

1           **DIVISION V—CLOUD ACT**

2   **SEC. 101. SHORT TITLE.**

3           This division may be cited as the “Clarifying Lawful  
4   Overseas Use of Data Act” or the “CLOUD Act”.

5   **SEC. 102. CONGRESSIONAL FINDINGS.**

6           Congress finds the following:

7           (1) Timely access to electronic data held by  
8   communications-service providers is an essential  
9   component of government efforts to protect public  
10   safety and combat serious crime, including ter-  
11   rorism.

12          (2) Such efforts by the United States Govern-  
13   ment are being impeded by the inability to access  
14   data stored outside the United States that is in the  
15   custody, control, or possession of communications-  
16   service providers that are subject to jurisdiction of  
17   the United States.

18          (3) Foreign governments also increasingly seek  
19   access to electronic data held by communications-  
20   service providers in the United States for the pur-  
21   pose of combating serious crime.

22          (4) Communications-service providers face po-  
23   tential conflicting legal obligations when a foreign  
24   government orders production of electronic data that

1 United States law may prohibit providers from dis-  
2 closing.

3 (5) Foreign law may create similarly conflicting  
4 legal obligations when chapter 121 of title 18,  
5 United States Code (commonly known as the “  
6 Stored Communications Act”), requires disclosure of  
7 electronic data that foreign law prohibits commu-  
8 nications-service providers from disclosing.

9 (6) International agreements provide a mecha-  
10 nism for resolving these potential conflicting legal  
11 obligations where the United States and the relevant  
12 foreign government share a common commitment to  
13 the rule of law and the protection of privacy and  
14 civil liberties.

15 **SEC. 103. PRESERVATION OF RECORDS; COMITY ANALYSIS**  
16 **OF LEGAL PROCESS.**

17 (a) REQUIRED PRESERVATION AND DISCLOSURE OF  
18 COMMUNICATIONS AND RECORDS.—

19 (1) AMENDMENT.—Chapter 121 of title 18,  
20 United States Code, is amended by adding at the  
21 end the following:

22 **“§ 2713. Required preservation and disclosure of com-**  
23 **munications and records**

24 “A provider of electronic communication service or  
25 remote computing service shall comply with the obligations

1 of this chapter to preserve, backup, or disclose the con-  
2 tents of a wire or electronic communication and any record  
3 or other information pertaining to a customer or sub-  
4 scriber within such provider’s possession, custody, or con-  
5 trol, regardless of whether such communication, record, or  
6 other information is located within or outside of the  
7 United States.”.

8 (2) TABLE OF SECTIONS.—The table of sections  
9 for chapter 121 of title 18, United States Code, is  
10 amended by inserting after the item relating to sec-  
11 tion 2712 the following:

“2713. Required preservation and disclosure of communications and records.”.

12 (b) COMITY ANALYSIS OF LEGAL PROCESS SEEKING  
13 CONTENTS OF WIRE OR ELECTRONIC COMMUNICA-  
14 TION.—Section 2703 of title 18, United States Code, is  
15 amended by adding at the end the following:

16 “(h) COMITY ANALYSIS AND DISCLOSURE OF INFOR-  
17 MATION REGARDING LEGAL PROCESS SEEKING CON-  
18 TENTS OF WIRE OR ELECTRONIC COMMUNICATION.—

19 “(1) DEFINITIONS.—In this subsection—

20 “(A) the term ‘qualifying foreign govern-  
21 ment’ means a foreign government—

22 “(i) with which the United States has  
23 an executive agreement that has entered  
24 into force under section 2523; and

1 “(ii) the laws of which provide to elec-  
2 tronic communication service providers and  
3 remote computing service providers sub-  
4 stantive and procedural opportunities simi-  
5 lar to those provided under paragraphs (2)  
6 and (5); and

7 “(B) the term ‘United States person’ has  
8 the meaning given the term in section 2523.

9 “(2) MOTIONS TO QUASH OR MODIFY.—(A) A  
10 provider of electronic communication service to the  
11 public or remote computing service, including a for-  
12 eign electronic communication service or remote  
13 computing service, that is being required to disclose  
14 pursuant to legal process issued under this section  
15 the contents of a wire or electronic communication  
16 of a subscriber or customer, may file a motion to  
17 modify or quash the legal process where the provider  
18 reasonably believes—

19 “(i) that the customer or subscriber is not  
20 a United States person and does not reside in  
21 the United States; and

22 “(ii) that the required disclosure would  
23 create a material risk that the provider would  
24 violate the laws of a qualifying foreign govern-  
25 ment.

1           Such a motion shall be filed not later than 14  
2           days after the date on which the provider was  
3           served with the legal process, absent agreement  
4           with the government or permission from the  
5           court to extend the deadline based on an appli-  
6           cation made within the 14 days. The right to  
7           move to quash is without prejudice to any other  
8           grounds to move to quash or defenses thereto,  
9           but it shall be the sole basis for moving to  
10          quash on the grounds of a conflict of law re-  
11          lated to a qualifying foreign government.

12          “(B) Upon receipt of a motion filed pursuant to  
13          subparagraph (A), the court shall afford the govern-  
14          mental entity that applied for or issued the legal  
15          process under this section the opportunity to re-  
16          spond. The court may modify or quash the legal  
17          process, as appropriate, only if the court finds  
18          that—

19                 “(i) the required disclosure would cause  
20                 the provider to violate the laws of a qualifying  
21                 foreign government;

22                 “(ii) based on the totality of the cir-  
23                 cumstances, the interests of justice dictate that  
24                 the legal process should be modified or quashed;  
25                 and

1           “(iii) the customer or subscriber is not a  
2           United States person and does not reside in the  
3           United States.

4           “(3) COMITY ANALYSIS.—For purposes of mak-  
5           ing a determination under paragraph (2)(B)(ii), the  
6           court shall take into account, as appropriate—

7           “(A) the interests of the United States, in-  
8           cluding the investigative interests of the govern-  
9           mental entity seeking to require the disclosure;

10          “(B) the interests of the qualifying foreign  
11          government in preventing any prohibited disclo-  
12          sure;

13          “(C) the likelihood, extent, and nature of  
14          penalties to the provider or any employees of  
15          the provider as a result of inconsistent legal re-  
16          quirements imposed on the provider;

17          “(D) the location and nationality of the  
18          subscriber or customer whose communications  
19          are being sought, if known, and the nature and  
20          extent of the subscriber or customer’s connec-  
21          tion to the United States, or if the legal process  
22          has been sought on behalf of a foreign authority  
23          pursuant to section 3512, the nature and extent  
24          of the subscriber or customer’s connection to  
25          the foreign authority’s country;

1           “(E) the nature and extent of the pro-  
2           vider’s ties to and presence in the United  
3           States;

4           “(F) the importance to the investigation of  
5           the information required to be disclosed;

6           “(G) the likelihood of timely and effective  
7           access to the information required to be dis-  
8           closed through means that would cause less se-  
9           rious negative consequences; and

10           “(H) if the legal process has been sought  
11           on behalf of a foreign authority pursuant to  
12           section 3512, the investigative interests of the  
13           foreign authority making the request for assist-  
14           ance.

15           “(4) DISCLOSURE OBLIGATIONS DURING PEND-  
16           ENCY OF CHALLENGE.—A service provider shall pre-  
17           serve, but not be obligated to produce, information  
18           sought during the pendency of a motion brought  
19           under this subsection, unless the court finds that im-  
20           mediate production is necessary to prevent an ad-  
21           verse result identified in section 2705(a)(2).

22           “(5) DISCLOSURE TO QUALIFYING FOREIGN  
23           GOVERNMENT.—(A) It shall not constitute a viola-  
24           tion of a protective order issued under section 2705  
25           for a provider of electronic communication service to

1 the public or remote computing service to disclose to  
2 the entity within a qualifying foreign government,  
3 designated in an executive agreement under section  
4 2523, the fact of the existence of legal process  
5 issued under this section seeking the contents of a  
6 wire or electronic communication of a customer or  
7 subscriber who is a national or resident of the quali-  
8 fying foreign government.

9 “(B) Nothing in this paragraph shall be con-  
10 strued to modify or otherwise affect any other au-  
11 thority to make a motion to modify or quash a pro-  
12 tective order issued under section 2705.”.

13 (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
14 tion, or an amendment made by this section, shall be con-  
15 strued to modify or otherwise affect the common law  
16 standards governing the availability or application of com-  
17 ity analysis to other types of compulsory process or to in-  
18 stances of compulsory process issued under section 2703  
19 of title 18, United States Code, as amended by this sec-  
20 tion, and not covered under subsection (h)(2) of such sec-  
21 tion 2703.

22 **SEC. 104. ADDITIONAL AMENDMENTS TO CURRENT COM-**  
23 **MUNICATIONS LAWS.**

24 Title 18, United States Code, is amended—

25 (1) in chapter 119—



1 (A) in section 2511(2), by adding at the  
2 end the following:

3 “(j) It shall not be unlawful under this chapter for  
4 a provider of electronic communication service to the pub-  
5 lic or remote computing service to intercept or disclose the  
6 contents of a wire or electronic communication in response  
7 to an order from a foreign government that is subject to  
8 an executive agreement that the Attorney General has de-  
9 termined and certified to Congress satisfies section  
10 2523.”; and

11 (B) in section 2520(d), by amending para-  
12 graph (3) to read as follows:

13 “(3) a good faith determination that section  
14 2511(3), 2511(2)(i), or 2511(2)(j) of this title per-  
15 mitted the conduct complained of;”;

16 (2) in chapter 121—

17 (A) in section 2702—

18 (i) in subsection (b)—

19 (I) in paragraph (8), by striking  
20 the period at the end and inserting “;  
21 or”; and

22 (II) by adding at the end the fol-  
23 lowing:

24 “(9) to a foreign government pursuant to an  
25 order from a foreign government that is subject to

1 an executive agreement that the Attorney General  
2 has determined and certified to Congress satisfies  
3 section 2523.”; and

4 (ii) in subsection (c)—

5 (I) in paragraph (5), by striking  
6 “or” at the end;

7 (II) in paragraph (6), by striking  
8 the period at the end and inserting “;  
9 or”; and

10 (III) by adding at the end the  
11 following:

12 “(7) to a foreign government pursuant to an  
13 order from a foreign government that is subject to  
14 an executive agreement that the Attorney General  
15 has determined and certified to Congress satisfies  
16 section 2523.”; and

17 (B) in section 2707(e), by amending para-  
18 graph (3) to read as follows:

19 “(3) a good faith determination that section  
20 2511(3), section 2702(b)(9), or section 2702(c)(7)  
21 of this title permitted the conduct complained of;”;  
22 and

23 (3) in chapter 206—

24 (A) in section 3121(a), by inserting before  
25 the period at the end the following: “or an

1           order from a foreign government that is subject  
2           to an executive agreement that the Attorney  
3           General has determined and certified to Con-  
4           gress satisfies section 2523”; and

5                       (B) in section 3124—

6                       (i) by amending subsection (d) to read  
7                       as follows:

8           “(d) NO CAUSE OF ACTION AGAINST A PROVIDER  
9   DISCLOSING INFORMATION UNDER THIS CHAPTER.—No  
10   cause of action shall lie in any court against any provider  
11   of a wire or electronic communication service, its officers,  
12   employees, agents, or other specified persons for providing  
13   information, facilities, or assistance in accordance with a  
14   court order under this chapter, request pursuant to section  
15   3125 of this title, or an order from a foreign government  
16   that is subject to an executive agreement that the Attor-  
17   ney General has determined and certified to Congress sat-  
18   isfies section 2523.”; and

19                      (ii) by amending subsection (e) to  
20                      read as follows:

21           “(e) DEFENSE.—A good faith reliance on a court  
22   order under this chapter, a request pursuant to section  
23   3125 of this title, a legislative authorization, a statutory  
24   authorization, or a good faith determination that the con-  
25   duct complained of was permitted by an order from a for-

1 eign government that is subject to executive agreement  
2 that the Attorney General has determined and certified  
3 to Congress satisfies section 2523, is a complete defense  
4 against any civil or criminal action brought under this  
5 chapter or any other law.”.

6 **SEC. 105. EXECUTIVE AGREEMENTS ON ACCESS TO DATA**  
7 **BY FOREIGN GOVERNMENTS.**

8 (a) IN GENERAL.—Chapter 119 of title 18, United  
9 States Code, is amended by adding at the end the fol-  
10 lowing:

11 **“§ 2523. Executive agreements on access to data by**  
12 **foreign governments**

13 “(a) DEFINITIONS.—In this section—

14 “(1) the term ‘lawfully admitted for permanent  
15 residence’ has the meaning given the term in section  
16 101(a) of the Immigration and Nationality Act (8  
17 U.S.C. 1101(a)); and

18 “(2) the term ‘United States person’ means a  
19 citizen or national of the United States, an alien  
20 lawfully admitted for permanent residence, an unin-  
21 corporated association a substantial number of mem-  
22 bers of which are citizens of the United States or  
23 aliens lawfully admitted for permanent residence, or  
24 a corporation that is incorporated in the United  
25 States.

1       “(b) EXECUTIVE AGREEMENT REQUIREMENTS.—  
2 For purposes of this chapter, chapter 121, and chapter  
3 206, an executive agreement governing access by a foreign  
4 government to data subject to this chapter, chapter 121,  
5 or chapter 206 shall be considered to satisfy the require-  
6 ments of this section if the Attorney General, with the con-  
7 currence of the Secretary of State, determines, and sub-  
8 mits a written certification of such determination to Con-  
9 gress, including a written certification and explanation of  
10 each consideration in paragraphs (1), (2), (3), and (4),  
11 that—

12               “(1) the domestic law of the foreign govern-  
13 ment, including the implementation of that law, af-  
14 fords robust substantive and procedural protections  
15 for privacy and civil liberties in light of the data col-  
16 lection and activities of the foreign government that  
17 will be subject to the agreement, if—

18               “(A) such a determination under this sec-  
19 tion takes into account, as appropriate, credible  
20 information and expert input; and

21               “(B) the factors to be met in making such  
22 a determination include whether the foreign  
23 government—

24               “(i) has adequate substantive and pro-  
25 cedural laws on cybercrime and electronic

1 evidence, as demonstrated by being a party  
2 to the Convention on Cybercrime, done at  
3 Budapest November 23, 2001, and entered  
4 into force January 7, 2004, or through do-  
5 mestic laws that are consistent with defini-  
6 tions and the requirements set forth in  
7 chapters I and II of that Convention;

8 “(ii) demonstrates respect for the rule  
9 of law and principles of nondiscrimination;

10 “(iii) adheres to applicable inter-  
11 national human rights obligations and  
12 commitments or demonstrates respect for  
13 international universal human rights, in-  
14 cluding—

15 “(I) protection from arbitrary  
16 and unlawful interference with pri-  
17 vacy;

18 “(II) fair trial rights;

19 “(III) freedom of expression, as-  
20 sociation, and peaceful assembly;

21 “(IV) prohibitions on arbitrary  
22 arrest and detention; and

23 “(V) prohibitions against torture  
24 and cruel, inhuman, or degrading  
25 treatment or punishment;

1                   “(iv) has clear legal mandates and  
2                   procedures governing those entities of the  
3                   foreign government that are authorized to  
4                   seek data under the executive agreement,  
5                   including procedures through which those  
6                   authorities collect, retain, use, and share  
7                   data, and effective oversight of these ac-  
8                   tivities;

9                   “(v) has sufficient mechanisms to pro-  
10                  vide accountability and appropriate trans-  
11                  parency regarding the collection and use of  
12                  electronic data by the foreign government;  
13                  and

14                  “(vi) demonstrates a commitment to  
15                  promote and protect the global free flow of  
16                  information and the open, distributed, and  
17                  interconnected nature of the Internet;

18                  “(2) the foreign government has adopted appro-  
19                  priate procedures to minimize the acquisition, reten-  
20                  tion, and dissemination of information concerning  
21                  United States persons subject to the agreement;

22                  “(3) the terms of the agreement shall not cre-  
23                  ate any obligation that providers be capable of  
24                  decrypting data or limitation that prevents providers  
25                  from decrypting data; and

1           “(4) the agreement requires that, with respect  
2           to any order that is subject to the agreement—

3           “(A) the foreign government may not in-  
4           tentionally target a United States person or a  
5           person located in the United States, and shall  
6           adopt targeting procedures designed to meet  
7           this requirement;

8           “(B) the foreign government may not tar-  
9           get a non-United States person located outside  
10          the United States if the purpose is to obtain in-  
11          formation concerning a United States person or  
12          a person located in the United States;

13          “(C) the foreign government may not issue  
14          an order at the request of or to obtain informa-  
15          tion to provide to the United States Govern-  
16          ment or a third-party government, nor shall the  
17          foreign government be required to share any in-  
18          formation produced with the United States  
19          Government or a third-party government;

20          “(D) an order issued by the foreign gov-  
21          ernment—

22                 “(i) shall be for the purpose of obtain-  
23                 ing information relating to the prevention,  
24                 detection, investigation, or prosecution of  
25                 serious crime, including terrorism;



1                   “(ii) shall identify a specific person,  
2                   account, address, or personal device, or  
3                   any other specific identifier as the object of  
4                   the order;

5                   “(iii) shall be in compliance with the  
6                   domestic law of that country, and any obli-  
7                   gation for a provider of an electronic com-  
8                   munications service or a remote computing  
9                   service to produce data shall derive solely  
10                  from that law;

11                  “(iv) shall be based on requirements  
12                  for a reasonable justification based on  
13                  articulable and credible facts, particularity,  
14                  legality, and severity regarding the conduct  
15                  under investigation;

16                  “(v) shall be subject to review or over-  
17                  sight by a court, judge, magistrate, or  
18                  other independent authority prior to, or in  
19                  proceedings regarding, enforcement of the  
20                  order; and

21                  “(vi) in the case of an order for the  
22                  interception of wire or electronic commu-  
23                  nications, and any extensions thereof, shall  
24                  require that the interception order—

1                   “(I) be for a fixed, limited dura-  
2                   tion; and

3                   “(II) may not last longer than is  
4                   reasonably necessary to accomplish  
5                   the approved purposes of the order;  
6                   and

7                   “(III) be issued only if the same  
8                   information could not reasonably be  
9                   obtained by another less intrusive  
10                  method;

11                  “(E) an order issued by the foreign gov-  
12                  ernment may not be used to infringe freedom of  
13                  speech;

14                  “(F) the foreign government shall prompt-  
15                  ly review material collected pursuant to the  
16                  agreement and store any unreviewed commu-  
17                  nications on a secure system accessible only to  
18                  those persons trained in applicable procedures;

19                  “(G) the foreign government shall, using  
20                  procedures that, to the maximum extent pos-  
21                  sible, meet the definition of minimization proce-  
22                  dures in section 101 of the Foreign Intelligence  
23                  Surveillance Act of 1978 (50 U.S.C. 1801), seg-  
24                  regate, seal, or delete, and not disseminate ma-  
25                  terial found not to be information that is, or is

1           necessary to understand or assess the impor-  
2           tance of information that is, relevant to the pre-  
3           vention, detection, investigation, or prosecution  
4           of serious crime, including terrorism, or nec-  
5           essary to protect against a threat of death or  
6           serious bodily harm to any person;

7           “(H) the foreign government may not dis-  
8           seminate the content of a communication of a  
9           United States person to United States authori-  
10          ties unless the communication may be dissemi-  
11          nated pursuant to subparagraph (G) and re-  
12          lates to significant harm, or the threat thereof,  
13          to the United States or United States persons,  
14          including crimes involving national security  
15          such as terrorism, significant violent crime,  
16          child exploitation, transnational organized  
17          crime, or significant financial fraud;

18          “(I) the foreign government shall afford  
19          reciprocal rights of data access, to include,  
20          where applicable, removing restrictions on com-  
21          munications service providers, including pro-  
22          viders subject to United States jurisdiction, and  
23          thereby allow them to respond to valid legal  
24          process sought by a governmental entity (as de-  
25          fined in section 2711) if foreign law would oth-

1           erwise prohibit communications-service pro-  
2           viders from disclosing the data;

3           “(J) the foreign government shall agree to  
4           periodic review of compliance by the foreign  
5           government with the terms of the agreement to  
6           be conducted by the United States Government;  
7           and

8           “(K) the United States Government shall  
9           reserve the right to render the agreement inap-  
10          plicable as to any order for which the United  
11          States Government concludes the agreement  
12          may not properly be invoked.

13          “(c) LIMITATION ON JUDICIAL REVIEW.—A deter-  
14          mination or certification made by the Attorney General  
15          under subsection (b) shall not be subject to judicial or ad-  
16          ministrative review.

17          “(d) EFFECTIVE DATE OF CERTIFICATION.—

18                 “(1) NOTICE.—Not later than 7 days after the  
19          date on which the Attorney General certifies an ex-  
20          ecutive agreement under subsection (b), the Attorney  
21          General shall provide notice of the determination  
22          under subsection (b) and a copy of the executive  
23          agreement to Congress, including—

1           “(A) the Committee on the Judiciary and  
2           the Committee on Foreign Relations of the Sen-  
3           ate; and

4           “(B) the Committee on the Judiciary and  
5           the Committee on Foreign Affairs of the House  
6           of Representatives.

7           “(2) ENTRY INTO FORCE.—An executive agree-  
8           ment that is determined and certified by the Attor-  
9           ney General to satisfy the requirements of this sec-  
10          tion shall enter into force not earlier than the date  
11          that is 180 days after the date on which notice is  
12          provided under paragraph (1), unless Congress en-  
13          acts a joint resolution of disapproval in accordance  
14          with paragraph (4).

15          “(3) REQUESTS FOR INFORMATION.—Upon re-  
16          quest by the Chairman or Ranking Member of a  
17          congressional committee described in paragraph (1),  
18          the head of an agency shall promptly furnish a sum-  
19          mary of factors considered in determining that the  
20          foreign government satisfies the requirements of this  
21          section.

22          “(4) CONGRESSIONAL REVIEW.—

23                 “(A) JOINT RESOLUTION DEFINED.—In  
24                 this paragraph, the term ‘joint resolution’  
25                 means only a joint resolution—

1 “(i) introduced during the 180-day  
2 period described in paragraph (2);

3 “(ii) which does not have a preamble;

4 “(iii) the title of which is as follows:

5 ‘Joint resolution disapproving the executive  
6 agreement signed by the United States and  
7 \_\_\_\_\_.’, the blank space being appropriately  
8 filled in; and

9 “(iv) the matter after the resolving  
10 clause of which is as follows: ‘That Con-  
11 gress disapproves the executive agreement  
12 governing access by \_\_\_\_\_ to certain elec-  
13 tronic data as submitted by the Attorney  
14 General on \_\_\_\_\_’, the blank spaces being  
15 appropriately filled in.

16 “(B) JOINT RESOLUTION ENACTED.—Not-  
17 withstanding any other provision of this section,  
18 if not later than 180 days after the date on  
19 which notice is provided to Congress under  
20 paragraph (1), there is enacted into law a joint  
21 resolution disapproving of an executive agree-  
22 ment under this section, the executive agree-  
23 ment shall not enter into force.

1                   “(C) INTRODUCTION.—During the 180-day  
2                   period described in subparagraph (B), a joint  
3                   resolution of disapproval may be introduced—

4                   “(i) in the House of Representatives,  
5                   by the majority leader or the minority  
6                   leader; and

7                   “(ii) in the Senate, by the majority  
8                   leader (or the majority leader’s designee)  
9                   or the minority leader (or the minority  
10                  leader’s designee).

11                  “(5) FLOOR CONSIDERATION IN HOUSE OF  
12                  REPRESENTATIVES.—If a committee of the House of  
13                  Representatives to which a joint resolution of dis-  
14                  approval has been referred has not reported the joint  
15                  resolution within 120 days after the date of referral,  
16                  that committee shall be discharged from further con-  
17                  sideration of the joint resolution.

18                  “(6) CONSIDERATION IN THE SENATE.—

19                  “(A) COMMITTEE REFERRAL.—A joint res-  
20                  olution of disapproval introduced in the Senate  
21                  shall be referred jointly—

22                  “(i) to the Committee on the Judici-  
23                  ary; and

24                  “(ii) to the Committee on Foreign Re-  
25                  lations.

1           “(B) REPORTING AND DISCHARGE.—If a  
2           committee to which a joint resolution of dis-  
3           approval was referred has not reported the joint  
4           resolution within 120 days after the date of re-  
5           ferral of the joint resolution, that committee  
6           shall be discharged from further consideration  
7           of the joint resolution and the joint resolution  
8           shall be placed on the appropriate calendar.

9           “(C) PROCEEDING TO CONSIDERATION.—  
10          It is in order at any time after both the Com-  
11          mittee on the Judiciary and the Committee on  
12          Foreign Relations report a joint resolution of  
13          disapproval to the Senate or have been dis-  
14          charged from consideration of such a joint reso-  
15          lution (even though a previous motion to the  
16          same effect has been disagreed to) to move to  
17          proceed to the consideration of the joint resolu-  
18          tion, and all points of order against the joint  
19          resolution (and against consideration of the  
20          joint resolution) are waived. The motion is not  
21          debatable or subject to a motion to postpone. A  
22          motion to reconsider the vote by which the mo-  
23          tion is agreed to or disagreed to shall not be in  
24          order.



1                   “(D) CONSIDERATION IN THE SENATE.—

2                   In the Senate, consideration of the joint resolu-  
3                   tion, and on all debatable motions and appeals  
4                   in connection therewith, shall be limited to not  
5                   more than 10 hours, which shall be divided  
6                   equally between those favoring and those oppos-  
7                   ing the joint resolution. A motion further to  
8                   limit debate is in order and not debatable. An  
9                   amendment to, or a motion to postpone, or a  
10                  motion to proceed to the consideration of other  
11                  business, or a motion to recommit the joint res-  
12                  olution is not in order.

13                  “(E) CONSIDERATION OF VETO MES-  
14                  SAGES.—Debate in the Senate of any veto mes-  
15                  sage with respect to a joint resolution of dis-  
16                  approval, including all debatable motions and  
17                  appeals in connection with the joint resolution,  
18                  shall be limited to 10 hours, to be equally di-  
19                  vided between, and controlled by, the majority  
20                  leader and the minority leader or their des-  
21                  ignees.

22                  “(7) RULES RELATING TO SENATE AND HOUSE  
23                  OF REPRESENTATIVES.—

24                  “(A) TREATMENT OF SENATE JOINT RESO-  
25                  LUTION IN HOUSE.—In the House of Rep-

1           representatives, the following procedures shall  
2           apply to a joint resolution of disapproval re-  
3           ceived from the Senate (unless the House has  
4           already passed a joint resolution relating to the  
5           same proposed action):

6                     “(i) The joint resolution shall be re-  
7                     ferred to the appropriate committees.

8                     “(ii) If a committee to which a joint  
9                     resolution has been referred has not re-  
10                    ported the joint resolution within 7 days  
11                    after the date of referral, that committee  
12                    shall be discharged from further consider-  
13                    ation of the joint resolution.

14                    “(iii) Beginning on the third legisla-  
15                    tive day after each committee to which a  
16                    joint resolution has been referred reports  
17                    the joint resolution to the House or has  
18                    been discharged from further consideration  
19                    thereof, it shall be in order to move to pro-  
20                    ceed to consider the joint resolution in the  
21                    House. All points of order against the mo-  
22                    tion are waived. Such a motion shall not be  
23                    in order after the House has disposed of a  
24                    motion to proceed on the joint resolution.  
25                    The previous question shall be considered

1 as ordered on the motion to its adoption  
2 without intervening motion. The motion  
3 shall not be debatable. A motion to recon-  
4 sider the vote by which the motion is dis-  
5 posed of shall not be in order.

6 “(iv) The joint resolution shall be con-  
7 sidered as read. All points of order against  
8 the joint resolution and against its consid-  
9 eration are waived. The previous question  
10 shall be considered as ordered on the joint  
11 resolution to final passage without inter-  
12 vening motion except 2 hours of debate  
13 equally divided and controlled by the spon-  
14 sor of the joint resolution (or a designee)  
15 and an opponent. A motion to reconsider  
16 the vote on passage of the joint resolution  
17 shall not be in order.

18 “(B) TREATMENT OF HOUSE JOINT RESO-  
19 LUTION IN SENATE.—

20 “(i) If, before the passage by the Sen-  
21 ate of a joint resolution of disapproval, the  
22 Senate receives an identical joint resolution  
23 from the House of Representatives, the fol-  
24 lowing procedures shall apply:

1                   “(I) That joint resolution shall  
2 not be referred to a committee.

3                   “(II) With respect to that joint  
4 resolution—

5                   “(aa) the procedure in the  
6 Senate shall be the same as if no  
7 joint resolution had been received  
8 from the House of Representa-  
9 tives; but

10                  “(bb) the vote on passage  
11 shall be on the joint resolution  
12 from the House of Representa-  
13 tives.

14                  “(ii) If, following passage of a joint  
15 resolution of disapproval in the Senate, the  
16 Senate receives an identical joint resolution  
17 from the House of Representatives, that  
18 joint resolution shall be placed on the ap-  
19 propriate Senate calendar.

20                  “(iii) If a joint resolution of dis-  
21 approval is received from the House, and  
22 no companion joint resolution has been in-  
23 troduced in the Senate, the Senate proce-  
24 dures under this subsection shall apply to  
25 the House joint resolution.

1           “(C) APPLICATION TO REVENUE MEAS-  
2           URES.—The provisions of this paragraph shall  
3           not apply in the House of Representatives to a  
4           joint resolution of disapproval that is a revenue  
5           measure.

6           “(8) RULES OF HOUSE OF REPRESENTATIVES  
7           AND SENATE.—This subsection is enacted by Con-  
8           gress—

9           “(A) as an exercise of the rulemaking  
10          power of the Senate and the House of Rep-  
11          resentatives, respectively, and as such is deemed  
12          a part of the rules of each House, respectively,  
13          and supersedes other rules only to the extent  
14          that it is inconsistent with such rules; and

15          “(B) with full recognition of the constitu-  
16          tional right of either House to change the rules  
17          (so far as relating to the procedure of that  
18          House) at any time, in the same manner, and  
19          to the same extent as in the case of any other  
20          rule of that House.

21          “(e) RENEWAL OF DETERMINATION.—

22          “(1) IN GENERAL.—The Attorney General, with  
23          the concurrence of the Secretary of State, shall re-  
24          view and may renew a determination under sub-  
25          section (b) every 5 years.

1           “(2) REPORT.—Upon renewing a determination  
2           under subsection (b), the Attorney General shall file  
3           a report with the Committee on the Judiciary and  
4           the Committee on Foreign Relations of the Senate  
5           and the Committee on the Judiciary and the Com-  
6           mittee on Foreign Affairs of the House of Rep-  
7           resentatives describing—

8                   “(A) the reasons for the renewal;

9                   “(B) any substantive changes to the agree-  
10           ment or to the relevant laws or procedures of  
11           the foreign government since the original deter-  
12           mination or, in the case of a second or subse-  
13           quent renewal, since the last renewal; and

14                   “(C) how the agreement has been imple-  
15           mented and what problems or controversies, if  
16           any, have arisen as a result of the agreement  
17           or its implementation.

18           “(3) NONRENEWAL.—If a determination is not  
19           renewed under paragraph (1), the agreement shall  
20           no longer be considered to satisfy the requirements  
21           of this section.

22           “(f) REVISIONS TO AGREEMENT.—A revision to an  
23           agreement under this section shall be treated as a new  
24           agreement for purposes of this section and shall be subject  
25           to the certification requirement under subsection (b), and

1 to the procedures under subsection (d), except that for  
2 purposes of a revision to an agreement—

3 “(1) the applicable time period under para-  
4 graphs (2), (4)(A)(i), (4)(B), and (4)(C) of sub-  
5 section (d) shall be 90 days after the date notice is  
6 provided under subsection (d)(1); and

7 “(2) the applicable time period under para-  
8 graphs (5) and (6)(B) of subsection (d) shall be 60  
9 days after the date notice is provided under sub-  
10 section (d)(1).

11 “(g) PUBLICATION.—Any determination or certifi-  
12 cation under subsection (b) regarding an executive agree-  
13 ment under this section, including any termination or re-  
14 newal of such an agreement, shall be published in the Fed-  
15 eral Register as soon as is reasonably practicable.

16 “(h) MINIMIZATION PROCEDURES.—A United States  
17 authority that receives the content of a communication de-  
18 scribed in subsection (b)(4)(H) from a foreign government  
19 in accordance with an executive agreement under this sec-  
20 tion shall use procedures that, to the maximum extent pos-  
21 sible, meet the definition of minimization procedures in  
22 section 101 of the Foreign Intelligence Surveillance Act  
23 of 1978 (50 U.S.C. 1801) to appropriately protect non-  
24 publicly available information concerning United States  
25 persons.”.

1 (b) TABLE OF SECTIONS AMENDMENT.—The table of  
2 sections for chapter 119 of title 18, United States Code,  
3 is amended by inserting after the item relating to section  
4 2522 the following:

“2523. Executive agreements on access to data by foreign governments.”.

5 **SEC. 106. RULE OF CONSTRUCTION.**

6 Nothing in this division, or the amendments made by  
7 this division, shall be construed to preclude any foreign  
8 authority from obtaining assistance in a criminal inves-  
9 tigation or prosecution pursuant to section 3512 of title  
10 18, United States Code, section 1782 of title 28, United  
11 States Code, or as otherwise provided by law.

