

The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

“(B) NO JUDICIAL REVIEW.—An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

“(6) FAILURE TO COMPLY WITH ORDER.—Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

“(7) CIVIL ACTION TO REQUIRE COMPLIANCE.—“(A) IN GENERAL.—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

“(B) AWARD.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys’ and expert witness fees) to any party whenever the court determines such award is appropriate.

“(C) EFFECT OF SECTION.—

“(1) OTHER LAWS.—Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

“(2) RIGHTS OF EMPLOYEES.—Nothing in this section shall be construed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

“(d) ENFORCEMENT.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

“(e) LIMITATION.—Subsection (a) shall not apply with respect to an employee of an entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food who, acting without direction from such entity (or such entity’s agent), deliberately causes a violation of any requirement relating to any violation or alleged violation of any order, rule, regulation, standard, or ban under this Act.”.

SEC. 403. JURISDICTION; AUTHORITIES.

Nothing in this Act, or an amendment made by this Act, shall be construed to—

(1) alter the jurisdiction between the Secretary of Agriculture and the Secretary of Health and Human Services, under applicable statutes, regulations, or agreements regarding voluntary inspection of non-amenable species under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.);

(2) alter the jurisdiction between the Alcohol and Tobacco Tax and Trade Bureau and the Secretary of Health and Human Services, under applicable statutes and regulations;

(3) limit the authority of the Secretary of Health and Human Services under—

(A) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act; or

(B) the Public Health Service Act (42 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act;

(4) alter or limit the authority of the Secretary of Agriculture under the laws administered by such Secretary, including—

(A) the Federal Meat Inspection Act (21 U.S.C. 601 et seq.);

(B) the Poultry Products Inspection Act (21 U.S.C. 451 et seq.);

(C) the Egg Products Inspection Act (21 U.S.C. 1031 et seq.);

(D) the United States Grain Standards Act (7 U.S.C. 71 et seq.);

(E) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.);

(F) the United States Warehouse Act (7 U.S.C. 241 et seq.);

(G) the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.); and

(H) the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with the amendments made by the Agricultural Marketing Agreement Act of 1937; or

(5) alter, impede, or affect the authority of the Secretary of Homeland Security under the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) or any other statute, including any authority related to securing the borders of the United States, managing ports of entry, or agricultural import and entry inspection activities.

SEC. 404. COMPLIANCE WITH INTERNATIONAL AGREEMENTS.

Nothing in this Act (or an amendment made by this Act) shall be construed in a manner inconsistent with the agreement establishing the World Trade Organization or any other treaty or international agreement to which the United States is a party.

SEC. 405. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Amend the title so as to read: “An Act to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply.”.

ORDER OF PROCEDURE

Mr. KERRY. Mr. President, I ask unanimous consent that after any leader time on Tuesday, December 21, Senator ALEXANDER be recognized for up to 10 minutes; that following his remarks, the Senate then resume consideration of the House message with respect to H.R. 3082, and that the time until 10:15 a.m. be divided as follows: 10 minutes under the control of Senator INOUE or his designee and 15 minutes under the control of Senator MCCAIN; that upon the use or yielding back of time, the Senate then proceed to vote on the motion to invoke cloture on the Reid motion to concur in the House amendment to the Senate amendment to H.R. 3082 with amendment No. 4885; further that upon the conclusion of the vote, Senator SPECTER then be recognized for his farewell speech; that any time utilized by Senator SPECTER count postcloture, if applicable.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TUESDAY, DECEMBER 21, 2010

Mr. KERRY. Mr. President, I ask unanimous consent that when the Sen-

ate completes its business today, it adjourn until 9:30 a.m. on Tuesday, December 21; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and that following any leader remarks, Senator ALEXANDER be recognized in morning business for up to 10 minutes; that following his remarks, the Senate resume consideration of the motion to concur with respect to the House message on H.R. 3082 as provided for under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. KERRY. Mr. President, Senators should expect the first vote of the day to begin at approximately 10:15 a.m. tomorrow. That vote will be on the motion to invoke cloture on the motion to concur with respect to H.R. 3082 which is the vehicle for the continuing resolution. Following the vote, Senator SPECTER will deliver his farewell remarks to the Senate.

Upon disposition of the CR, the Senate will vote on the motion to invoke cloture on the New START treaty. We also have an agreement to consider the Pearson and Martinez nominations and we could debate and vote on those tomorrow afternoon.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. KERRY. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 8:09 p.m., adjourned until Tuesday, December 21, 2010, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF TRANSPORTATION

ANN D. BEGEMAN, OF VIRGINIA, TO BE A MEMBER OF THE SURFACE TRANSPORTATION BOARD FOR A TERM EXPIRING DECEMBER 31, 2015, VICE CHARLES D. NOTTINGHAM, TERM EXPIRING.

DEPARTMENT OF STATE

NILS MAARTEN PARIN DAULAIRE, OF VIRGINIA, TO BE REPRESENTATIVE OF THE UNITED STATES ON THE EXECUTIVE BOARD OF THE WORLD HEALTH ORGANIZATION, VICE JOXEL GARCIA.

OVERSEAS PRIVATE INVESTMENT CORPORATION

TERRY LEWIS, OF MICHIGAN, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 2011, VICE C. WILLIAM SWANK, TERM EXPIRED.

UNITED STATES INSTITUTE OF PEACE

JUDITH A. ANSLEY, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR THE REMAINDER OF THE TERM EXPIRING SEPTEMBER 19, 2011, VICE RON SILVER.

JUDITH A. ANSLEY, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM OF FOUR YEARS. (REAPPOINTMENT)

JOHN A. LANCASTER, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES

INSTITUTE OF PEACE FOR THE REMAINDER OF THE TERM EXPIRING SEPTEMBER 19, 2011, VICE KATHLEEN MARTINEZ.

JOHN A. LANCASTER, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM OF FOUR YEARS. (RE-APPOINTMENT)

JOSEPH CAMPBELL MOORE, OF WYOMING, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF WYOMING FOR THE TERM OF FOUR YEARS.

WILLIAM BENEDICT BERGER, SR., OF FLORIDA, TO BE UNITED STATES MARSHAL FOR THE MIDDLE DISTRICT OF FLORIDA FOR THE TERM OF FOUR YEARS.

WILLIAM BENEDICT BERGER, SR., OF FLORIDA, TO BE UNITED STATES MARSHAL FOR THE MIDDLE DISTRICT OF FLORIDA FOR THE TERM OF FOUR YEARS.

DISCHARGED NOMINATIONS

The Senate Committee on the Judiciary was discharged from further consideration of the following nominations by unanimous consent and the nominations were confirmed:

CONFIRMATIONS

Executive nominations confirmed by the Senate, Monday, December 20, 2010:

DEPARTMENT OF JUSTICE

JOSEPH CAMPBELL MOORE, OF WYOMING, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF WYOMING FOR THE TERM OF FOUR YEARS.

WITHDRAWAL

Executive message transmitted by the President to the Senate on December 20, 2010 withdrawing from further Senate consideration the following nomination:

BEATRICE A. HANSON, OF NEW YORK, TO BE DIRECTOR OF THE OFFICE FOR VICTIMS OF CRIME, VICE JOHN W. GILLIS, WHICH WAS SENT TO THE SENATE ON DECEMBER 23, 2009.