Will Publish June 30, 2003 in the Federal Register

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration.

14 CFR Part 193

[Docket No. FAA-2003 – 15468]

Flight Operational Quality Assurance Program (FOQA)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Order Designating FOQA Information as Protected from Public Disclosure

SUMMARY: Federal Aviation Administration (FAA) Order 8000.81 designates information provided to the agency from an approved voluntary FOQA Program as protected from public disclosure and in accordance with the provisions of 14 CFR part 193, including disclosure under the Freedom of Information Act or other laws. This designation is intended to encourage sharing of FOQA information between the FAA and operators participating in an approved voluntary FOQA program. The substance of Order 8000.81 is published in the Federal Register in accordance with the policy stated by the agency when it adopted 14 CFR part 193.

DATES: FAA Order 8000.81 became effective on April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Longridge, Flight Standards Service, AFS-230, Federal Aviation Administration, 800 Independence Ave,

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SUPPLEMENTARY INFORMATION:

Background

Under Title 49 of the United States Code (49 U.S.C.) section 40123, certain voluntarily provided safety and security information is protected from disclosure in order to encourage people to provide the information to the Federal Aviation Administration (FAA). The FAA must first find that the information should be protected in accordance with 49 U.S.C. section 40123. The FAA's rules for implementing section 40123 are in 14 CFR part 193. If the Administrator issues an order designating information as protected under section 40123, that information will not be disclosed under the Freedom of Information Act (5 U.S.C. section 552) or other laws, except as provided in section 40123, part 193, and the order that designates the information as protected. This FAA order for FOQA is issued under part 193, section 193.11, which sets out the notice procedure for designating information as protected.

A notice of proposed order designating FOQA information as protected from disclosure was published in 67 FR 56770 on September 5, 2002. In response to the notice, comments were received by the FAA. Appendix 1 of Order 8000.81 summarizes those comments and provides the FAA's responses thereto. A summary of changes made to the proposed order is provided in Appendix 2 of Order 8000.81.

Applicability

Order 8000.81 is applicable to any FAA office that receives information covered under this designation from a FOQA program. The order is also applicable to any other

government agency that receives such information from the FAA. In order for any other government agency to receive FOQA information protected from disclosure under this designation from the FAA, an agency must first stipulate, in writing, that it will abide by the provisions of part 193 and thisorder.

Summary of the FOQA Voluntary Information-Sharing Program

A. Who may participate? Aircraft operators that have an FAA-approved FOQA Implementation and Operations Plan may participate.

B. What voluntarily provided information would be protected from disclosure under this proposed designation?

1. FOQA data, which is defined as any digital flight data that has been collected from an individual aircraft pursuant to an FAA-approved FOQA program, regardless of the electronic format of that data.

Note: Operators are not expected or required to provide the FAA with FOQA data as a condition for approval of a FOQA Implementation and Operations Plan. However, if an operator elects to voluntarily provide such information to the FAA on its own initiative, it will be protected from disclosure under this order of designation.

2. The identities of pilots provided to the FAA who are associated with any FOQA data submitted to the FAA.

Note: The FAA does not anticipate that FOQA data containing pilot identity information, or information that could be employed to enable the determination of pilot identity, will be submitted to the agency. However, if such information is submitted to the agency, it will be protected from disclosure under this order of designation.

3. Aggregate FOQA data from an individual operator, which is defined as summary statistical indices based on analysis of FOQA data from multiple aircraft operations, when such data is provided pursuant to an FAA-approved FOQA program.

4. Reports prepared by an individual operator that are based on analysis of the individual operator's FOQA data or aggregate data pursuant to an FAA-approved FOQA program. (Before release of any such reports prepared by the FAA, information protected from disclosure under this order will be redacted.)

5. The identity of an individual operator associated with specific FOQA data, specific aggregate FOQA data, or a specific report derived from analysis of the individual operator's FOQA data, pursuant to an FAA-approved FOQA program.

6. The specific results of any FAA analysis of FOQA data or FOQA aggregate data from an individual operator or multiple operators, when such data has been provided pursuant to an FAA-approved FOQA program and the release of the specific results would constitute the release of FOQA data or aggregate data protected from disclosure under this order.

7. The specific corrective actions reported to the FAA that are initiated by the operator of an FAA-approved FOQA program to correct an adverse safety trend revealed by analysis of that operator's FOQA data.

8. A data base of aggregate FOQA data collected over time from an individual operator's approved FOQA program.

9. A data base of events, outcomes, and reports prepared by an individual operator collected over time from its approved FOQA program.

Note: The type of information or circumstances in which the information listed above would not be protected from disclosure is discussed in paragraph 6(e)(2) of Order 8000.18 [and under Findings, paragraph E.2 of this notice]. .

C. How do you participate? An operator participates by obtaining FAA approval of its FOQA Implementation and Operations Plan, adhering to that approved plan, and voluntarily sharing FOQA data, aggregate FOQA data, or other FOQA information as specified in this order with the FAA.

D. What is the duration of this information-sharing program? This information-sharing program continues until the operator terminates its FOQA Implementation and Operations Plan or until the FAA withdraws the approval of the operator's FOQA Implementation and Operations Plan.

Findings

The FAA designates information received from an approved FOQA program as protected under 49 U.S.C. section 40123 and 14 CFR part 193, § 193.7, based on the following findings:

A. Summary of why the FAA finds that the information will be provided voluntarily. The FAA finds that the information will be provided voluntarily. No operator is required to have a FOQA program. No operator that has a FOQA program is required to obtain FAA approval of that program. Any operator that has an FAA-approved FOQA program may terminate that program at the operator's discretion. The FAA anticipates that information from an operator's approved FOQA program will be shared with the FAA, because the voluntary establishment of an approved FOQA program constitutes a

partnership between the FAA and operator in the interest of achieving joint goals for the improvement of safety and efficiency.

B. Description of the type of information that may be voluntarily provided under the program, and a summary of why the FAA finds that the information is safety or security related.

1. The FAA anticipates that the types of information that may be voluntarily provided under the program will be:

(a) Summary statistical indices based on analysis of an individual operator's FOQA data

(b) Graphical depictions of trend information obtained from analysis of an individual operator's FOQA data

(c) Written findings that describe the results of FOQA data analysis and identify any adverse safety trends revealed by that data

(d) Corrective actions planned, in process, or completed to correct adverse safety trends revealed by FOQA data

(e) The results of FOQA analysis conducted to determine the effectiveness over time of corrective action accomplished by the operator

(2) The FAA finds that this information is safety related because FOQA data and FOQA aggregate data provide objective information on the extent to which aircraft are operated in accordance with established procedures and acceptable margins of safety.

C. Summary of why the FAA finds that the disclosure of the information would inhibit persons from voluntarily providing that type of information. The FAA finds that disclosure of the information would inhibit the voluntary provision of that type of

information. Operators are reluctant to share information from FOQA programs with the FAA, if such information might be subject to public disclosure.

(1) A significant impediment to the sharing of FOQA information with the FAA is the aviation industry's concern over public disclosure of the information and, if disclosed, the potential for it to be used for purposes other than the safety enhancement purposes that constitute the primary reason for the establishment of such programs. As a result, before this order, U.S. airlines participating in FAA-approved FOQA programs have not permitted aggregate FOQA data, and any written information derived from analysis of such programs, to leave the airline's premises. This information is considered to be confidential by the participating operators and their pilots.

(2) The FAA finds that reports prepared by an individual operator based on analysis of the individual operator's FOQA data or aggregate data, should be protected from public disclosure because the identity of the operator may be derived from that information. Unless the FAA can assure protection of identity information, such reports will not be submitted by the operator or specific information that could enhance the safety value of the report will not be included in the submission.

D. Summary of why the receipt of that type of information aids in fulfilling the FAA's safety and security responsibilities. The FAA finds that receipt of FOQA information aids in fulfilling the FAA's safety and security responsibilities. Because of its capacity to provide early objective information on emerging adverse safety trends, which enables remedial intervention, FOQA offers significant potential for incident and accident avoidance. Currently, FAA experience has clearly established that a FOQA program can produce objective safety-related data that is not available from any other source. For

example, FOQA data concerning the frequency of unstable approaches on landing as a function of specific airport and runway environment has identified areas where improvements were needed in airline approach and landing checklists, airline training, air traffic control procedures, and published airport approach and landing procedures. Receipt of this previously unavailable objective information enabled airlines and the FAA to modify procedures and policies in order to improve safety and efficiency. If operators voluntarily support providing the FAA with aggregate FOQA data, the FAA can better serve as a national safety information resource for aircraft operators.

E. Summary of why withholding such information from disclosure would be consistent with the FAA's safety and security responsibilities, including a statement as to the circumstances under which, and a summary of why, withholding such information from disclosure would not be consistent with the FAA's safety and security responsibilities, as described in 14 CFR 193.9. The FAA finds that withholding FOQA data or aggregate FOQA data provided to the FAA from an approved FOQA program is consistent with the FAA's safety and security responsibilities.

(1) An approved FOQA Implementation and Operations Plan specifically provides that corrective action for adverse safety trends will be initiated by the operator and that the operator will inform the FAA about that action. For example, an operator could modify its pilot training program to place greater emphasis on approach and landing procedures and inform the FAA of that training program modification. The FAA can then monitor the implementation of that modification, as well as review follow-on FOQA trend data pertinent to approach and landing maneuvers, to determine the effectiveness of the corrective action. The FAA can therefore accomplish its safety responsibilities without

disclosure of FOQA data to the public. Withholding the information is consistent with the FAA's safety responsibilities, because, except for disclosure protection the FAA would not receive the information, and by virtue of its receipt, the FAA is able to not only assure that the corrective action necessary to maintain public safety has been taken, but that such action continues to be effective for that purpose.

(2) The FAA will release FOQA information submitted to the agency, as specified in part 193 and this proposed order. For example, in order to explain the need for changes in FAA policies, procedures, and regulations, the FAA may disclose de-identified (no operator or pilot identity), summarized, information that has been derived from FOQA aggregate data or extracted from the protected information listed under paragraph 6b of Order 8000.81 [and under Findings, paragraph B, of this notice]. The FAA may disclose de-identified, summarized FOQA information that identifies a systemic problem in the aviation system, when other people need to be advised of the problem in order to take corrective action. The FAA may release the names of operators who have approved FOQA Implementation and Operations Plans. In addition, in accordance with 14 CFR section 13.401(e), the FAA may release FOQA information in support of enforcement actions that involve criminal or deliberate acts. To withhold disclosure of information in circumstances that involve criminal or deliberate acts would be inconsistent with the agency's safety responsibilities because it could prevent the agency, or at least diminish its ability, to effectively address such misconduct.

F. <u>Summary of how the FAA will distinguish information protected under part 193 from information the FAA receives from other sources.</u> An operator's approved FOQA Implementation and Operations Plan must specifically identify what digital flight data

will be considered FOQA data, how that data is defined, and provisions for FAA access to aggregate FOQA data. Since an operator's aggregate FOQA data is derived by a process of aggregation from the operator's FOQA data, as defined in the FOQA Implementation and Operations Plan, and reports and other FOQA information, as specified in this order, are derived from analysis of the FOQA data as defined in that plan, the FOQA Implementation and Operations Plan on file with the FAA will serve as the primary reference source for distinguishing information protected under part 193 from information the FAA receives from other sources.

(1) The FAA acknowledges that operators are highly reluctant to share sensitive FOQA information with the FAA, in part because of concerns that even if the information is designated as protected under part 193, it may still be inappropriately released by someone in the agency. Therefore, the FAA anticipates that, to be successful, any program for FOQA information sharing will have to proceed on an incremental basis. The FAA must demonstrate, on a stepwise basis, that the measures it puts in place to protect FOQA information from disclosure are completely effective. The FAA intends to work in a collaborative fashion with airlines and labor associations towards that end. A FOQA Aviation Rulemaking Committee (ARC) comprised of airline, labor association, and FAA representatives has been established for that purpose.

(2) The FAA anticipates that the venue for submission to the FAA of aggregate FOQA data or other FOQA information, as specified in this order, will evolve over time in a fashion acceptable to all stakeholders. In order to be protected under this designation, all such submissions, regardless of the venue, must be clearly labeled as follows:

WARNING: This FOQA information is protected from disclosure under 49 U.S.C. 40123 and 14 CFR part 193. It may be released only with written permission of the Associate Administrator for Regulation and Certification.

Designation

The FAA designates information described above to be protected from disclosure, in accordance with 49 U.S.C. section 40123 and 14 CFR part 193, when submitted pursuant to an approved FOQA program.

Issued in Washington, D.C., on JUN 19 2003

Certified to be a True Copy

for James J. Ballough

~~Nicholas A. Sabatini~~ JAMES J. BALLOUGH

ACTING ~~Associate~~ Acting Administrator for Regulation and Certification

Appendix 1 of Order 8000.81 (Summary of Significant Comments Received and the FAA's Response)

A proposed FAA order designating FOQA information as protected from disclosure under part 193 was published in the Federal Register on September 5, 2002 (Federal Register, Volume 67, Number 172, pages 56770-56774). Comments on the proposed order were received from one major trade association and one major labor association. These comments and the FAA responses are as follows:

A. Disclosure to Support Rulemaking/Regulatory Action.

1. Comment: Disclosure to support rulemaking/regulatory action should be limited. The FAA should not disclose de-identified (no operator or pilot identity), summarized information that has been derived from FOQA aggregate data or extracted from protected information. Instead, to support regulatory or policy changes, the FAA should disclose only its generalized findings and conclusions derived from its review of protected data and related information.

2. The FAA Response: The FAA's intent in its proposed use of the word "summarized" appears to be consistent with the commenter's concerns regarding the specificity of any information that is disclosed to explain the basis for rulemaking, procedural changes, or policy changes. However, the language of this order must retain use of the word "summarized" rather than "generalized", because that is the regulatory language specified in part 193 concerning the circumstances under which the FAA may release information obtained from an approved FOQA program.

B. Protected Data.

1. Comment: Protected data should be more broadly defined in the FOQA Order. The proposed order defines FOQA data as any digital data collected pursuant to a FAA-approved FOQA program, and the order would provide disclosure protection only to data obtained from such approved programs. In the course of aggregating, reviewing, or analyzing FOQA data, other data may be inadvertently (or purposefully) included, in order to make the information more robust or complete. In such instances, the fact that the data was not obtained or collected "pursuant to an FAA-approved FOQA program" should not prevent the data or aggregated data or analysis from being protected from disclosure. The commenter believes that it is consistent with the statute and Congressional intent to protect such data. The commenter recommends that the FAA revise the final order to protect all data shared with the FAA pursuant to an approved FOQA program, even if such data does not fall within the precise definition of FOQA data as it is defined in the proposed order.

2. The FAA Response: The FAA cannot anticipate when to protect undefined information in accordance with the notice procedure of 14 CFR part 193. Since the digital data that would be collected pursuant to an FAA-approved FOQA program is specified in an FAA-approved FOQA Implementation and Operations Plan, there is no ambiguity as to the nature of the information protected under this order. However, that protection cannot be extended through this order to "other data" without specifying what that "other data" is. Otherwise, it would be possible for an operator to inappropriately acquire disclosure protection by virtue of simply including other information together with submitted FOQA data. The FAA notes that the most likely category of "other data" that might be included with FOQA data, in order to provide more robust or complete

information, would be from an Aviation Safety Action Program (ASAP). The FAA is in the process of establishing disclosure protection for ASAP data and information in a separate order of designation under 14 CFR part 193.

C. Protecting Reports and the Identity of the Operator.

1. Comment: The proposed order is unduly restrictive with regard to only protecting reports prepared by the operator or the FAA and the identity of an operator associated with FOQA data or reports, when such reports or information are prepared "pursuant to an FAA-approved FOQA program." If a report is based on FOQA data or analysis of FOQA data, then the report should be protected. It need not necessarily have been prepared "pursuant to an FAA-approved FOQA program." The identity of an operator associated with FOQA data or a report based on FOQA data should always be protected. The analysis need not have been developed "pursuant to an FAA-approved FOQA program."

2. The FAA Response: The FAA concurs that a report or analysis of FOQA data, as well as the identity of an operator associated with FOQA data, should be protected from disclosure. As 14 CFR Part 13, section 13.401 requires operators of FAA-approved FOQA programs to provide the FAA with aggregate FOQA data in a form and manner acceptable to the Administrator, the principal intent of this order is to make clear that any FOQA data submitted to the FAA pursuant to an approved FOQA program will be protected from disclosure in accordance with the provisions of part 193 and this order. In addition, the FAA believes that the first prerequisite for establishing what is to be protected through the part 193 notice procedure is an unambiguous specification of what constitutes the FOQA data to be protected. As part 13 requires that operators who seek

the enforcement protection of that rule identify their FOQA data in an FAA-approved FOQA Implementation and Operations Plan, the language of this order, which limits disclosure protection to data submitted pursuant to an approved FOQA program, provides the needed specificity. This order does not preclude operators who do not have an approved FOQA program from submitting digital flight data to the FAA under the no-notice procedure of part 193 or from petitioning the FAA to issue a separate designation specific to pre-identified digital flight data outside of an approved FOQA program under the notice procedure of part 193.

D. Corrective Actions.

1. Comment: The proposed notice protects corrective actions, but only if based on an analysis of that operator's FOQA data. Here, any corrective action based on any FOQA data, including reports, analyses, or recommendations from the FAA based on another operator's FOQA data, should be protected from disclosure. The FAA contemplates that it will notify operators of systemic problems it uncovers. Thus, corrective actions taken by an operator may not, in fact, be based on its own FOQA data.

2. The FAA Response: Although section 13.401 requires operators to undertake corrective action, which analysis of its own FOQA data has determined is necessary in the interest of safety (and this order protects such operator specific corrective actions from disclosure), the rule does not require operators to undertake corrective action based solely on analysis of another operator's FOQA data. However, if FOQA data or aggregate FOQA data provided to the FAA from multiple operators indicates a systemic problem for which corrective action on a national basis is warranted in the interest of safety, the FAA anticipates that it would initiate appropriate procedural, policy, or

regulatory changes to correct the problem. The FAA anticipates that summarized FOQA information might be released to the public to explain or justify such changes. It is also theoretically possible that analysis of a single operator's FOQA might identify a problem for which corrective action applicable to all operators might be warranted in the interest of safety (e.g., a safety related engineering or maintenance issue specific to a particular aircraft make, model, series, or variant). Under either of the preceding two circumstances, the FAA does not believe that it is in the public interest to protect identification of the corrective action to be undertaken.

E. Submission of FOQA Data versus Aggregate FOQA Data.

1. Comment: One commenter stated that paragraph C in the proposed order, "How Persons Would Participate," requires operators to voluntarily share FOQA data and information with the FAA in order to participate. This statement contradicts paragraph B1 of the proposed notice, which states that operators are "not expected or required" to provide FOQA data as a condition of approval of their FOQA Implementation and Operations Plans. The paragraph is confusing and should be deleted. In a similar vein, another commenter stated that since there is a requirement to submit "aggregate FOQA data" and there is no requirement to submit "FOQA data", the commenter believes that the references in the proposed order to the submission of "FOQA data" to the FAA, and the use of "FOQA data" by the FAA for the production of reports, should be removed.

2. The FAA Response: As noted by the second commenter, part 13, section 13.401 distinguishes between FOQA data and aggregate FOQA data. The rule only requires that operators provide the FAA with aggregate FOQA data. The intent of the referenced language from paragraph B1 in the proposed order was not only to acknowledge this

distinction, but to also make clear, with reference to FOQA data (not aggregate FOQA data), that "if an operator elects on its own initiative to voluntarily provide such information to the FAA, it will be protected from disclosure under the proposed order of designation," as is stated in the remainder of the referenced paragraph of the proposed order. The intent of the reference to FOQA data is not to establish or imply a requirement for submission of that data to the FAA. Rather, it is to provide disclosure protection for FOQA data in the event that, although not required to do so, an operator submits that data to the FAA. However, the FAA agrees that the related language of paragraph C could be confusing on this point. In the final designation, paragraph 6c has therefore been modified to read, "...and by voluntarily sharing FOQA data, aggregate FOQA data, or other FOQA information as specified in this order with the FAA."

F. Electronic Data.

1. Comment: In Finding 6 of the proposed order, the FAA states that it hopes to establish an internet-based method for receiving aggregate FOQA data. We are concerned in this particular instance about assuming that an internet-based system will be the best system. Given the sensitive nature of FOQA (and ASAP) data, it may be the case that a different method of delivering this data in electronic format to the FAA will be preferred. Likewise, it may not be the case that initial submissions under part 193 will be in the form of paper reports, as this finding contemplates. The statement also suggests that the FAA intends to be a repository of FOQA data, an issue which is outside the scope of part 193. Furthermore, appropriate consideration has not been given to how FOQA data might be aggregated, analyzed, and used. FAA should work with industry to allow flexibility in the manner in which initial reports are submitted and to address issues

associated with the maintenance and disposition of FOQA data. The discussion of this finding should be revised accordingly.

2. The FAA Response: The FAA concurs with this comment and has revised the language in Finding 6 accordingly.

Appendix 2 of Order 8000.81 [Summary of significant changes to the Notice of Proposed Order Designating FOQA information as protected from disclosure (Federal Register, Volume 67, Number 172, Pages 56770-56774, September 5, 2002)]

In addition to minor editorial corrections, the following changes from the above referenced proposed notice were made in the final order to assure consistency with 49 USC 40123 and 14 CFR 13.401, as well as in response to those public comments with which the FAA concurred as described in Appendix 1:

A. The word "proposed" is deleted in the final order from wherever it appeared in the notice.

B. Paragraph B2 of the notice has been modified by inserting the words "provided to the FAA who are" in the final order.

C. Paragraph B3 has been modified by replacing the word "obtained" with "provided" in the final order.

D. Paragraph B4 of the notice has been modified by deleting the words "or the FAA" and by adding the following parenthetical in the final order: (Before release of any such reports prepared by the FAA, information protected from disclosure under this order will be redacted.).

E. Paragraph B6 of the notice has been modified by replacing the words "is obtained" with "has been provided" and by adding the following language, "and the release of the

specific results would constitute the release of FOQA data or aggregate data" in the final order.

F. Paragraph B7 of the notice has been modified by inserting the words "reported to the FAA that are" in the final order.

G. Paragraph B9 of the notice has been modified by deleting the word "reports" and the word "and" and inserting the words "and reports prepared by an operator" in the final order.

H. Under paragraph C of the notice, the words "and by voluntarily sharing data and information from the FOQA program with the FAA" have been replaced in the final order with, "and by voluntarily sharing FOQA data, and aggregate FOQA data, or other FOQA information as specified in this order with the FAA."

I. Under proposed findings, paragraph (3) of the notice, the following sentence has been deleted from the final order: "Withholding such information from public disclosure is consistent with the FAA's safety and security responsibilities because, unless the FAA can provide an assurance that it will not be disclosed, the FAA will not receive the information. If the FAA does not receive the information, the FAA and the public will be deprived of the opportunity to make the safety improvements that receipt of the information enables."

J. Under proposed findings, paragraph (4) of the notice, the grammar in the example cited in the paragraph has been changed from conditional tense to past tense in the final order, i.e., "could identify" has been replaced with "has identified", "are needed" has been replaced with "were needed", etc.

K. Under proposed findings, paragraph (5) of the notice, the following sentence has been deleted from the final order, "Corrective action under FOQA can be accomplished without disclosure of protected information." The following sentences have been added to the final order: "The FAA can then monitor the implementation of that modification, as well as review follow-on FOQA trend data pertinent to approach and landing maneuvers, to determine the effectiveness of the corrective action. The FAA can therefore accomplish its safety responsibilities without disclosure of FOQA data to the public. Withholding the information is consistent with the FAA's safety responsibilities, because, except for disclosure protection the FAA would not receive the information, and by virtue of its receipt, the FAA is able to not only assure that the corrective action necessary to maintain public safety has been taken, but that such action continues to be effective for that purpose."

L. Under proposed findings, paragraph (5) of the notice, the following sentences have been added to the final order, "In addition, in accordance with 14 CFR section 13.401(e), the FAA may release FOQA information in support of enforcement actions that involve criminal or deliberate acts. To withhold disclosure of information in circumstances that involve criminal or deliberate acts would be inconsistent with the agency's safety responsibilities because it could prevent the agency, or at least diminish its ability, to effectively address such misconduct."

M. Under proposed designation in the notice, the word "hereby" has been deleted, the reference to paragraph 6b has been corrected to 5b, and the words "with the exceptions noted in paragraph 6(e)(2)" have been added.

N. Under proposed findings, paragraph 6, of the notice, the last paragraph referring to a secure internet based methodology has been deleted in its entirety from the final order.