

CATCHING OPERATIONAL VULNERABILITIES BY ENSURING
RANDOM TESTING ACT OF 2008 (COVERT ACT OF
2008)

JUNE 5, 2008.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. THOMPSON of Mississippi, from the Committee on Homeland
Security, submitted the following

R E P O R T

[To accompany H.R. 5909]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 5909) to amend the Aviation and Transportation Security Act to prohibit advance notice to certain individuals, including security screeners, of covert testing of security screening procedures for the purpose of enhancing transportation security at airports, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	3
Background and Need for Legislation	4
Hearings	4
Committee Consideration	5
Committee Votes	5
Committee Oversight Findings	5
New Budget Authority, Entitlement Authority, and Tax Expenditures	6
Congressional Budget Office Estimate	6
Statement of General Performance Goals and Objectives	6
Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits ..	7
Federal Mandates Statement	7
Advisory Committee Statement	7
Constitutional Authority Statement	7
Applicability to Legislative Branch	7
Section-by-Section Analysis of the Legislation	8
Changes in Existing Law Made by the Bill, as Reported	9

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Catching Operational Vulnerabilities by Ensuring Random Testing Act of 2008” or the “COVERT Act of 2008”.

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

Section 111 of the Aviation and Transportation Security Act (Public Law 107–71; 49 U.S.C. 44935 note) is amended—

(1) by striking the section enumerator and heading and inserting the following:

“**SEC. 111. TRAINING, EMPLOYMENT, AND TESTING OF SECURITY SCREENING PERSONNEL.**”;
and

(2) by adding at the end the following:

“(e) **PROHIBITION OF ADVANCE NOTICE TO SECURITY SCREENERS OF COVERT TESTING AND EVALUATION.**—

“(1) **IN GENERAL.**—The Secretary of Homeland Security shall ensure that information concerning a covert test of a transportation security system to be conducted by a covert testing office, the Inspector General of the Department of Homeland Security, or the Government Accountability Office is not provided to any individual prior to the completion of the test.

“(2) **EXCEPTIONS.**—Notwithstanding paragraph (1)—

“(A) an individual may provide information concerning a covert test of a transportation security system to employees, officers, and contractors of the Federal Government (including military personnel); employees and officers of State and local governments; and law enforcement officials, who are authorized to receive or directed to be provided such information by the Assistant Secretary of Homeland Security (Transportation Security Administration), the Inspector General of the Department of Homeland Security, or the Comptroller General of the United States, as the case may be; and

“(B) for the purpose of ensuring the security of any individual in the vicinity of a site where a covert test of a transportation security system is being conducted, an individual conducting the test may disclose his or her status as an individual conducting the test to any appropriate individual if a security screener or other individual who is not a covered employee identifies the individual conducting the test as a potential threat.

“(3) **SPECIAL RULES FOR THE TRANSPORTATION SECURITY ADMINISTRATION.**—

“(A) **MONITORING AND SECURITY OF TESTING PERSONNEL.**—The head of each covert testing office shall ensure that a person or group of persons conducting a covert test of a transportation security system for the covert testing office is accompanied at the site of the test by a cover team comprised of one or more employees of the covert testing office for the purpose of monitoring the test and confirming the identity of personnel involved in the test under subparagraph (B).

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

“(i) monitor the test; and

“(ii) for the purpose of ensuring the security of any individual in the vicinity of a site where the test is being conducted, confirm, notwithstanding paragraph (1), the identity of any individual conducting the test to any appropriate individual if a security screener or other individual who is not a covered employee identifies the individual conducting the test as a potential threat.

“(C) **AVIATION SCREENING.**—Notwithstanding subparagraph (A), the Transportation Security Administration is not required to have a cover team present during a test of the screening of persons, carry-on items, or checked baggage at an aviation security checkpoint at or serving an airport if the test—

“(i) is approved by the Federal Security Director for such airport; and

“(ii) is carried out under an aviation screening assessment program of the Department of Homeland Security.

“(D) **USE OF OTHER PERSONNEL.**—The Transportation Security Administration may use employees, officers, and contractors of the Federal Government (including military personnel) and employees and officers of State and local governments to conduct covert tests.

“(4) **IMPACT STUDY AND REPORT ON COVERT TESTING PROCEDURES.**—

“(A) IMPACT STUDY.—The Secretary of Homeland Security shall conduct a study of the impact of the implementation of this subsection on the Department of Homeland Security’s efforts to improve transportation security.

“(B) REQUIREMENTS.—The study under subparagraph (A) shall include an assessment of—

“(i) the impact of the implementation of this subsection on personnel of the Department of Homeland Security;

“(ii) the impact of such implementation on information sharing within the Department;

“(iii) best practices for integrating the topic of covert testing into existing training and testing programs for personnel of the Department; and

“(iv) the effectiveness of covert testing as a method to improve security.

“(C) REPORT.—Not later than 270 days after the date of the enactment of this subsection, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report that contains—

“(i) the results of the study under subparagraph (A);

“(ii) recommendations for changes to the training of personnel of the Department that are necessary to ensure compliance with the requirements of this subsection; and

“(iii) recommendations to improve the effectiveness of the implementation of this subsection.

“(5) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

“(A) APPROPRIATE INDIVIDUAL.—The term ‘appropriate individual’, as used with respect to a covert test of a transportation security system, means any individual that—

“(i) the individual conducting the test determines needs to know his or her status as an individual conducting a test under paragraph (2)(B); or

“(ii) the cover team monitoring the test under paragraph (3)(B)(i) determines needs to know the identity of an individual conducting the test.

“(B) COVERED EMPLOYEE.—The term ‘covered employee’ means any individual who receives notice of a covert test before the completion of a test under paragraph (2)(A).

“(C) COVERT TEST.—

“(i) IN GENERAL.—The term ‘covert test’ means an exercise or activity conducted by a covert testing office, the Inspector General of the Department of Homeland Security, or the Government Accountability Office to intentionally test, compromise, or circumvent transportation security systems to identify vulnerabilities in such systems.

“(ii) LIMITATION.—Notwithstanding clause (i), the term ‘covert test’ does not mean an exercise or activity by an employee or contractor of the Transportation Security Administration to test or assess compliance with regulations under title 49 of the Code of Federal Regulations.

“(D) COVERT TESTING OFFICE.—The term ‘covert testing office’ means any office of the Transportation Security Administration designated by the Assistant Secretary of Homeland Security (Transportation Security Administration) to conduct covert tests of transportation security systems.

“(E) EMPLOYEE OF A COVERT TESTING OFFICE.—The term ‘employee of a covert testing office’ means an individual who is an employee of a covert testing office or a contractor or an employee of a contractor of a covert testing office.”.

PURPOSE AND SUMMARY

The purpose of H.R. 5909 is to amend the Aviation and Transportation Security Act to prohibit advance notice to certain individuals, including security screeners, of covert testing of security screening procedures for the purpose of enhancing transportation security at airports, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

There have been a number of incidents reported where it appears that covert tests of transportation security systems may have been compromised by individuals providing advance notice of the covert tests to transportation security officers. Specifically, the Department of Homeland Security's Office of Inspector General (DHS OIG) found that between August 2003 and May 2004, Transportation Security Administration (TSA) officials at San Francisco International Airport compromised DHS OIG covert testing efforts by tracking testers throughout the airport via surveillance cameras and notifying screening personnel in advance of the testers arriving at security checkpoints. Then Transportation Security Officers at the Jackson-Evers International Airport in Jackson, MS reported that they received advance notice of covert tests conducted by TSA's Office of Inspection on February 12, 2004. In addition, the Committee on Homeland Security conducted an investigation into these matters and discovered a third incident involving an April 2006 e-mail from TSA's Office of Security Operations to all Federal Security Directors and other TSA airport officials informing them of testing at airports throughout the country.

Additionally, the Committee on Homeland Security held a hearing entitled "Cover Blown—Did TSA Tip-Off Airport Screeners about Covert Testing?" on November 14, 2007.

This bill was introduced to legally prohibit individuals from providing advance notice of covert tests to security screeners or any other individuals without approval from the Assistant Secretary of Homeland Security (Transportation Security Administration), the Inspector General of the Department of Homeland Security, or the Comptroller General of the United States.

HEARINGS

On April 19, 2007, the Subcommittee on Transportation Security and Infrastructure Protection held a hearing entitled "Airport Security: The Necessary Improvements to Secure America's Airports." The Subcommittee received testimony from Hon. Edmund "Kip" Hawley, Assistant Secretary, Transportation Security Administration, Department of Homeland Security; Ms. Lauren Stover, Assistant Aviation Director for Security and Communications, Miami-Dade Aviation Department; Mr. Greg Principato, President, Airports Council International—North America; and Mr. William E. Holden, Senior Vice President of Operations, Covenant Homeland Security Solutions.

On October 16, 2007, the Subcommittee on Transportation Security and Infrastructure Protection held a hearing entitled "Aviation Security: Are We Truly Protected?" The Subcommittee received testimony from Ms. Cathleen A. Berrick, Director, Homeland Security and Justice Issues, Government Accountability Office; Hon. Edmund "Kip" Hawley, Assistant Secretary, Transportation Security Administration, Department of Homeland Security; and Mr. Franklin Hatfield, Director, System Operations Security Office, Federal Aviation Administration, Department of Transportation.

On November 1, 2007, the Subcommittee on Transportation Security and Infrastructure Protection held a hearing entitled "Aviation Security Part II: A Frontline Perspective on the Need for En-

hanced Human Resources and Equipment.” The Subcommittee received testimony from Mr. John Gage, National President, American Federation of Government Employees, AFL-CIO; Ms. Patricia A. Friend, International President, Association of Flight Attendants—CWA, AFL-CIO; and Mr. Robert Hesselbein, Chairman, National Security Committee, Air Line Pilots Association, International.

On November 14, 2007, the Committee held a hearing entitled “Cover Blown—Did TSA Tip Off Airport Screeners about Covert Testing?” The Committee received testimony from Hon. Edmund “Kip” Hawley, Assistant Secretary, Transportation Security Administration, Department of Homeland Security; Mr. Gregory Kutz, Managing Director, Office of Forensic Audits and Special Investigations, Government Accountability Office; Hon. Clark Kent Ervin, Director, Homeland Security Program, The Aspen Institute.

COMMITTEE CONSIDERATION

H.R. 5909 was introduced in the House on April 24, 2008, by Mrs. Lowey and referred solely to the Committee on Homeland Security. Within the Committee, H.R. 5909 was referred to the Subcommittee on Transportation Security and Infrastructure Protection.

The Subcommittee on Transportation Security and Infrastructure Protection met on Thursday, May 1, 2008, to consider H.R. 5909 and adopted H.R. 5909, as amended, by voice vote.

The following amendment was offered:

An Amendment in the Nature of a Substitute offered by Ms. Jackson-Lee (#1); was AGREED TO by voice vote.

The Chairman discharged the Subcommittee on Transportation Security and Infrastructure Protection from further consideration of H.R. 5909 on May 20, 2008.

The Committee on Homeland Security considered H.R. 5909 on May 20, 2008, and ordered the measure reported to the House with a favorable recommendation, as amended, by unanimous consent.

The following amendment was offered:

An Amendment in the Nature of a Substitute offered by Mrs. Lowey (#1); was AGREED TO by unanimous consent.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during Committee consideration.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 5909, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

JUNE 3, 2008.

Hon. BENNIE G. THOMPSON,
Chairman, Committee on Homeland Security,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5909, the Catching Operational Vulnerabilities by Ensuring Random Testing Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 5909—Catching Operational Vulnerabilities by Ensuring Random Testing Act of 2008

H.R. 5909 would specify certain procedures for the Transportation Security Administration (TSA) to follow when conducting covert tests of transportation systems and require the agency to report on the effect that those procedures have on the agency's efforts to improve transportation security.

Based on information from TSA, CBO estimates that implementing H.R. 5909 would have no significant impact on the federal budget. According to TSA, enacting H.R. 5909 would not significantly affect the agency's costs to conduct covert tests, and CBO estimates that the cost of meeting the bill's reporting requirements would be negligible. Any such costs would be subject to the availability of appropriated funds. H.R. 5909 would not affect direct spending or receipts.

H.R. 5909 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5909 contains the following general performance goals, and objectives, including outcome related goals and objectives authorized.

The Catching Operational Vulnerabilities by Ensuring Random Testing Act of 2008 prohibits the advance notice of covert tests of transportation security systems to ensure that covert tests of these systems are not compromised. This bill establishes a procedure by which the Transportation Security Administration (TSA), the Department of Homeland Security's Inspector General, and the Comptroller of the United States can provide limited advance notice of covert tests to certain personnel before the tests occur. This established procedure will add increased integrity, uniformity, and accountability to covert testing without hampering this vital and important function in protecting America's transportation systems. Further, by creating a flexible process by which the Assistant Secretary for the Transportation Security Administration and those within the TSA can continue to conduct localized tests of security screeners and transportation security systems, this bill will not reduce or diminish the efforts of TSA's Federal Security Directors with respect to their individual areas and facilities of responsibility. Finally, by preparing and providing an Impact Study and Report to Congress on the impact of training and best practices to train the workforce, Congress can conduct adequate oversight on this issue.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 1, which grants Congress the power to provide for the common Defense of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section designates the short title of H.R. 5909 as the “Catching Operational Vulnerabilities by Ensuring Random Testing Act of 2008” or the “COVERT Act of 2008”.

Section 2. Prohibition of advance notice of covert testing to security screeners

This section amends section 111 of the Aviation and Transportation Security Act (Pub. L. 107–71), to prohibit advance notice to individuals, including security screeners, of covert testing of transportation security screening procedures.

Section 111 prohibits any individual participating in covert testing to provide advance notice or information concerning covert tests, prior to the test’s completion, to any individual. Additionally, this section provides the Assistant Secretary of the Department of Homeland Security (Transportation Security Administration), the Inspector General of the Department of Homeland Security, and Comptroller General of the United States the authority to provide advance notice of covert tests to Federal Officers and Law Enforcement Officials. This section also allows individuals conducting covert tests to inform others they are conducting a covert test in instances where they are identified as a potential threat for purposes of ensuring the security of individuals in the vicinity.

Additionally, this section establishes a cover team to monitor testing personnel for the purpose of ensuring the security of transportation security screeners, the traveling public, individuals conducting the test, or any others within the vicinity of the test. Each head of a covert testing office shall ensure that a cover team, comprised of one or more individuals, is present during a covert test in order to monitor testing and confirm the identity of those conducting the test. The Transportation Security Administration (TSA) is not required to provide a cover team during tests to screen persons, carry-on items, or checked baggage at an aviation security checkpoint, or a checkpoint that is serving an airport, if the test is approved by a Federal Security Director and carried out under an aviation screening assessment program of the Department of Homeland Security. The Committee does not intend the cover team requirement to apply to TSA’s locally based aviation covert testing program managed by Federal Security Directors at their respective airports. In addition, due to the limited availability of testing personnel for TSA’s locally based aviation covert testing program, this section allows the TSA to use employees, officers, and contractors of the Federal Government, including military personnel, and employees and officers of state and local governments to conduct covert tests.

Further, this section requires the Secretary to conduct an impact study. Specifically, the study shall include a summary of best practices on how to best integrate covert testing into other training and testing programs; recommendations on the implementation and execution of this section; and an assessment on the results of covert testing for improving security. A report on the study and its re-

sults, including recommendations required for personnel training, is due to the named committees of jurisdiction.

This section also establishes the definition of terms used within this bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 111 OF THE AVIATION AND TRANSPORTATION SECURITY ACT

[SEC. 111. TRAINING AND EMPLOYMENT OF SECURITY SCREENING PERSONNEL.]

SEC. 111. TRAINING, EMPLOYMENT, AND TESTING OF SECURITY SCREENING PERSONNEL.

(a) * * *

* * * * *

(e) PROHIBITION OF ADVANCE NOTICE TO SECURITY SCREENERS OF COVERT TESTING AND EVALUATION.—

(1) *IN GENERAL.*—*The Secretary of Homeland Security shall ensure that information concerning a covert test of a transportation security system to be conducted by a covert testing office, the Inspector General of the Department of Homeland Security, or the Government Accountability Office is not provided to any individual prior to the completion of the test.*

(2) *EXCEPTIONS.*—*Notwithstanding paragraph (1)—*

(A) *an individual may provide information concerning a covert test of a transportation security system to employees, officers, and contractors of the Federal Government (including military personnel); employees and officers of State and local governments; and law enforcement officials, who are authorized to receive or directed to be provided such information by the Assistant Secretary of Homeland Security (Transportation Security Administration), the Inspector General of the Department of Homeland Security, or the Comptroller General of the United States, as the case may be; and*

(B) *for the purpose of ensuring the security of any individual in the vicinity of a site where a covert test of a transportation security system is being conducted, an individual conducting the test may disclose his or her status as an individual conducting the test to any appropriate individual if a security screener or other individual who is not a covered employee identifies the individual conducting the test as a potential threat.*

(3) *SPECIAL RULES FOR THE TRANSPORTATION SECURITY ADMINISTRATION.*—

(A) *MONITORING AND SECURITY OF TESTING PERSONNEL.*—*The head of each covert testing office shall ensure that a person or group of persons conducting a covert*

test of a transportation security system for the covert testing office is accompanied at the site of the test by a cover team comprised of one or more employees of the covert testing office for the purpose of monitoring the test and confirming the identity of personnel involved in the test under subparagraph (B).

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

- (i) monitor the test; and*
- (ii) for the purpose of ensuring the security of any individual in the vicinity of a site where the test is being conducted, confirm, notwithstanding paragraph (1), the identity of any individual conducting the test to any appropriate individual if a security screener or other individual who is not a covered employee identifies the individual conducting the test as a potential threat.*

(C) AVIATION SCREENING.—Notwithstanding subparagraph (A), the Transportation Security Administration is not required to have a cover team present during a test of the screening of persons, carry-on items, or checked baggage at an aviation security checkpoint at or serving an airport if the test—

- (i) is approved by the Federal Security Director for such airport; and*
- (ii) is carried out under an aviation screening assessment program of the Department of Homeland Security.*

(D) USE OF OTHER PERSONNEL.—The Transportation Security Administration may use employees, officers, and contractors of the Federal Government (including military personnel) and employees and officers of State and local governments to conduct covert tests.

(4) IMPACT STUDY AND REPORT ON COVERT TESTING PROCEDURES.—

(A) IMPACT STUDY.—The Secretary of Homeland Security shall conduct a study of the impact of the implementation of this subsection on the Department of Homeland Security's efforts to improve transportation security.

(B) REQUIREMENTS.—The study under subparagraph (A) shall include an assessment of—

- (i) the impact of the implementation of this subsection on personnel of the Department of Homeland Security;*
- (ii) the impact of such implementation on information sharing within the Department;*
- (iii) best practices for integrating the topic of covert testing into existing training and testing programs for personnel of the Department; and*
- (iv) the effectiveness of covert testing as a method to improve security.*

(C) REPORT.—Not later than 270 days after the date of the enactment of this subsection, the Secretary shall submit to the Committee on Homeland Security of the House of

Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report that contains—

- (i) the results of the study under subparagraph (A);*
- (ii) recommendations for changes to the training of personnel of the Department that are necessary to ensure compliance with the requirements of this subsection; and*
- (iii) recommendations to improve the effectiveness of the implementation of this subsection.*

(5) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

(A) APPROPRIATE INDIVIDUAL.—The term “appropriate individual”, as used with respect to a covert test of a transportation security system, means any individual that—

- (i) the individual conducting the test determines needs to know his or her status as an individual conducting a test under paragraph (2)(B); or*
- (ii) the cover team monitoring the test under paragraph (3)(B)(i) determines needs to know the identity of an individual conducting the test.*

(B) COVERED EMPLOYEE.—The term “covered employee” means any individual who receives notice of a covert test before the completion of a test under paragraph (2)(A).

(C) COVERT TEST.—

(i) IN GENERAL.—The term “covert test” means an exercise or activity conducted by a covert testing office, the Inspector General of the Department of Homeland Security, or the Government Accountability Office to intentionally test, compromise, or circumvent transportation security systems to identify vulnerabilities in such systems.

(ii) LIMITATION.—Notwithstanding clause (i), the term “covert test” does not mean an exercise or activity by an employee or contractor of the Transportation Security Administration to test or assess compliance with regulations under title 49 of the Code of Federal Regulations.

(D) COVERT TESTING OFFICE.—The term “covert testing office” means any office of the Transportation Security Administration designated by the Assistant Secretary of Homeland Security (Transportation Security Administration) to conduct covert tests of transportation security systems.

(E) EMPLOYEE OF A COVERT TESTING OFFICE.—The term “employee of a covert testing office” means an individual who is an employee of a covert testing office or a contractor or an employee of a contractor of a covert testing office.