

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 2825
OFFERED BY MR. KATKO OF NEW YORK**

In subtitle C of title V, add at the end the following:

1 **SEC. 533. PROHIBITION OF ADVANCE NOTICE OF COVERT**
2 **TESTING TO SECURITY SCREENERS.**

3 Section 44935 of title 49, United States Code, is
4 amended by adding at the end the following new sub-
5 section:

6 “(m) PROHIBITION OF ADVANCE NOTICE TO SECUR-
7 RITY SCREENERS OF COVERT TESTING AND EVALUA-
8 TION.—

9 “(1) IN GENERAL.—The Administrator of the
10 Transportation Security Administration shall ensure,
11 to the greatest extent practicable, that information
12 concerning a covert test of a transportation security
13 system to be conducted by a covert testing office, the
14 Inspector General of the Department of Homeland
15 Security, or the Government Accountability Office is
16 not provided to any individual involved in such test
17 prior to the completion of such test.

18 “(2) EXCEPTIONS.—Notwithstanding para-
19 graph (1)—

1 “(A) an authorized individual involved in a
2 covert test of a transportation security system
3 may provide information concerning such covert
4 test to—

5 “(i) employees, officers, and contrac-
6 tors of the Federal Government (including
7 military personnel);

8 “(ii) employees and officers of State
9 and local governments; and

10 “(iii) law enforcement officials who
11 are authorized to receive or directed to be
12 provided such information by the Adminis-
13 trator of the Transportation Security Ad-
14 ministration, the Inspector General of the
15 Department of Homeland Security, or the
16 Comptroller General of the United States,
17 as the case may be; and

18 “(B) for the purpose of ensuring the secu-
19 rity of any individual in the vicinity of a site at
20 which a covert test of a transportation security
21 system is being conducted, an individual con-
22 ducting such test may disclose his or her status
23 as an individual conducting such test to any ap-
24 propriate individual if a security screener or
25 other individual who is not a covered employee

1 identifies the individual conducting such test as
2 a potential threat.

3 “(3) SPECIAL RULES FOR TSA.—

4 “(A) MONITORING AND SECURITY OF
5 TESTING PERSONNEL.—The head of each covert
6 testing office shall ensure that a person or
7 group of persons conducting a covert test of a
8 transportation security system for a covert test-
9 ing office is accompanied at the site of such test
10 by a cover team composed of one or more em-
11 ployees of such covert testing office for the pur-
12 pose of monitoring such test and confirming the
13 identity of personnel involved in such test under
14 subparagraph (B).

15 “(B) RESPONSIBILITY OF COVER TEAM.—
16 Under this paragraph, a cover team for a covert
17 test of a transportation security system shall—

18 “(i) monitor such test; and

19 “(ii) for the purpose of ensuring the
20 security of any individual in the vicinity of
21 a site at which such test is being con-
22 ducted, confirm, notwithstanding para-
23 graph (1), the identity of any individual
24 conducting such test to any appropriate in-
25 dividual if a security screener or other in-

1 dividual who is not a covered employee
2 identifies the individual conducting such
3 test as a potential threat.

4 “(C) AVIATION SCREENING.—Notwith-
5 standing subparagraph (A), the Transportation
6 Security Administration is not required to have
7 a cover team present during a test of the
8 screening of persons, carry-on items, or checked
9 baggage at an aviation security checkpoint at or
10 serving an airport if such test—

11 “(i) is approved, in coordination with
12 the designated security official for the air-
13 port operator by the Federal Security Di-
14 rector for such airport; and

15 “(ii) is carried out under an aviation
16 screening assessment program of the De-
17 partment of Homeland Security.

18 “(D) USE OF OTHER PERSONNEL.—The
19 Transportation Security Administration may
20 use employees, officers, and contractors of the
21 Federal Government (including military per-
22 sonnel) and employees and officers of State and
23 local governments or any personnel authorized
24 by the Federal Security Director to conduct
25 covert tests.

1 “(4) DEFINITIONS.—In this subsection, the fol-
2 lowing definitions apply:

3 “(A) APPROPRIATE INDIVIDUAL.—The
4 term ‘appropriate individual’, as used with re-
5 spect to—

6 “(i) a covert test under paragraph
7 (2)(B) of a transportation security system,
8 means any individual who the individual
9 conducting such test determines needs to
10 know his or her status as an individual
11 conducting such test; or

12 “(ii) a covert test under paragraph
13 (3)(B)(i), means any individual who the
14 cover team monitoring such test deter-
15 mines needs to know the identity of such
16 cover team.

17 “(B) COVERED EMPLOYEE.—The term
18 ‘covered employee’ means any individual who
19 receives notice of a covert test before the com-
20 pletion of a test under paragraph (2)(B).

21 “(C) COVERT TEST.—

22 “(i) IN GENERAL.—The term ‘covert
23 test’ means an exercise or activity con-
24 ducted by a covert testing office, the In-
25 specter General of the Department of

1 Homeland Security, or the Government Ac-
2 countability Office to intentionally test,
3 compromise, or circumvent transportation
4 security systems to identify vulnerabilities
5 in such systems.

6 “(ii) LIMITATION.—Notwithstanding
7 clause (i), the term ‘covert test’ does not
8 mean an exercise or activity by an em-
9 ployee or contractor of the Transportation
10 Security Administration to test or assess
11 compliance with relevant regulations.

12 “(D) COVERT TESTING OFFICE.—The term
13 ‘covert testing office’ means any office of the
14 Transportation Security Administration des-
15 ignated by the Administrator of the Transpor-
16 tation Security Administration to conduct cov-
17 ert tests of transportation security systems.

18 “(E) EMPLOYEE OF A COVERT TESTING
19 OFFICE.—The term ‘employee of a covert test-
20 ing office’ means an individual who is an em-
21 ployee of a covert testing office or a contractor
22 or an employee of a contractor of a covert test-
23 ing office.”.

