

Carper-Alexander-Collins-Klobuchar Staff Working Draft

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Title: To amend the Clean Air Act to establish a national uniform multiple air pollutant regulatory program for the electric generating sector.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Clean Air Planning Act of 2009”.

SEC. 2. FINDINGS AND PURPOSES.

Section 401 of the Clean Air Act (42 U.S.C. 7651) is amended to read as follows:

“SEC. 401. FINDINGS AND PURPOSES.

“(a) Findings.—Congress finds that—

“(1) the presence of acidic compounds and associated precursors in the atmosphere and in deposition from the atmosphere represents a threat to natural resources, ecosystems, materials, visibility, and public health;

“(2) the principal sources of the acidic compounds and those precursors in the atmosphere are emissions of sulfur and nitrogen oxides from the combustion of fossil fuels;

“(3) the problem of acid deposition is of national and international significance;

“(4) strategies and technologies for the control of precursors to acid deposition exist now that are economically feasible, and improved methods are expected to become increasingly available over the next decade;

“(5) current and future generations of people in the United States will be adversely affected by delaying measures to remedy the problem;

“(6) reduction of total atmospheric loading of sulfur dioxide and nitrogen oxides will enhance protection of the public health and welfare and the environment;

“(7) control measures to reduce precursor emissions from steam-electric generating units should be initiated without delay;

(8) exposure to sulfur oxides is associated with decreased lung function and respiratory symptoms in exercising asthmatics, it is also associated with more serious indicators of adverse respiratory effects such as respiratory-related emergency department visits and hospital admissions in the general population.

(9) exposure to nitrogen oxides is associated with worsened asthma symptoms, increased respiratory illnesses and symptoms, and serious indicators of adverse respiratory effects such as respiratory-related emergency department visits and hospital admissions.

1 (10) gaseous emissions of sulfur oxides and nitrogen oxides may be transformed in the
2 atmosphere to form particles; exposure to particles has been associated with adverse health
3 and welfare effects including premature mortality, aggravation of respiratory and
4 cardiovascular disease (as indicated by hospital admissions and emergency department
5 visits), changes in lung function, and increased respiratory symptoms (cough, wheeze,
6 shortness of breath) as well as impairment of visibility, adverse effects on ecosystem
7 processes, impacts on climate, and damage and/or soiling of structures and property.

8 (11) in addition to the public welfare effects of materials damage and visibility, the
9 ecological effects due to both gas and particle deposition of nitrogen and sulfur compounds
10 include acidification (due to both nitrogen and sulfur), excess nitrogen enrichment, and
11 interactions between sulfur and methylmercury production.

12 (12) nitrogen oxide can react with volatile organic compounds in the presence of heat
13 and sunlight to form ground-level ozone; and

14 (13) exposure to ground-level ozone can cause symptoms such as wheezing and
15 shortness of breath; it can inflame the linings of the lungs, aggravate respiratory illnesses
16 such as asthma, emphysema and bronchitis leading to increased medication use, school
17 absences, doctor and emergency department visits and hospital admissions; it can increase
18 susceptibility to respiratory infection; long-term exposure can permanently damage lung
19 tissue; and short-term exposure is associated with increased non-accidental and
20 cardiopulmonary mortality.

21 (14) exposure to ozone damages vegetation and ecosystems. Specifically, ozone exposure
22 can visibly damage the leaves of plants and the process by which leaves produce food
23 (photosynthesis). Impaired food production leads to reduced plant growth and
24 reproduction, resulting in reduced forestry production, crop yields, and overall plant vigor.
25 Loss of vigor can result in increased susceptibility of plants to insect attack, disease, harsh
26 weather, and interspecies competition. These adverse effects of ozone have implications for
27 global crop production and food security. Visible ozone injury to leaves can result in a loss
28 of aesthetic value in areas of special scenic significance like national parks and wilderness.

29 “(b) Purposes.—The purposes of this title are—

30 “(1) to reduce the adverse public and environmental health effects caused by the emission
31 of sulfur dioxide and nitrogen oxides, including but not limited to effects of acid deposition,
32 particulate matter, and ozone, through reductions in annual emissions of sulfur dioxide and
33 nitrogen oxides in the 48 contiguous States and the District of Columbia;

34 “(2) to effectuate those reductions by requiring compliance by affected sources with
35 prescribed emission limitations by specified deadlines, which limitations may be met
36 through alternative methods of compliance provided by an emission allocation and transfer
37 system; and

38 “(3) to encourage energy conservation, use of renewable and clean alternative
39 technologies, and pollution prevention as a long-range strategy, consistent with this title, for
40 reducing air pollution and other adverse impacts of energy production and use.”.

41 **SEC. 3. REVISIONS TO SULFUR DIOXIDE ALLOWANCE** 42 **PROGRAM.**

1 (a) In General.—Title IV of the Clean Air Act (relating to acid deposition control) (42 U.S.C.
2 7651 et seq.) is amended by adding at the end the following:

3 **“SEC. 417. INTERIM CLEAN AIR INTERSTATE RULE.**

4 “(a) Interim Legal Effect of the Clean Air Interstate Rule.—

5 “(1) IN GENERAL.—Notwithstanding any other provision of law, the Clean Air Interstate
6 Rule and related Federal implementation plans promulgated and modified by the
7 Administrator on May 12, 2005 (70 Fed. Reg. 25162), April 28, 2006 (71 Fed. Reg. 25288
8 and 25328), October 19, 2007 (72 Fed. Reg. 59190), November 2, 2007 (72 Fed. Reg.
9 62338), and April 28, 2008 (73 Fed. Reg. 22818), shall remain in force and effect with
10 respect to all provisions relating in any way to nitrogen oxides and sulfur dioxide emitted
11 through calendar year 2011.

12 “(2) EXCEPTIONS.—

13 “(A) IN GENERAL.—Paragraph (1) shall not apply with respect to the response of the
14 Administrator (71 Fed. Reg. 25328 (April 28, 2006)) to the petition of the State of
15 North Carolina under section 126.

16 “(B) OZONE PROGRAMS.—Any provision of the rules referred to in paragraph (1)
17 relating to the establishment and implementation of a seasonal ozone emission cap-
18 and-trade program for nitrogen oxides shall not expire, but shall remain in full force
19 and effect, with respect to nitrogen oxides emitted after calendar year 2011, unless ~~or~~
20 and until the date on which the units subject to such seasonal cap-and-trade program
21 are required to begin meeting a nitrogen oxides emission limitation established by a
22 successor regulation that the Administrator promulgates accordance with this Act.

23 **“SEC. 418. PHASE III SULFUR DIOXIDE**
24 **REQUIREMENTS.**

25 “(a) Establishment.—Not later than January 1, 2011, the Administrator shall promulgate
26 regulations to establish, for affected units in the 48 contiguous States and the District of
27 Columbia, a sulfur dioxide allowance trading program to reduce sulfur dioxide emissions from
28 affected units.

29 “(b) Applicability.—After January 1, 2012—

30 “(1) each affected unit within the meaning of section 402 shall be considered to be an
31 affected unit under this section; and

32 “(2) each source that includes 1 or more such affected units shall be considered to be an
33 affected source under this section.

34 “(c) Limitations on Emissions.—

35 “(1) PROHIBITION.—

36 “(A) IN GENERAL.—Beginning on January 1, 2012, it shall be unlawful for the
37 affected units at an affected source to emit a total number of tons of sulfur dioxide
38 during a calendar year in excess of the number of tons authorized by the sulfur dioxide
39 allowances held for the affected source for that year by the owners and operators of the

1 affected source and affected units.

2 “(B) QUALIFICATION.—Only sulfur dioxide allowances described in paragraphs (2)
3 and (3) of subsection (e) shall be held in order to meet the requirements of
4 subparagraph (A).

5 “(2) LIMITATION ON TOTAL EMISSIONS.—The Administrator shall issue allowances
6 authorizing an annual tonnage of emissions of sulfur dioxide from affected units in the
7 United States equal to—

8 “(A) for each of calendar years 2012 through 2014, 3,500,000 tons;

9 “(B) for each of calendar years 2015 through 2019, 1,500,000 tons; and

10 “(C) for calendar year 2020 and each calendar year thereafter—

11 “(i) 1,500,000 tons; or

12 “(ii) a lesser quantity, if the Administrator determines that emissions should be
13 reduced further—

14 “(I) to protect public health or the environment;

15 “(II) to assist with the attainment of national ambient air quality standards;
16 or

17 “(III) to assist States in fulfilling their emission reduction obligations
18 under section 110(a)(2)(D).

19 “(d) Regulations.—The regulations promulgated by the Administrator to carry out this section
20 shall establish requirements for the allowance trading program under this section, including
21 requirements concerning—

22 “(1) the selection of a designated representative for each affected source, who shall make
23 all submissions to the Administrator under this section for the affected source;

24 “(2) the issuance, recording, tracking, holding, transfer, auction, and use of sulfur dioxide
25 allowances;

26 “(3) the monitoring and reporting of emissions, quality assurance of data, and
27 recordkeeping, which shall be consistent with section 412(a) and the first sentence of
28 section 412(d), as applied to the owners and operators of an affected unit and an affected
29 source, except that subsection (a) shall apply in lieu of the deadlines for promulgation of
30 regulations under subsections (a) and (d) of section 412;

31 “(4) excess emission penalties and offsets;

32 “(5) permits in accordance with section 408(h)(3) and title V, as applied to—

33 “(A) an affected unit and an affected source; and

34 “(B) allowances under subsection (e);

35 “(6) provisions that require—

36 “(A) a statement submitted by the designated representative of an owner or operator
37 that the owner or operator will hold allowances authorizing emissions equaling not less
38 than the actual emissions of the affected units at the affected source, in accordance

1 with this section, to be considered to meet the compliance planning requirements of
2 title V; and

3 “(B) recording by the Administrator of a transfer of allowances to amend
4 automatically all applicable permit applications, compliance plans, and permits; and

5 “(7) the public availability of all information concerning the activities described in
6 paragraphs (1) through (5) that is not confidential or is emission data that, pursuant to
7 section 114(c), cannot be confidential.

8 “(e) Allowances.—

9 “(1) IN GENERAL.—Not later than January 1, 2012, the Administrator shall promulgate
10 regulations establishing an auction for the distribution of sulfur dioxide allowances issued in
11 accordance with subsection (c)(2).

12 “(2) NATURE OF ALLOWANCES.—Each sulfur dioxide emission allowance shall be—

13 “(A) a limited authorization to emit, in accordance with this section, 1 ton of sulfur
14 dioxide in the vintage year for which the allowance is issued, or in any subsequent
15 year; and

16 “(B) allowed to be used to meet requirements under this section.

17 “(3) PREVIOUSLY BANKED ALLOWANCES.—

18 “(A) IN GENERAL.—Any sulfur dioxide allowances issued under sections 403
19 through 416 or the rules referred to in section 417(a) for any vintage year before 2012
20 that are not used to meet any requirements under sections 403 through 416 or those
21 rules, and that are not otherwise retired by the Administrator, may be used to meet
22 requirements under this section.

23 “(B) NATURE OF ALLOWANCES.—

24 “(i) BEFORE 2010.—Each sulfur dioxide emission allowance issued for a
25 vintage year before 2010 shall be a limited authorization to emit, in accordance
26 with this section, 1 ton of sulfur dioxide.

27 “(ii) 2010 OR 2011.—Each sulfur dioxide emission allowance issued for a
28 vintage year 2010 or 2011 shall be a limited authorization to emit, in accordance
29 with this section, $\frac{1}{2}$ ton of sulfur dioxide.

30 “(4) FUTURE YEAR ALLOWANCES.—Any sulfur dioxide allowances issued under sections
31 403 through 416 for a vintage year 2012 or any vintage year thereafter shall not be eligible
32 for use to meet requirements under this section.

33 “(5) NO PROPERTY RIGHT.—An allowance issued under this section does not constitute a
34 property right.

35 “(f) Replacement of Sulfur Dioxide Program.—Except as expressly provided in this section,
36 the provisions and requirements of sections 403 through 416 concerning emissions of sulfur
37 dioxide shall not apply to any such emissions in calendar year 2012 or any calendar year
38 thereafter.

39 “(g) Effect on Other Requirements.—

1 “(1) IN GENERAL.—Nothing in this section exempts or excludes the owner or operator of
2 any affected source or affected unit from compliance with any other applicable requirement
3 of this Act, and any liability for excess emission penalties under this section shall not limit
4 the application of section 113, 114, 120, or 304 to the owner or operator.

5 “(2) SEPARATE VIOLATIONS.—Each ton of sulfur dioxide emitted in violation of
6 subsection (c)(1), as implemented in the regulations promulgated under subsection (d), shall
7 be a violation of this title, and, for a calendar year during which the emission occurs, each
8 day of that year shall be a violation of this title.

9 **“SEC. 419. NITROGEN OXIDE CONTROL AND TRADING** 10 **PROGRAM.**

11 “(a) Definitions.—In this section:

12 “(1) ZONE 1 STATE.—The term ‘Zone 1 State’ means the District of Columbia or any of
13 the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana,
14 Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota,
15 Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio,
16 Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West
17 Virginia, and Wisconsin.

18 “(2) ZONE 2 STATE.—The term ‘Zone 2 State’ means any State within the 48 contiguous
19 States that is not a Zone 1 State.

20 “(3) AFFECTED UNIT. The term ‘affected unit’, with respect to nitrogen oxides, means a
21 fossil fuel-fired electric generating facility (including a co-generation facility) that –

22 “(i) on or after January 1, 1985, served as a generator with a nameplate capacity greater
23 than 25 megawatts; and

24 “(ii) produces electricity for sale.

25 “(b) Establishment.—Not later than January 1, 2011, the Administrator shall promulgate
26 regulations to establish 2 nitrogen oxide allowance trading programs to reduce nitrogen oxide
27 emissions for affected units, one for affected units in the Zone 1 States and one for affected units
28 in the Zone 2 States.

29 “(c) Applicability.—Beginning on January 1, 2012—

30 “(1) each unit meeting the applicability requirements set forth in the rules imposing an
31 annual nitrogen oxide tonnage emission limitation referred to in section 417 shall be an
32 affected unit under this section; and

33 “(2) each source that includes 1 or more such affected units shall be an affected source
34 under this section.

35 “(d) Limitations on Emissions.—

36 “(1) ZONE 1 PROHIBITION.—

37 “(A) IN GENERAL.—Beginning on January 1, 2012, it shall be unlawful for the
38 affected units at an affected source in a Zone 1 State to emit a total quantity of nitrogen
39 oxides during a calendar year in excess of the number of nitrogen oxide allowances

1 held for the affected source for that year by the owners and operators of the affected
2 source and the affected units.

3 “(B) LIMITATION.—Only nitrogen oxide allowances described in paragraphs (2)(A)
4 and (3) of subsection (f) shall be held in order to meet the requirements of
5 subparagraph (A).

6 “(2) ZONE 2 PROHIBITION.—

7 “(A) IN GENERAL.—Beginning on January 1, 2012, it shall be unlawful for the
8 affected units at an affected source in a Zone 2 State to emit a total quantity of nitrogen
9 oxides during a calendar year in excess of the number of nitrogen oxide allowances
10 held for the affected source for that year by the owners and operators of the affected
11 source and the affected units.

12 “(B) LIMITATION.—Only nitrogen oxide allowances described in subsection
13 (f)(2)(B) shall be held in order to meet the requirements of subparagraph (A).

14 “(3) ZONE 1 STATE LIMITATIONS ON TOTAL EMISSIONS.—The Administrator shall issue
15 allowances authorizing an annual tonnage of emissions of nitrogen oxides from affected
16 units in the Zone 1 States that are equal, in the aggregate, to—

17 “(A) for each of calendar years 2012 through 2014, 1,390,000 tons;

18 “(B) for each of calendar years 2015 through 2019, 1,300,000 tons;

19 “(C) for calendar year 2020 and each calendar year thereafter—

20 “(i) 1,300,000 tons; or

21 “(ii) a lesser quantity, if the Administrator determines that emissions should be
22 reduced further—

23 “(I) to protect public health or the environment;

24 “(II) to assist in the attainment of national ambient air quality standards; or

25 “(III) to assist States in fulfilling their emission reduction obligations
26 under section 110(a)(2)(D) section 110(a)(2)(D).

27 “(4) ZONE 2 STATE LIMITATIONS ON TOTAL EMISSIONS.—The Administrator shall issue
28 allowances authorizing an annual tonnage limitation for emissions of nitrogen oxides from
29 affected units in the Zone 2 States that are equal, in the aggregate, to—

30 “(A) for each of calendar years 2012 through 2014, 400,000 tons;

31 “(B) for each of calendar years 2015 through 2019, 320,000 tons;

32 “(C) for calendar year 2020 and each calendar year thereafter—

33 “(i) 320,000 tons; or

34 “(ii) a lesser quantity, if the Administrator determines that emissions should be
35 reduced further—

36 “(I) to protect public health or the environment;

37 “(II) to assist in the attainment of national ambient air quality standards; or

1 “(III) to assist States in fulfilling their emission reduction obligations
2 under section 110(a)(2)(D).”

3 “(e) Regulations.—The regulations promulgated by the Administrator to carry out this section
4 shall establish requirements for the allowance trading program under this section, including
5 requirements concerning—

6 “(1) the selection of a designated representative for each affected source, who shall make
7 all submissions to the Administrator under this section for the affected source;

8 “(2) the issuance, recording, tracking, holding, transfer, auction, and use of nitrogen
9 oxide allowances;

10 “(3) the monitoring and reporting of emissions, quality assurance of data, and
11 recordkeeping, which shall be consistent with section 412(a) and the first sentence of
12 section 412(d), as applied to the owners and operators of an affected unit and an affected
13 source, except that subsection (a) shall apply in lieu of the deadlines for promulgation of
14 regulations under subsections (a) and (d) of section 412;

15 “(4) excess emission penalties and offsets;

16 “(5) permits in accordance with section 408(h)(3) and title V, as applied to—

17 “(A) an affected unit and an affected source; and

18 “(B) allowances under subsection (f);

19 “(6) provisions that require—

20 “(A) a statement submitted by the designated representative of an owner or operator
21 that the owner or operator will hold allowances authorizing emissions equaling not less
22 than the actual emissions of the affected units at the affected source, in accordance
23 with this section, to be considered to meet the compliance planning requirements of
24 title V; and

25 “(B) recordation by the Administrator of a transfer of allowances to amend
26 automatically all applicable permit applications, compliance plans, and permits; and

27 “(7) the public availability of all information concerning the activities described in
28 paragraphs (1) through (5) that is not confidential or is emission data that, pursuant to
29 section 114(c), cannot be confidential.

30 “(f) Allowances.—

31 “(1) IN GENERAL.—Not later than January 1, 2012, the Administrator shall promulgate
32 regulations establishing 2 auctions for the distribution of the nitrogen oxide allowances in
33 accordance with this subsection.

34 “(2) AUCTIONS.—

35 “(A) ZONE 1 STATES.—

36 “(i) IN GENERAL.—Of the auctions described in paragraph (1), 1 shall be for the
37 distribution of nitrogen oxide allowances issued in accordance with subsection
38 (d)(3).

39 “(ii) NATURE OF ALLOWANCES.—Each nitrogen oxide allowance auctioned

1 under clause (i) shall be—

2 “(I) a limited authorization to emit, in accordance with this section, 1 ton
3 of nitrogen oxides in the vintage year for which the allowance is issued, or in
4 any subsequent year; and

5 “(II) allowed to be used to meet requirements under this section pertaining
6 to Zone 1 States.

7 “(B) ZONE 2 STATES.—

8 “(i) IN GENERAL.—Of the auctions described in paragraph (1), 1 shall be for the
9 distribution of nitrogen oxide allowances issued in accordance with subsection
10 (d)(4).

11 “(ii) NATURE OF ALLOWANCES.—Each nitrogen oxide allowance auctioned
12 under clause (i) shall be—

13 “(I) a limited authorization to emit, in accordance with this section, 1 ton
14 of nitrogen oxides in the vintage year for which the allowance is issued, or in
15 any subsequent year; and

16 “(II) allowed to be used to meet requirements under this section pertaining
17 to Zone 2 States.

18 “(3) PREVIOUSLY BANKED ALLOWANCES.—

19 “(A) IN GENERAL.—Any nitrogen oxide allowances issued under the rules referred to
20 in section 417(a) for any vintage year before 2012 that are not used to meet any
21 requirements under these rules, and that are not otherwise retired by the
22 Administrator, may be used to meet requirements under this section applicable to
23 sources in Zone 1 States.

24 “(B) NATURE OF ALLOWANCES.—Each allowance described in subparagraph (A) is a
25 limited authorization to emit, in accordance with the requirements of this section, 1 ton
26 of nitrogen oxide,

27 “(4) FUTURE YEAR ALLOWANCES.—Any nitrogen oxide allowances issued under the rules
28 referred to in section 417(a) concerning annual nitrogen oxide emissions for vintage year
29 2012 or any vintage year thereafter shall not be eligible for use in meeting requirements
30 under this section.

31 “(5) NO PROPERTY RIGHT.—An allowance issued under this section does not constitute a
32 property right.

33 “(g) Effect on Other Requirements.—

34 “(1) IN GENERAL.—Nothing in this section exempts or excludes the owner or operator of
35 any affected source or affected unit from compliance with any other applicable
36 requirements of this Act, and any liability for excess emission penalties under this section
37 shall not limit the application of section 113, 114, 120, or 304 to the owner or operator.

38 “(2) SEPARATE VIOLATIONS.—Each ton of nitrogen oxides emitted in violation of
39 paragraph (1) or (2) of subsection (d), as implemented in the regulations promulgated under
40 subsection (e), shall be a violation of this title, and, for a calendar year during which the

1 emission occurs, each day of that year shall be a violation of this title.”.

2 SEC. 4. MERCURY PROGRAM FOR THE ELECTRIC 3 GENERATING SECTOR.

4 (a) MACT Mercury Requirement Reductions.—Section 112(d) of the Clean Air Act is
5 amended by adding at the end the following:

6 (11) Electric Utility Steam Generating Units

7 In promulgating emission standards for electric utility steam generating units
8 under this section, EPA shall assure that:

- 9 (i) such standards achieve at least a 90% reduction in emissions of mercury when
10 applied to the listed category as a whole.
- 11 (ii) mercury emission reductions at electric utility steam generating units begin no later
12 than January 1, 2015.

13 (b) Section 112(n)(1)(A) of the Clean Air Act (42 U.S.C. 7412(n)(1)(A)) is amended by
14 deleting the following sentence: "The Administrator shall regulate electric utility steam
15 generating units under this section, if the Administrator finds such regulation is appropriate and
16 necessary after considering the results of the study required by this subparagraph."

17 (c) Electric Utility Steam Generating Unit Monitoring and Reporting Program.—Section 112
18 of the Clean Air Act (42 U.S.C. 7412) is amended by adding at the end the following:

19 “(t) Mercury Monitoring and Reporting Program.—

20 “(1) MONITORING.—The Administrator shall promulgate regulations requiring—

21 “(A) the operation, reporting, and certification of continuous emission monitoring
22 systems to accurately measure the quantity of mercury that is emitted by electric utility
23 steam generating units; and

24 “(B) verification and reporting of mercury emissions at each electric utility steam
25 generating unit.

26 “(2) REPORTING.—

27 “(A) IN GENERAL.—Not less often than quarterly, the owner or operator of an
28 affected unit that is an electric utility steam generating unit shall submit to the
29 Administrator a report on the monitoring of emissions of mercury carried out by the
30 owner or operator in accordance with the regulations promulgated under paragraph (1).

31 “(B) AUTHORIZATION.—Each report submitted under subparagraph (A) shall be
32 authorized by a responsible official of the electric utility steam generating unit, who
33 shall certify the accuracy of the report.

34 “(C) PUBLIC REPORTING.—The Administrator shall make available to the public,
35 through 1 or more published reports and 1 or more forms of electronic media, data
36 concerning the emission of mercury from each electric utility steam generating unit.”.

37 SEC. 5. SAVINGS CLAUSE.

1 Except as specifically provided in this Act or an amendment made by this Act, nothing in this
2 Act modifies or otherwise affects any authority or obligation set forth in the Clean Air Act (42
3 U.S.C. 7401 et seq.), including sections 110(a)(2)(D), 112 and 126 of that Act (42 U.S.C.
4 7410(a)(2)(D), 7412, 7426).

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