutes to speak for the amendment.

Ms. Castor. Thank you, Mr. Chairman. Here is a wake-up call for everyone. This bill, H.R. 4775, is a radical attempt to gut the Clean Air Act. That is all that it is. The Clean Air Act is one of America's bedrock fundamental environmental laws. Over the past almost 50 years it has cleaned up the air that we breathe all across America, in my community and in your community.

The Clean Air Act requires EPA to review the science. It

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requires that the public policy on clean air be based upon sound science. And it says, EPA, you should do this every five years. And I think that is important and it is appropriate because conditions change. They change quickly in our communities.

This bill, one of the flaws in the bill is that it says we are going to lengthen those time frames, so there is nothing to see here. You can ignore the science for longer and you can delay EPA's action working with our local communities to help clean up the air. That is wrong. You know, the other part of the Clean Air Act says that yes, we work together with our local communities to do this, but what the bill does is it creates a number of huge loopholes. One is that they don't have to review over a five-year period; that they are going to lengthen that.

But one of the other provisions creates a loophole so large you can drive a truck through it. It expands the definition of exceptional events. Now exceptional events under the Clean Air Act say, all right, local communities, we understand that if you have a huge wildfire in your community the stringent requirements are not going to apply. But what they do in this bill is they say an exceptional event would apply to just about anything. So it would say, it would let communities and polluters off the hook because you would just say, oh, stagnant air every day, higher ozone that we breathe would be exceptional when it is not. It is not exceptional. The Rush amendment goes to the heart of

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the Clean Air Act. If our Republican colleagues say that this bill has nothing to do with the science then they should adopt the Rush amendment that says simply, well, if the EPA determines that there are health impacts that we keep the current structure of the Clean Air Act. I don't know why that would be opposed.

But I think in the end it won't be enough to cure this bill because it really is a sweeping attack on the lifesaving standards that protect all of us from pollutants in the air. This bill is really a radical attempt to undermine our country's clean air protections that make America great and make it strong and make it different from so many other countries across the globe. It would not only delay the long overdue updated ozone standards and weaken their implementation and enforcement, but it would permanently weaken the health protections against many dangerous air pollutants and the scientific basis of the Clean Air Act.

I urge you to adopt the Rush amendment and then at the end of the day I think you have got to oppose this radical bill. I yield back my time.

Mr. Olson. The gentlelady yields back. Is there further discussion on this amendment?

Mr. Barton. Mr. Chairman. Mr. Chairman.

Mr. Olson. Yes, sir. Mr. Barton from Texas recognized for five minutes.

Mr. Barton. I seek recognition in opposition to my good

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friend Mr. Rush's amendment. Before I express that opposition, I think we all know that Congressman Bob Latta's father, Del Latta, just passed away, and Chairman Upton and I served with Congressman Latta. He was one of our heroes. The Gramm-Latta bill that passed in August, I believe, of 1980 is one of the signature accomplishments of the Congress in the last 30 or 40 years.

The Chairman. It was '81.

Mr. Barton. Was it '81? I thought it was 1980. But it would have had to be '81, yes, you are right. The Chairman, as always, is correct. Anyway, the Latta family are in our prayers.

With regard to this pending bill and the amendment to it, the bill doesn't gut the Clean Air Act. It brings a little bit of sanity to it, gives a little more time to implement it. We need standards for ozone. The Clean Air Act requires a review of the NAAQS every five years, and basically what we are doing now is because they have to review it every five years, the Obama administration is trying to make it stronger, tighter, whatever your verb of choice is, but I am skeptical if an increase in the standard below its current level is going to bring any public health benefits at all.

I am absolutely positive that is going to cost huge amounts of resources for cities, states, counties, communities to comply with it, so this bill simply slows it down a little bit. I don't have a problem with that. That is not gutting the Clean Air Act.

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Changing the review cycle from five to ten years given where the current standard is, you know, we are down at now what, 8 parts per billion or something like that and they want to go even -- you can't measure. We don't have the technology and the equipment in some cases to measure the difference in the tightening of the standard.

So, people know my affection for Mr. Rush and I have huge affection for Ms. Castor. We are working on the ACE Kids bill. But in this case I am going to strongly urge a no vote on the Rush amendment and a yes vote on the underlying bill. With that, Mr. Chairman, I yield back.

Mr. Olson. The gentleman yields back. Is there further discussion of the amendment? The gentlelady from California is recognized for five minutes.

Mrs. Capps. Thank you, Mr. Chairman. I move to strike the last word in support of the Rush amendment, and I will be as brief as I can. The Clean Air Act is designed to improve the quality of our air which is fundamental to protecting public health. It has -- I come from a part of the country where the word smog was invented, so this is a pretty important topic.

The Clean Air Act has been tremendously successful since it was enacted. The Clean Air Act has provided the foundation for a safer, cleaner environment and it is clear that this has improved public health especially regarding respiratory health. We have

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all benefited from this. Part of the reason that this law has been so impactful is that it is designed to prioritize public health and safety. However, this bill is written, would significantly depart from this prioritization.

There is clear evidence that ozone pollution can threaten public health especially in groups that are more at risk from exposure such as children, the elderly, or individuals with chronic diseases. It is also true that some communities are more at risk from ozone and other pollutants than others, so we must ensure our laws protect the right to clean air for everyone not just a privileged subset.

And that is what my colleague's amendment would do by ensuring that the Clean Air Act works to improve and protect public health. As written, the legislation before us puts certain communities at increased risk. I thank Mr. Rush for highlighting this discrepancy and putting forward this amendment to ensure that we continue to prioritize clean air for everyone.

Without it, we risk putting Americans at risk for an increase in the rate of asthma attacks, respiratory disease, cardiovascular disease, stroke, heart attacks, neurological damage, premature mortality, prematurity, and birth defects. No one in this room wants that to happen, so why would we put our constituents or anyone else at greater risk when we can help to prevent it?

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The Rush amendment is critical to addressing these risks and that is why I strongly support it. I urge my colleagues to support it as well, and I yield either to someone else or I yield back. Thank you.

Mr. Olson. The gentlelady yields back. Is there further discussion of the amendment? If there is no further discussion, a roll call is called.

The Clerk. Mr. Olson.

Mr. Olson. Mr. Olson is no.

The Clerk. Mr. Olson votes no.

Mr. Barton.

Mr. Barton. No.

The Clerk. Mr. Barton votes no.

Mr. Shimkus.

Mr. Shimkus. No.

The Clerk. Mr. Shimkus votes no.

Mr. Pitts.

[No response.]

The Clerk. Mr. Latta.

[No response.]

The Clerk. Mr. Harper.

Mr. Harper. No.

The Clerk. Mr. Harper votes no.

Mr. McKinley.

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Mr. McKinley. No.

The Clerk. Mr. McKinley votes no.

Mr. Pompeo.

Mr. Pompeo. No.

The Clerk. Mr. Pompeo votes no.

Mr. Kinzinger.

Mr. Kinzinger. No.

The Clerk. Mr. Kinzinger votes no.

Mr. Griffith.

Mr. Griffith. No.

The Clerk. Mr. Griffith votes no.

Mr. Johnson.

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Mr. Long.

Mr. Long. No.

The Clerk. Mr. Long votes no.

Mrs. Ellmers.

Mrs. Ellmers. No.

The Clerk. Mrs. Ellmers votes no.

Mr. Flores.

Mr. Flores. No.

The Clerk. Mr. Flores votes no.

Mr. Mullin.

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Mr. Mullin. No.

The Clerk. Mr. Mullin votes no.

Mr. Hudson.

Mr. Hudson. No.

The Clerk. Mr. Hudson votes no.

Mr. Upton.

The Chairman. No.

The Clerk. Mr. Upton votes no.

Mr. Rush.

Mr. Rush. Aye.

The Clerk. Mr. Rush votes aye.

Mr. McNerney.

Mr. McNerney. Aye.

The Clerk. Mr. McNerney votes aye.

Mr. Tonko.

Mr. Tonko. Aye.

The Clerk. Mr. Tonko votes aye.

Mr. Engel.

[No response.]

The Clerk. Mr. Green.

Mr. Green. Aye.

The Clerk. Mr. Green votes aye.

Mrs. Capps.

Mrs. Capps. Aye.

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The Clerk. Mrs. Capps votes aye.

Mr. Doyle.

[No response.]

The Clerk. Ms. Castor.

Ms. Castor. Aye.

The Clerk. Ms. Castor votes aye.

Mr. Sarbanes.

Mr. Sarbanes. Aye.

The Clerk. Mr. Sarbanes votes aye.

Mr. Welch.

Mr. Welch. Aye.

The Clerk. Mr. Welch votes aye.

Mr. Yarmuth.

Mr. Yarmuth. Aye.

The Clerk. Mr. Yarmuth votes aye.

Mr. Loeb sack.

Mr. Loeb sack. Aye.

The Clerk. Mr. Loeb sack votes aye.

Mr. Pallone.

Mr. Pallone. Aye.

The Clerk. Mr. Pallone votes aye.

Chairman Whitfield.

[No response.]

Mr. Olson. Are there any other members wishing to cast a

vote? The clerk will report the vote.

The Clerk. Mr. Chairman, on that vote there are 11 ayes and 15 noes.

Mr. Olson. Sorry about that. Are there any other amendments to this bill? The chair recognizes the gentleman from California, Mr. McNerney, for five minutes.

Mr. McNerney. Mr. Chairman, I have an amendment at the desk.

[The Amendment offered by Mr. McNerney follows:]

\*\*\*\*\*INSERT 4\*\*\*\*\*

The Clerk. Amendment to H.R. 4775 offered by Mr. McNerney.

Mr. Olson. The gentleman is recognized for five minutes to speak in support of his amendment.

Mr. McNerney. Thank you, Mr. Chairman. My amendment strikes Section 3(a) of 4775. Section 3(a) changes the timeline that the EPA's National Ambient Air Quality Standards review from every five years to every ten years.

I want to make an important distinction between reviews and updates. Currently, the Clean Air Act requires the EPA to review the health science of pollution every five years and may update the air quality standards if necessary to protect public health. Section 3(a) of this legislation would weaken the Clean Air Act by doubling that time period. The EPA updates the standards if science indicates that the standards would be updated and are necessary to protect public health. And I want to repeat, if the science indicates it is necessary. The EPA relies on its Clean Air Scientific Advisory Committee which provides independent advice on technical basis. Waiting a decade to review scientific data does not benefit the public.

We know that pollutants such as ozone, carbon monoxide, and lead can cause serious health problems. A recent American Lung Association report indicates that there are 166 million people living in counties where they are exposed to unhealthy levels of pollution, and most of the areas in my district received an F grade

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for their air quality. California has faced and will continue facing significant challenges regarding air quality, and the EPA has acknowledged that a transformational change is needed within the state. Fortunately, California is leading the nation in its efforts to combat climate change, reducing all transportation emissions, moving to a 50 percent RPS and continued implementation of its cap and trade program.

Even with this five-year statutory review deadline, in practice EPA has occasionally reviewed health standards only every eight years or longer. This indicates that delaying the statutory deadline from five years to ten years could delay the EPA's updates to standards for even longer than ten years.

Our decisions need to be informed by the research in science. Delaying analysis of current standards because it is not convenient is a step backwards. For the sake of the people of my own district and the American public in general I urge the adoption of my amendment, and I yield back.

Mr. Olson. The gentleman yields back. The chair strikes the last word, will speak in five minutes in opposition to the amendment from the gentleman from California.

This amendment is unnecessary, and this reads Section 3(a). H.R. 4775 extends the mandatory review period from five years to ten years while allowing the EPA administrator discretion to issue revised standards earlier if the circumstances warrant. The

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administrator can do this at the five-year mark, the six-year mark, the seven-year mark, the eight-year mark, the nine-year mark; it stops at ten years. This is reasonable because the process of reviewing the standards are complex and they are rarely completed within the five-year time period. It involves planning, integrated science assessment, risk exposure assessment, policy assessment, and rulemaking. At the same time as reviews are being conducted, states are also required to implement multiple standards already issued by the agency. For example, states are currently different from ozone, particulate matter, and sulfur dioxide.

EPA can take years to issue necessary rulemaking for each of these new standards. EPA took nearly seven years to finalize the standards for the 2008 ozone, and they have yet to issue them for the 2012 particulate matter standards. EPA can also take years to process state implementation plans. As of the end of 2015, there were 557 backlogged plans according to EPA's budget documents.

Most state regulators have agreed, urge that the current mandatory review period be extended. I urge a no vote on the amendment. I yield back.

Does anyone else want to speak, discuss the amendment? The ranking member of the full committee, Mr. Pallone, is recognized for five minutes.

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Mr. Pallone. Thank you, Mr. Chairman. I want to speak in support of the McNerney amendment. The proposed changes to the NAAQS review cycle would put lives at risk by permanently delaying updates to limits on not just ozone but every dangerous criteria air pollutant -- carbon monoxide, lead, nitrogen oxides, ozone, particulate matter and sulfur dioxide.

The Clean Air Act requires EPA to review the science every five years and to update the standards when necessary to protect public health. And it is important to note that EPA isn't required to update the NAAQS every five years, just review the science. The 2015 ozone standard reflects strong scientific evidence regarding the harmful effects of ozone on human health and the environment including more than a thousand new studies.

And scientists are constantly researching the impacts that air pollution has on human health and have consistently discovered that ozone, particulate pollutants, and other types of air pollution covered by the Clean Air Act are harmful in more ways and at lower concentrations than previously understood.

But this bill would ignore all this work by doubling the review period from five years to ten years, delaying the review of science and potentially necessary updates to the standards. And ten years, in my opinion, is too long to wait to protect public health from levels of ozone, particulate pollution, and other pollutants that the science shows are dangerous.

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Delaying EPA's review of the best medical science won't make outdated air pollution levels safe, it will just lead to more American suffering from unhealthy air for longer periods of time. As history has shown it is very difficult for EPA to act without strict deadlines, and so I urge all members to support the McNerney amendment and I yield back.

Mr. Olson. The gentleman yields back. Is there further discussion of the amendment?

Mr. Flores. Mr. Chairman.

Mr. Olson. Mr. Flores from Texas recognized for five minutes in opposition to the amendment.

Mr. Flores. Yes, Mr. Chairman, I just need a couple of minutes. I am against the amendment and here is why. When this section of the bill is predominantly from H.R. 4000 which I introduced a few weeks ago, when we drafted this section of the bill it was done based on what actual EPA performance has been. And if you look at the full reviews that the EPA has done since 1971, it has taken an average of 10.5 years for each review.

So this bill just conforms to the EPA's actual performance in terms of the standards reviews, and therefore I think we are just trying to make the statute fit what is actually possible in the real world. With that I would urge our colleagues to vote no on the amendment, yes on the bill, and I yield back.

Mr. Olson. The gentleman yields back. Is there further

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discussion to the amendment?

Mr. Tonko. Mr. Chair.

Mr. Olson. The chair recognizes Mr. Tonko from New York for five minutes.

Mr. Tonko. May I have -- I move to strike the last word.

Mr. Olson. The gentleman is recognized for five minutes.

Mr. Tonko. Thank you. I support the McNerney amendment. The proposal to move from a five-year to a ten-year review cycle for all NAAQS will undermine progress toward cleaner air and health protections for millions of Americans. The purpose of these standards is to establish a level of air quality that adequately protects public health based on the latest scientific knowledge.

Under the current law, if EPA finds that a change is not warranted in that five-year cycle it does not have to revise the standard. The most recent NAAQS standard is consistent with the recommendations of the Clean Air Scientific Advisory Committee and the latest science. In fact that committee concluded that the latest science supports a standard within a range of 70 parts per billion down to 60 parts per billion, so EPA standard is on the high end of that range.

The current five-year cycle provides a reasonable amount of time for the development of new research. The increase to a ten-year review cycle would undermine that effort. We know that

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within a five-year window new and significant research can become available. This proposed delay would hinder the agency's ability to ensure the latest sciences incorporated in EPA's decision making.

We shouldn't pretend that air pollution doesn't exist. We shouldn't deny the latest science to make smart decisions in how it should be reduced. Delaying this process will only harm Americans, especially children, who expect the EPA to use its most recent studies to inform its standard setting. With that I will yield to Mr. McNerney with my remaining time.

Mr. McNerney. I thank the gentleman for yielding. I just want to point out the distinction between the review, reviewing the standards and updating the standards. Science moves along pretty quickly so new information is coming along, the standards should be reviewed every five years. Now whether we want to update those standards every five years is another question entirely depending on what the science tells us. If it tells us there is an urgent need to update the standards then they should be updated. But reviewing the standards should take place at a five-year period. Delaying it to ten years a lot of information can be lost and wasted, a lot of lives can be put at risk.

So I see why you don't want to update standards if it takes seven years to update them, but let's go ahead and have a review every five years. With that I will yield back.

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Mr. Tonko. And with that Mr. Chair --

Mr. Rush. Will the gentleman yield?

Mr. Tonko. I will yield to the gentleman from Illinois, please.

Mr. Rush. I want to thank the gentleman for yielding.

Mr. Chairman, I am really sitting here and I am just wondering what is going on here. Mr. Chairman, I don't understand how we can continue to argue for a delay for five years and extending the review period to ten years.

Mr. Chairman, the public needs assurance. The public needs health. The public is looking toward this subcommittee to place at the center of its deliberation public health. And Mr. Chairman, I have heard from the other side of the aisle here from the Republicans on this subcommittee and their answers just don't answer and provide answers to what the American people are seeking. It doesn't benefit the public, doesn't benefit public health by denying health-based scientific data for a decade. It doesn't make sense. Mr. Chairman, in fact delaying these health-based standards unnecessarily harms the very people we were elected to protect. It makes them vulnerable to illnesses, even premature deaths.

Mr. Chairman, this provision would be similar to prohibiting the very industry of which you are, and your side is attempting to protect. This provision would be like prohibiting industry

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from making any updates to their products or their services for a decade regardless of any technological advances that might occur during that same period of time, during that ten-year period of time.

We should not make changes to the Clean Air Act that harm public health and ties the hands of the very agency that is responsible for protecting our air. Mr. Chairman, I fully support the McNerney amendment and I urge all of my colleagues to do the same.

Mr. Olson. The gentleman's time is expired. Is there further discussion of the amendment? Not for discussion, the question now occurs on the amendment.

All those in favor will signify by saying aye.

All those opposed say nay.

In the opinion of the chair the noes have it, the amendment is not agreed to.

Are there further amendments for consideration?

Mr. Pallone. Mr. Chairman.

Mr. Olson. The chair recognizes the ranking member, Mr. Pallone, for five minutes to introduce his amendment.

Mr. Pallone. My amendment is at the desk, Number 3.

[The Amendment offered by Mr. Pallone follows:]

\*\*\*\*\*INSERT 5\*\*\*\*\*

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Mr. Olson. The clerk will report the amendment.

The Clerk. Amendment to H.R. 4775 offered by Mr. Pallone.

Mr. Pallone. Mr. Chairman, my amendment is straightforward. It fixes one of the most egregious provisions in the bill and that is the consideration of, quote, technical feasibility in the NAAQS setting process. Now I don't want to pretend that we are tinkering around the margins or applying common sense with this bill. I think the bill and this provision, and provision in particular, is a radical provision that would allow polluters to override scientists. It would require EPA to set up air quality standards based on profits rather than public health.

The bill's approach would make feasibility a factor in the scientific decision about how much pollution is safe for a child to breathe without experiencing an asthma attack, and this is equivalent to your doctor basing your diagnosis on the cost of treatment. It puts the health of our children and the elderly of all Americans at unnecessary risk.

During the hearing on this bill the Republicans downplayed the significance of this change. This provision would overturn a unanimous Supreme Court decision saying that the goal of the Clean Air Act is to achieve air quality that is safe. The Republicans claim that the Supreme Court was ambiguous on whether anything beyond health could be considered when establishing a

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national ambient air quality standard.

But in fact the Supreme Court wasn't at all ambiguous, and I just want to read what the late Justice Scalia wrote in 2001. He wrote for the Court that the Clean Air Act, and I quote, unambiguously bars cost considerations from the NAAQS setting process and thus ends the matter for us as well as the EPA, end of quote.

And this is not to say that feasibility and costs aren't considered at any point, the scientific determination of what is safe to breathe doesn't depend on the technology of cost or cleaning up pollution, but these considerations do come into play in the second step of the process when states decide the most effective way to meet their air quality goals.

But Section 3(b) of this bill turns this extremely effective approach upside down, so my amendment would restore current law preserving NAAQS' purely health-based standards and leaving the consideration of cost and feasibility to the states. At almost every time EPA proposes a significant new requirement opponents tell us that it can't be done. It is going to cost too much. It will turn off the lights. And Republicans are once again raising the false specter of job losses and high economic costs to block the implementation of stronger ozone standards.

These doomsday claims about the cost of clean air are nothing new. The history of the Clean Air Act is a history of exaggerated

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claims by industry that have never come true, and Section 3(b) is just the latest in a string of reckless legislative attacks on these purely health-based air quality standards which can unravel the entire framework of the Clean Air Act. So for these reasons I would ask my colleagues to support my amendment, and I yield back.

Mr. Tonko. The gentleman yields back. The chair recognizes himself for five minutes to speak in opposition to the amendment.

This amendment mischaracterizes Section 3(b). Section 3(b) states that if the EPA administrator in consultation with the EPA's independent scientific advisory committee finds a range of levels of air quality are requisite to protect public health with an adequate margin of safety, then, and this is a quote from the bill, the administrator may -- not must, may -- consider, as a secondary consideration, likely technological feasibility in establishing and revising the national primary ambient air quality standard for this pollutant, end quote. May, may, not must, may.

H.R. 4775 does not change the Clean Air Act's requirement that standards be based on the protection of health. This bill simply clarifies that the EPA administrator has the discretion, the discretion, to consider technological feasibility when choosing among a range of levels identified and supported by the

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science as protective of public health. This is a clarification for future administrations that Congress considers technical feasibility to be a reasonable part of the decision making process when positive choices must be made among a range of scientifically valid options. I urge a no vote on this amendment.

Are there further discussions of this amendment? The chair recognizes the gentleman from New York, Mr. Tonko, for five minutes.

Mr. Tonko. Thank you, Mr. Chair. I move to strike the last word.

Mr. Olson. You are recognized for five minutes, sir.

Mr. Tonko. Thank you. I speak in support of the Pallone amendment. Mr. Chair, requiring EPA to consider technological feasibility when setting an air quality standard is a dangerous precedent that ignores the history of the Clean Air Act and, frankly, it is not even unnecessary. Since 1970, the Clean Air Act has had several key features that have helped make it one of the most successful environmental laws in our country. The law's science-based, health protective standards keep our eye on the prize and that is healthy air for everyone. Cooperative federalism allows EPA to set the clean air goals and allows states to decide how best to achieve those goals.

And the Clean Air Act uses regulatory standards like the National Ambient Air Quality Standards to drive technological

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innovation in pollution controls often called technology forcing standards. The act recognizes that it usually costs less to dump pollution rather than to clean it up, so businesses generally don't control pollution absent regulatory requirements.

We know from decades of experience that the Clean Air Act drives innovations in pollution controls that then become the industry standard. Once an air pollution standard is in place industry gets to work to meet it, and along the way we develop more effective and less expensive pollution control technologies. Not only is our air cleaner, but we also export tens of billions of dollars of pollution control equipment all over the world. We have seen that happen over and over again.

But Section 3(b) ignores this fact and rejects an approach that has been successful for over four decades. This section is a radical rewrite of the health-based air quality standards that are the foundation of the Clean Air Act. It ignores decades of experience in cleaning up air pollution and it is an extreme and a reckless approach.

So with that I urge adoption of the Pallone amendment to ensure that these critical standards are based on science and science alone. With that I yield back.

Mr. Tonko. The gentleman yields back. Is there further discussion of the amendment?

Mr. Shimkus. Mr. Chairman.

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Mr. Olson. The chair recognizes Mr. Shimkus from Illinois.

Mr. Shimkus. Just for one minute let me just say that OMB already does this, also that what my colleagues are saying is set a standard that we have no technology to meet. When the Clean Air Act was passed in '92 we had scrubber technology and so that is why it was partly successful. When the Clean Power Plan was just passed we didn't have the technology on CO2 and that is why we have problems with it. So to consider whether we actually have the technology to meet a standard, I think it is realistic especially if you want to have baseload generation and low cost power. So I, obviously I am in opposition to the amendment and I ask my colleagues to vote no.

Mr. Rush. Mr. Chairman.

Mr. Olson. Yes, sir. Is there further discussion to the amendment?

Mr. Rush. Mr. Chairman.

Mr. Olson. Mr. Rush.

Mr. Rush. I move to strike the last word.

Mr. Olson. The gentleman strikes the last word. Mr. Rush can speak for five minutes in support of the amendment.

Mr. Rush. Mr. Chairman, I strongly support the Pallone amendment. My list of concerns with H.R. 4775 are many, but the main issue I have with this legislation is that it would permanently weaken the Clean Air Act as well as the future air

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pollution health standards for all criteria pollutants. Specifically, Mr. Chairman, H.R. 4775 would fundamentally alter, or fundamentally change provisions of the Clean Air Act by imposing cost and technological feasibility considerations on the standard setting process.

This drastic alteration of the Clean Air Act would prohibit the EPA from relying on the most current scientific data when determining air pollutant standards. Instead, this bill, Mr. Chairman, will require the agency to primarily consider industry friendly standards regardless of their impacts on public health and on the environment. Additionally, H.R. 4775, Mr. Chairman, would delay the ozone standards recently introduced by the EPA for up to another eight years while also doubling the amount of time, doubling the amount of time, Mr. Chairman, that the agency is required to review national health standards for ozone, for soot, for lead, and other dangerous pollutants.

The new standard that the EPA originally issues tightening the ozone nets from 75 parts per billion to 70 parts per billion already, Mr. Chairman, represents a measured approach. Unfortunately, H.R. 4775 represents the exact opposite of a measured approach as it unabashedly tips the scale in favor of industry over public health. This bill delays new standards for years on end. It changes the consideration of further and future standards from health-based to industry friendly regulations.

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It creates loopholes for construction permitting, it exempts the most extreme nonattainment areas, and it expands the definition of, quote, exceptional events to include conditions that are becoming more and more common.

Mr. Chairman, the Pallone amendment would help keep the Clean Air Act provisions intact, and I urge my colleagues to strongly support this, the Pallone amendment, and with that I yield back the balance of my time.

Mr. Olson. The gentleman yields back. Is there further discussion of the amendment? A roll call vote has been requested. The clerk will call the roll.

The Clerk. Mr. Olson.

Mr. Olson. No.

The Clerk. Mr. Olson votes no.

Mr. Barton.

Mr. Barton. No.

The Clerk. Mr. Barton votes no.

Mr. Shimkus.

Mr. Shimkus. No.

The Clerk. Mr. Shimkus votes no.

Mr. Pitts.

[No response.]

The Clerk. Mr. Latta.

[No response.]

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The Clerk. Mr. Harper.

Mr. Harper. No.

The Clerk. Mr. Harper votes no.

Mr. McKinley.

Mr. McKinley. No.

The Clerk. Mr. McKinley votes no.

Mr. Pompeo.

Mr. Pompeo. No.

The Clerk. Mr. Pompeo votes no.

Mr. Kinzinger.

Mr. Kinzinger. No.

The Clerk. Mr. Kinzinger votes no.

Mr. Griffith.

Mr. Griffith. No.

The Clerk. Mr. Griffith votes no.

Mr. Johnson.

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Mr. Long.

Mr. Long. No.

The Clerk. Mr. Long votes no.

Mrs. Ellmers.

Mrs. Ellmers. No.

The Clerk. Mrs. Ellmers votes no.

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Mr. Flores.

Mr. Flores. No.

The Clerk. Mr. Flores votes no.

Mr. Mullin.

Mr. Mullin. No.

The Clerk. Mr. Mullin votes no.

Mr. Hudson.

Mr. Hudson. No.

The Clerk. Mr. Hudson votes no.

Mr. Upton.

The Chairman. No.

The Clerk. Mr. Upton votes no.

Mr. Rush.

Mr. Rush. Aye.

The Clerk. Mr. Rush votes aye.

Mr. McNerney.

Mr. McNerney. Aye.

The Clerk. Mr. McNerney votes aye.

Mr. Tonko.

Mr. Tonko. Aye.

The Clerk. Mr. Tonko votes aye.

Mr. Engel.

Mr. Engel. Aye.

The Clerk. Mr. Engel votes aye.

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Mr. Green.

Mr. Green. Aye.

The Clerk. Mr. Green votes aye.

Mrs. Capps.

Mrs. Capps. Aye.

The Clerk. Mrs. Capps votes aye.

Mr. Doyle.

Mr. Doyle. Yes.

The Clerk. Mr. Doyle votes aye.

Ms. Castor.

Ms. Castor. Aye.

The Clerk. Ms. Castor votes aye.

Mr. Sarbanes.

Mr. Sarbanes. Aye.

The Clerk. Mr. Sarbanes votes aye.

Mr. Welch.

Mr. Welch. Aye.

The Clerk. Mr. Welch votes aye.

Mr. Yarmuth.

Mr. Yarmuth. Aye.

The Clerk. Mr. Yarmuth votes aye.

Mr. Loeb sack.

Mr. Loeb sack. Aye.

The Clerk. Mr. Loeb sack votes aye.

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Mr. Pallone.

Mr. Pallone. Aye.

The Clerk. Mr. Pallone votes aye.

Chairman Whitfield.

[No response.]

Mr. Olson. Are there further members requesting a vote?

The clerk will report the result.

The Clerk. Mr. Chairman, on that vote there were 13 ayes and 15 noes.

Mr. Olson. There was 13 ayes, 15 noes. The amendment is not agreed to. Are there further amendments? Seeing none, the question now occurs on forwarding H.R. 4775 to the full committee.

All those in favor say aye.

All those opposed say nay.

Roll call vote is requested. The clerk will call the roll.

The Clerk. Mr. Olson.

Mr. Olson. Yes, aye.

The Clerk. Mr. Olson votes aye.

Mr. Barton.

Mr. Barton. Yes.

The Clerk. Mr. Barton votes aye.

Mr. Shimkus.

Mr. Shimkus. Aye.

The Clerk. Mr. Shimkus votes aye.

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Mr. Pitts.

[No response.]

The Clerk. Mr. Latta.

[No response.]

The Clerk. Mr. Harper.

Mr. Harper. Yes.

The Clerk. Mr. Harper votes aye.

Mr. McKinley.

Mr. McKinley. Aye.

The Clerk. Mr. McKinley votes aye.

Mr. Pompeo.

Mr. Pompeo. Aye.

The Clerk. Mr. Pompeo votes aye.

Mr. Kinzinger.

Mr. Kinzinger. Aye.

The Clerk. Mr. Kinzinger votes aye.

Mr. Griffith.

Mr. Griffith. Aye.

The Clerk. Mr. Griffith votes aye.

Mr. Johnson.

[No response.]

The Clerk. Mr. Long.

Mr. Long. Aye.

The Clerk. Mr. Long votes aye.

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Mrs. Ellmers.

Mrs. Ellmers. No -- or yes. Yes.

The Clerk. Mrs. Ellmers votes aye.

Mr. Flores.

Mr. Flores. Aye.

The Clerk. Mr. Flores votes aye.

Mr. Mullin.

Mr. Mullin. Aye.

The Clerk. Mr. Mullin votes aye.

Mr. Hudson.

Mr. Hudson. Aye.

The Clerk. Mr. Hudson votes aye.

Mr. Upton.

The Chairman. Aye.

The Clerk. Mr. Upton votes aye.

Mr. Rush.

Mr. Rush. No.

The Clerk. Mr. Rush votes no.

Mr. McNerney.

Mr. McNerney. No.

The Clerk. Mr. McNerney votes no.

Mr. Tonko.

Mr. Tonko. No.

The Clerk. Mr. Tonko votes no.

Mr. Engel.

Mr. Engel. No.

The Clerk. Mr. Engel votes no.

Mr. Green.

Mr. Green. No.

The Clerk. Mr. Green votes no.

Mrs. Capps.

Mrs. Capps. No.

The Clerk. Mrs. Capps votes no.

Mr. Doyle.

Mr. Doyle. No.

The Clerk. Mr. Doyle votes no.

Ms. Castor.

Ms. Castor. No.

The Clerk. Ms. Castor votes no.

Mr. Sarbanes.

Mr. Sarbanes. No.

The Clerk. Mr. Sarbanes votes no.

Mr. Welch.

Mr. Welch. No.

The Clerk. Mr. Welch votes no.

Mr. Yarmuth.

Mr. Yarmuth. No.

The Clerk. Mr. Yarmuth votes no.

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Mr. Loeb sack.

Mr. Loeb sack. No.

The Clerk. Mr. Loeb sack votes no.

Mr. Pallone.

Mr. Pallone. No.

The Clerk. Mr. Pallone votes no.

Chairman Whitfield.

[No response.]

Mr. Olson. Are there members requiring a vote? Not voted yet, Mr. Johnson?

Mr. Johnson. Aye. Yes.

The Clerk. Mr. Johnson votes aye.

Mr. Olson. Any other who have not voted yet? The clerk will report the result.

The Clerk. Mr. Chairman, on that vote there were 15 ayes and 13 noes.

Mr. Olson. 15 ayes, 13 noes, the bill passes. It will be reported favorably to the full committee. I now ask unanimous consent to enter into the record nine letters both in support and opposition to the bills the subcommittee considered today.

Mr. Rush. Mr. Chairman.

Mr. Olson. Yes. Yes, the gentleman from Illinois.

Mr. Rush. I ask unanimous consent to enter in two letters for the record. One is a letter from public health advocates

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opposing H.R. 4775, and the other one is a letter from the environmental organizations also opposing H.R. 4775.

Mr. Olson. And those were included in my request, so they will be there. Without objection, so ordered.

[The information follows:]

\*\*\*\*\*COMMITTEE INSERT 6\*\*\*\*\*



Mr. Olson. Without objection, the staff is authorized to use, to make technical and conforming changes to legislation approved by the subcommittee today, so ordered. Without objection, the subcommittee stands adjourned.

[Whereupon, at 11:01 a.m., the subcommittee was adjourned.]

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