To enhance the research security protocols of the Department of Energy for the purpose of preventing theft of government research by nationals of foreign countries of concern, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. BARRASSO introduced the following bill; which was read twice and referred to the Committee on

A BILL

To enhance the research security protocols of the Department of Energy for the purpose of preventing theft of government research by nationals of foreign countries of concern, and for other purposes.

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 “Securing American Research from Foreign Adversaries Act” or the “SARFA Act”.

1
2
3
4
5
6
SEC. 2. RESEARCH SECURITY.

Section 10114(a)(2) of the Research and Development, Competition, and Innovation Act (42 U.S.C. 18912(a)(2)) is amended by striking “authorized” and all that follows through the period at the end and inserting “administered or provided, as applicable, by the Department of Energy, including National Laboratories (as defined in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801)).”.

SEC. 3. POLYGRAPH EXAMINATIONS FOR CERTAIN FOREIGN NATIONALS WITH ACCESS TO NON-PUBLIC NATIONAL LABORATORY AREAS OR INFORMATION.

(a) Definitions.—In this section:

(1) Covered foreign national.—

(A) In general.—The term “covered foreign national” means a foreign national who—

(i) is a citizen or national of, or otherwise owes allegiance to, a country that, as of the date described in subparagraph (B), is a foreign country of concern (as defined in section 10612(a) of the Research and Development, Competition, and Innovation Act (42 U.S.C. 19221(a))); and

(ii) is not—
(I) a national of the United States; or

(II) lawfully admitted for permanent residence.

(B) DATE DESCRIBED.—The date referred to in subparagraph (A)(i) is, as applicable—

(i) the date on which the foreign national begins work—

(I) in a position at a National Laboratory; or

(II) in any other position at the Department in which the foreign national will have access to nonpublic areas, data, or information of a National Laboratory; or

(ii) the date on which the foreign national is initially granted access to nonpublic areas, data, or information of a National Laboratory under a contract or agreement with the Department.

(2) DEPARTMENT.—The term “Department” means the Department of Energy.

(3) LAWFULLY ADMITTED FOR PERMANENT RESIDENCE.—The term “lawfully admitted for permanent residence” has the meaning given the term
in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

(4) NATIONAL OF THE UNITED STATES.—The term “national of the United States” has the meaning given the term in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

(5) NATIONAL LABORATORY.—The term “National Laboratory” has the meaning given the term in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801).

(6) QUALIFYING POLYGRAPH EXAMINATION.—The term “qualifying polygraph examination” means a polygraph examination that is carried out in a manner that, as determined by the Secretary, is consistent with Intelligence Community Policy Guidance 704.6 published by the Director of National Intelligence and entitled “Conduct of Polygraph Examinations for Personnel Security Vetting” (or successor guidance).

(7) SECRETARY.—The term “Secretary” means the Secretary of Energy, acting through the Director of the Office of Intelligence and Counterintelligence.

(b) QUALIFYING POLYGRAPH EXAMINATIONS.—

(1) POTENTIAL EMPLOYEES OF THE DEPARTMENT.—Before a covered foreign national is hired
by the Department to work in a position at a Na-
tional Laboratory or in any position in which the
covered foreign national will have access to non-
public areas, data, or information of a National Lab-
oratory, the Secretary shall administer a qualifying
polygraph examination to the covered foreign na-
tional.

(2) Existing employees of the department.—

(A) In general.—Before an employee of
the Department who is a covered foreign na-
tional may be transferred to a position at a Na-
tional Laboratory or to any other position at
the Department in which the employee will have
access to nonpublic areas, data, or information
of a National Laboratory, the Secretary shall
administer a qualifying polygraph examination
to the employee.

(B) Certain existing employees with
access to nonpublic information.—

(i) Existing employees who are
covered foreign nationals.—Each em-
ployee of the Department who, as of the
date of enactment of this Act, is a covered
foreign national who works in a position at
a National Laboratory or in any other position at the Department in which the employee has access to nonpublic areas, data, or information of a National Laboratory shall be required to submit to a qualifying polygraph examination by a date determined by the Secretary, but not later than 1 year after the date of enactment of this Act, to remain in that position.

(ii) Existing employees who become covered foreign nationals.—An employee of the Department who works in a position at a National Laboratory or in any other position at the Department in which the employee has access to nonpublic areas, data, or information of a National Laboratory shall be required to submit to a qualifying polygraph examination—

(I) as soon as practicable after becoming a covered foreign national; and

(II) before being transferred, promoted, or otherwise hired into another position at the Department in which the employee will have access to
nonpublic areas, data, or information
of a National Laboratory if the em-
ployee is a covered foreign national as
of the date of the transfer, promotion,
or hiring.

(3) CONTRACTORS AND OTHER INDIVIDUALS
WITH ACCESS TO NONPUBLIC INFORMATION.—Be-
fore a covered foreign national is initially granted
access to nonpublic areas, data, or information of a
National Laboratory under a contract or agreement
with the Department, the Secretary shall administer
a qualifying polygraph examination to the covered
foreign national.

(e) SPECIFIC ISSUE POLYGRAPH EXAMINATIONS.—
The Secretary may require a covered foreign national to
submit to a Specific Issue Polygraph examination (within
the meaning of Intelligence Community Policy Guidance
704.6 published by the Director of National Intelligence
and entitled “Conduct of Polygraph Examinations for Per-
sonnel Security Vetting” (or successor guidance)) at any
time during which the covered foreign national is employed
by the Department.

(d) REEXAMINATION.—The Secretary shall require
each employee of the Department who is a covered foreign
national to be reexamined with an appropriate polygraph
examination—

(1) not less frequently than once every 5 years
while employed by the Department; and

(2) in a manner consistent with other members
of the intelligence community (as defined in section
3 of the National Security Act of 1947 (50 U.S.C.
3003)) that require reexamination every 5 years.

(e) REFUSAL OF EXAMINATION; TERMINATION OF
EMPLOYMENT.—

(1) IN GENERAL.—If a covered foreign national
refuses to submit to a polygraph examination under
this section—

(A) the covered foreign national shall not
be granted access to any nonpublic areas, data,
or information of a National Laboratory, and
any existing grant of access to such areas, data,
or information shall be immediately revoked;
and

(B) if the covered foreign national is an
employee of the Department, the employment of
the covered foreign national at the Department
shall be terminated.

(2) CERTAIN EMPLOYEES OF THE DEPART-
MENT.—
(A) EMPLOYEES UNDER CONSIDERATION FOR TRANSFER TO CERTAIN POSITIONS.—Paragraph (1)(B) shall apply to an employee of the Department described in subsection (b)(2)(A) who does not have access to nonpublic areas, data, or information of the Department but is under consideration for a transfer to a position described in that paragraph such that, if the employee refuses to submit to a polygraph examination under this section—

(i) the employee shall be ineligible for the transfer; and

(ii) the employment of the employee at the Department shall be terminated.

(B) EMPLOYEES WITH ACCESS TO NON-PUBLIC AREAS OR INFORMATION.—Paragraph (1)(B) shall apply to any employee of the Department who is a covered foreign national and works in a position at a National Laboratory or in any other position at the Department in which the employee has access to nonpublic areas, data, or information of a National Laboratory such that, if the employee refuses to submit to a polygraph examination under this section, the employment of the employee at the
Department, including at any National Laboratory, shall be terminated.

(3) Potential Employees of the Department.—A covered foreign national who is under consideration for employment in a position described in subsection (b)(1) and refuses to submit to a polygraph examination under this section—

(A) shall be removed from consideration for employment in that position; and

(B) in accordance with paragraph (4), shall not be eligible for employment at the Department, including at any National Laboratory.

(4) Subsequent Employment at the Department.—

(A) In General.—A covered foreign national shall not be eligible for employment at the Department, including at any National Laboratory, if the covered foreign national previously refused to submit to a polygraph examination under this section.

(B) Change in Status.—A foreign national who is lawfully admitted for permanent residence shall not be eligible for employment at the Department, including at any National Lab-
oratory, if the foreign national previously refused to submit to a polygraph examination under this section at a time when the foreign national was a covered foreign national.

(f) SAVINGS PROVISION.—Nothing in this section authorizes the Secretary to require an individual who is not a covered foreign national to submit to a polygraph examination.