

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

Chapter 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

§ 2523. Executive agreements on access to data by foreign govern- 343 ments

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(b) Executive Agreement Requirements.—For purposes of this chapter, chapter 121, and chapter 206, an executive agreement governing access by a foreign government to data subject to this chapter, chapter 121, or chapter 206 shall be considered to satisfy the requirements of this section if the Attorney General, with the concurrence of the Secretary of State, determines, and submits a written certification of such determination to Congress, including a written certification and explanation of each consideration in paragraphs (1), (2), (3), and (4),

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(d) Effective Date of Certification.—

(1) Notice.—Not later than 7 days after the date on which the Attorney General certifies an executive agreement under subsection (b), the Attorney General shall provide notice of the determination under subsection (b) and a copy of the executive agreement to Congress, including—

(A) the Committee on the Judiciary and the Committee on Foreign Relations of the Senate; and

(B) the Committee on the Judiciary and the Committee on Foreign Affairs of the House of Representatives.

(2) Entry into force.—An executive agreement that is determined and certified by the Attorney General to satisfy the requirements of this section shall enter into force not earlier than the date that is 180 days after the date on which notice is provided under paragraph (1), unless Congress enacts a joint resolution of disapproval in accordance with paragraph (4).

(3) Requests for information.—Upon request by the Chairman or Ranking Member of a congressional committee described in paragraph (1), the head of an agency shall promptly furnish a summary of factors considered in determining that the foreign government satisfies the requirements of this section.

(4) Congressional review.—

(A) Joint resolution defined.—In this paragraph, the term “joint resolution” means only a joint resolution—

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

(ii) which does not have a preamble;

(iii) the title of which is as follows: “Joint resolution disapproving the executive agreement signed by the United

States and _____.”, the blank space being appropriately filled in; and

(iv) the matter after the resolving clause of which is as follows: “That Congress disapproves the executive agreement governing access by _____ to certain electronic data as submitted by the Attorney General on _____”, the blank spaces being appropriately filled in.

(B) Joint resolution enacted.—Notwithstanding any other provision of this section, if not later than 180 days after the date on which notice is provided to Congress under paragraph (1), there is enacted into law a joint resolution disapproving of an executive agreement under this section, the executive agreement shall not enter into force.

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

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

(ii) in the Senate, by the majority leader (or the majority leader’s designee) or the minority leader (or the minority leader’s designee).

(5) Floor consideration in House of Representatives.—If a committee of the House of Representatives to which a joint resolution of disapproval has been referred has not reported the joint resolution within 120 days after the date of referral, that committee shall be discharged from further consideration of the joint resolution.

(6) Consideration in the Senate.—

(A) Committee referral.—A joint resolution of disapproval introduced in the Senate shall be referred jointly—

(i) to the Committee on the Judiciary; and

(ii) to the Committee on Foreign Relations.

(B) Reporting and discharge.—If a committee to which a joint resolution of disapproval was referred has not reported the joint resolution within 120 days after the date of referral of the joint resolution, that committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be placed on the appropriate calendar.

(C) Proceeding to consideration.—It is in order at any time after both the Committee on the Judiciary and the Committee on Foreign Relations report a joint resolution of disapproval to the Senate or have been discharged from consideration of such a joint resolution (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not debatable or subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order.

(D) Consideration in the Senate.—In the Senate, consideration of the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring

and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(E) Consideration of veto messages.—Debate in the Senate of any veto message with respect to a joint resolution of disapproval, including all debatable motions and appeals in connection with the joint resolution, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(7) Rules relating to Senate and House of Representatives.—

(A) Treatment of Senate joint resolution in House.—In the House of Representatives, the following procedures shall apply to a joint resolution of disapproval received from the Senate (unless the House has already passed a joint resolution relating to the same proposed action):

(i) The joint resolution shall be referred to the appropriate committees.

(ii) If a committee to which a joint resolution has been referred has not reported the joint resolution within 7 days after the date of referral, that committee shall be discharged from further consideration of the joint resolution.

(iii) Beginning on the third legislative day after each committee to which a joint resolution has been referred reports the joint resolution to the House or has been discharged from further consideration thereof, it shall be in order to move to proceed to consider the joint resolution in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(iv) The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to final passage without intervening motion except 2 hours of debate equally divided and controlled by the sponsor of the joint resolution (or a designee) and an opponent. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

(B) Treatment of house joint resolution in Senate.—

(i) If, before the passage by the Senate of a joint resolution of disapproval, the Senate receives an identical joint resolution from the House of Representatives, the following procedures shall apply:

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

(II) With respect to that joint resolution—

(aa) the procedure in the Senate shall be the same as if no joint resolution had been received from the House of Representatives; but

(bb) the vote on passage shall be on the joint resolution from the House of Representatives.

(ii) If, following passage of a joint resolution of disapproval in the Senate, the Senate receives an identical joint resolution from the House of Representatives, that joint resolution shall be placed on the appropriate Senate calendar.

(iii) If a joint resolution of disapproval is received from the House, and no companion joint resolution has been introduced in the Senate, the Senate procedures under this subsection shall apply to the House joint resolution.

(C) Application to revenue measures.—The provisions of this paragraph shall not apply in the House of Representatives to a joint resolution of disapproval that is a revenue measure.

(8) Rules of House of Representatives and Senate.—This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such is deemed a part of the rules of each House, respectively, and supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(e) Renewal of Determination.—

(1) In general.—The Attorney General, with the concurrence of the Secretary of State, shall review and may renew a determination under subsection (b) every 5 years.

(2) Report.—Upon renewing a determination under subsection (b), the Attorney General shall file a report with the Committee on the Judiciary and the Committee on Foreign Relations of the Senate and the Committee on the Judiciary and the Committee on Foreign Affairs of the House of Representatives describing—

(A) the reasons for the renewal;

(B) any substantive changes to the agreement or to the relevant laws or procedures of the foreign government since the original determination or, in the case of a second or subsequent renewal, since the last renewal; and

(C) how the agreement has been implemented and what problems or controversies, if any, have arisen as a result of the agreement or its implementation.

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

(f) Revisions to Agreement.—A revision to an agreement under this section shall be treated as a new agreement for purposes of this section and shall be subject to the certification requirement under subsection (b), and to the procedures under subsection (d), except that for purposes of a revision to an agreement—

(1) the applicable time period under paragraphs (2), (4)(A)(i), (4)(B), and (4)(C) of subsection (d) shall be 90 days after the date notice is provided under subsection (d)(1); and

(2) the applicable time period under paragraphs (5) and (6)(B) of subsection (d) shall be 60 days after the date notice is provided under subsection (d)(1).

(g) Publication.—Any determination or certification under subsection (b) regarding an executive agreement under this section, including any termination or renewal of such an agreement, shall be published in the Federal Register as soon as is reasonably practicable.

(h) Minimization Procedures.—A United States authority that receives the content of a communication described in subsection (b)(4)(H) from a foreign government in accordance with an executive agreement under this section shall use procedures that, to the maximum extent possible, meet the definition of minimization procedures in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) to appropriately protect nonpublicly available information concerning United States persons. (Added Pub. L. 115–141, div. V, § 105(a), Mar. 23, 2018, 132 Stat. 1217, 1224.)