total of $125,000 in financial assurance, in case Trinity does not fulfill its obligations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Western Crude Reserves, Inc. et al.*, DOJ Ref. #90–112–859.

The proposed consent decree may be examined at the office of the United States Attorney, 1441 Main Street, Suite 500 Columbia, South Carolina (803) 929–3000; the Region IV Office of the Environmental Protection Agency, 100 Alabama Street, SW, Atlanta, Georgia 30303; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

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BILLING CODE 4410–15–M

Federal Bureau of Investigation

Implementation of Section 104 of the Communications Assistance for Law Enforcement Act

AGENCY: Federal Bureau of Investigation (FBI).

ACTION: Second Notice and request for comments.

SUMMARY: The FBI is providing a second notification of the requirements for actual and maximum capacity of communication interceptions, pen register and trap and trace device-based interceptions that telecommunications carriers may be required to conduct to support law enforcement's electronic surveillance needs, as mandated in section 104 of the Communications Assistance for Law Enforcement Act (CALEA). On October 16, 1995, the FBI published an Initial Notice for comment (60FR53643); and on November 9, 1995, the comment period was extended until January 16, 1996. After reviewing the comments received, the FBI is issuing this Second Notice for comment.

DATES: Written comments must be received on or before February 13, 1997.

ADDRESSES: Comments should be submitted in triplicate to the Telecommunications Industry Liaison Unit (TILU), Federal Bureau of Investigation, P.O. Box 220450, Chantilly, VA 20153–0450.

FOR FURTHER INFORMATION CONTACT: Contact TILU at (800) 551–0336. Please refer to your question as a capacity notice question. Because the appendices referred to in this Notice are voluminous, they are not contained herein but are available in a public reading room located at Federal Bureau of Investigation Headquarters, 935 Pennsylvania Ave. N.W., Washington, D.C. 20535. To review the appendices, interested parties should contact Ms. Eloise Lee at FBI Headquarters, telephone number (202) 324–3476, to schedule an appointment (48 hours in advance).

I. Background

A. Purpose of CALEA

On October 25, 1994, President Clinton signed into law the Communications Assistance for Law Enforcement Act (CALEA) (Public Law 103–414, 47 U.S.C. 1001–1010). Its objective is to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes. (For purposes of this notice, the word ''interception'' refers to the interception of both call-content and call-identifying information.) CALEA was enacted to preserve law enforcement's ability, pursuant to court order or other lawful authorization, to access call-content and call-identifying (pen registers and trap and trace) information in an ever-changing telecommunications environment.

In 1968 when Congress statutorily authorized court-ordered electronic surveillance, there were no technological limitations on the number of interceptions that could be conducted. However, the onset of new and advanced technologies has begun to erode the ability of the telecommunications industry to support law enforcement's interception needs. To preserve communications interception as a vital investigative tool, the Congress determined that technological solutions must be employed necessitating greater levels of assistance from telecommunications carriers.

The intent of CALEA is to define and clarify the level of technical assistance required from telecommunications carriers. CALEA does not alter or expand law enforcement's fundamental statutory authority to conduct interceptions. It simply seeks to ensure that after law enforcement obtains legal authority, telecommunications carriers will have the necessary technical ability to fulfill their statutory obligation to accommodate requests for assistance.

B. Capacity Notice Mandate

Because many future interceptions will be fulfilled through equipment controlled by telecommunications carriers, CALEA obligates the Attorney General to provide carriers with information they will need (a) to be capable of accommodating the actual number of simultaneous interceptions law enforcement might conduct as of October 25, 1998, and (b) to size and design their networks to accommodate the maximum number of simultaneous interceptions that law enforcement might conduct after October 25, 1998. (Although actual and maximum capacity determinations represent estimates for October 25, 1998, and thereafter, telecommunications carrier compliance with capacity requirements is, by terms of CALEA, required by 3 years after issuance of the Final Notice.) These two information elements are referred to in CALEA as ''actual'' and ''maximum'' capacity requirements. In accordance with section 104 of CALEA, the FBI, which has been delegated CALEA implementation responsibilities from the Attorney General, must provide notice of law enforcement's future actual and maximum capacity requirements. The statute defines these requirements as follows:

For actual capacity: The actual number of communication interceptions, pen registers, and trap and trace devices, representing a portion of the maximum capacity, that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously by the date that is 4 years after the date of enactment of CALEA.

For maximum capacity: The maximum capacity required to accommodate all of the communication interceptions, pen registers, and trap and trace devices that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously after the date that is 4 years after the date of enactment of CALEA.

Although CALEA requires the Attorney General to estimate the actual number of communication

interceptions, pen registers and trap and trace devices that may be required simultaneously as of October 25, 1998 and thereafter, the estimates are not a reflection of the number of interceptions expected to occur. Indeed, law enforcement has no estimate or expectations about how many interceptions will occur. The number of interceptions that actually occur will be determined by authorized law enforcement investigations at the time.

Under CALEA, telecommunications carriers are required to have an actual capacity available for immediate use 3 years after issuance of a Final Notice. Maximum capacity, on the other hand, is a capacity level that telecommunications carriers must be able to accommodate ''expeditiously'' if law enforcement's needs increase in the future. The time frame for ''expeditious'' expansion to maximum capacity was not specified in CALEA. However, law enforcement typically maintains ongoing liaison with telecommunications carriers serving their areas. Such liaison facilitates the needed technical capability and capacity to be prearranged, thereby ensuring that the interception can begin as soon as the legal authorization is received. Such liaison is critical because electronic surveillance interceptions are by their very nature time sensitive. Law enforcement considers five business days from receipt of a court order by a telecommunications carrier to be a reasonable period of time to allow for incremental expansion up to the maximum capacity on an as-needed basis. This time frame is based on the time typically involved under existing procedures used by law enforcement and telecommunications carriers to make technical arrangements.

The term ''expeditious,'' as used herein, applies to section 104 capacity requirements regarding incremental expansion up to the maximum capacity. It should not be confused with ''expeditious access'' to call-content and call-identifying information as used in section 103 of CALEA, which pertains to the assistance capability requirements.

Law enforcement has interpreted the maximum capacity chiefly as a requirement that telecommunications carriers will follow to size a capacity ceiling. This ceiling is intended to provide telecommunications carriers with a stable framework for cost-effectively designing future capacity into their networks. It also would provide room for accommodating future interception-related ''worst-case scenarios.'' Establishing the maximum capacity will allow telecommunications carriers to assist law enforcement during serious, unpredictable emergencies requiring unusual levels of interception.

Consistent with CALEA, this Second Notice identifies the number of simultaneous interceptions that a telecommunications carrier should be able to accommodate in a given geographic area as of the date that is three years after the date of the Final Notice of Capacity and thereafter. An interception relates to accessing and delivering all communications (call-content) and/or call-identifying information associated with the telecommunications service of the subject specified in a court order or lawful authorization. The telecommunications service targeted for interception includes all of the services and features associated with the subject's wireline/wireless telephone number, or as otherwise specified in the court order or lawful authorization.

For a call content-based interception, a carrier is responsible for accessing and delivering all communications and call-identifying information supported by the subject's telecommunications service, regardless of the advanced services or features to which the subject subscribes (e.g., a redirected call through call forwarding); and notwithstanding that the subject may be engaged in more than one communication (e.g., a subject is engaged in a voice telephone call and simultaneously sends a fax or data transmission; a subject is engaged with several (different) parties in a conference call and simultaneously communicates with a non-conferenced party).

For an interception of call-identifying information, a carrier is responsible for accessing and delivering all call-identifying information related to the communications caused to be generated or received by the subject, regardless of the advanced services or features to which the subject subscribes and notwithstanding that the subject may be engaged in more than one simultaneous communication. The fact that a subject utilizes advanced services and features as part of his/her telecommunications service or is capable of sending or receiving more than one communication simultaneous does not mean that carrier access and delivery of each constitutes a separate interception. Consequently, telecommunications carriers need to ensure that, regardless of their solutions (which may be varied), the solution permits access and delivery of all the communications and call-identifying information for each interception. Because of this circumstance, and because CALEA forbids the government from dictating solutions, law enforcement will be available to consult with carriers as they develop solutions and apply the capacity requirements to their particular solutions.

In some instances a telecommunications carrier may be able to meet the assistance capability requirements without modifying its equipment, facilities, or services. As a practical matter, conventional methods of effectuating interceptions of call-content and call-identifying information, such as loop extender technologies, may meet the requirements of CALEA for some subjects of court-ordered interceptions, depending on the types of services and features, etc., to which the subject subscribes. Telecommunications carriers that presently meet these requirements under the circumstances described above will be in compliance until the equipment, facility, or service is replaced or significantly upgraded or otherwise undergoes major modification. Furthermore, telecommunications carriers that cannot meet the assistance capability requirements may still be considered to be in compliance if the Government does not provide cost recovery for modifications to equipment, facilities, and services installed or deployed on or before January 1, 1995. Such carriers will also be in compliance with CALEA until such time as they significantly upgrade or replace or otherwise undergo major modification to equipment, facilities, or services.

C. Initial Notice of Capacity

On October 16, 1995, law enforcement's proposed future actual and maximum capacity requirements were presented in an Initial Notice published in the Federal Register as mandated by section 104 of CALEA. Comments on the Initial Notice were accepted through January 16, 1996. The Initial Notice and the comments on it are summarized in section V of this notice.

D. Second Notice of Capacity

Since the release of the Initial Notice, law enforcement has consulted with telecommunications industry representatives, privacy advocates, and other interested parties to receive feedback on the method used to express future actual and maximum capacity requirements. This consultative process has helped law enforcement understand the challenges facing the industry and others in appling the capacity requirements. After deliberation, law enforcement concluded that it should

issue a Second Notice for comment in order to refine its original approach.

After the instant comment period closes, a complete record will be delineated and a Final Notice will be issued that fulfills the obligations of the Attorney General under section 104(a)(1) of CALEA. Telecommunications carriers will have 180 days after publication of the Final Notice in the Federal Register to submit a Carrier Statement as mandated by section 104(d) to the Government identifying any of its systems or services that do not have the capacity to accommodate law enforcement's requirements (see section IV infra).

CALEA applies to all telecommunications carriers as defined in section 102(8). Notices will eventually be issued covering all telecommunications carriers. However, this Second Notice and its associated Final Notice should be viewed as a first phase applicable to telecommunications carriers offering services that are of most immediate concern to law enforcement—that is, those telecommunications carriers offering local exchange services and certain commercial mobile radio services, specifically cellular service and personal communications service (PCS). (For the purpose of this notice, PCS is considered a service operating in the licensed portion of the 2 GHz band of the electromagnetic spectrum, from 1850 MHZ to 1990 MHZ. Telecommunications carriers offering local exchange services are referred to hereafter in this notice as ''wireline'' carriers, and telecommunications carriers offering cellular and PCS services are referred to as ''wireless'' carriers.

The exclusion from this notice of certain other telecommunications carriers that have services deployed currently or anticipate deploying services in the near term does not exempt them from any obligations under CALEA. Law enforcement will consult with these other telecommunications carriers before subsequent Notices are issued and applicable capacity requirements are established. Law enforcement also looks forward to consulting with these other telecommunications carriers to develop a reasonable method for characterizing capacity requirements.

II. Methodology for Projecting Capacity Requirements

A. Overview

The CALEA mandate set forth in section 104 obligates the Attorney General to estimate future interception capacity requirements and marks the first time that (a) information has been required to be provided to telecommunications carriers in order for them to design future networks with reference to the amount of potential future interception activity that may occur, and (b) the entire law enforcement community has been required to project its collective future potential needs for interception. This new circumstance has generated legitimate concern in the law enforcement community, because telephone technology historically placed no constraints on the number of court-ordered interceptions that could be effected. If not implemented carefully, an under-scoping of capacity requirements under CALEA could have the unintended effect of restricting the technical ability to conduct interceptions authorized in court orders. If future interception needs are understated, law enforcement's investigative abilities will be hampered and, more important, public safety will be jeopardized.

Capacity provisions were included in CALEA to ensure that law enforcement's future interception needs can be met in a way that will not be unduly burdensome for telecommunications carriers. These provisions also present a means for telecommunications carriers to better understand the nature and extent of their existing statutory obligations to accommodate law enforcement's interception needs. (Since law enforcement requirements for all types of interceptions are a function of authorized investigations, the estimated number that may be conducted cannot be zero since that would imply that there is a county or market service area where an interception could not be conducted. See section G ''Establishing Threshold Capacity Requirements'' for further discussion on how minimum capacities are estimated.) To derive capacity requirements that would meet law enforcement's future interception needs without being unduly burdensome, law enforcement used a rigorous methodology. The objective was to ensure that law enforcement's future capacity requirements would (a) be based on historical interception activity, (b) ensure that public safety is not compromised, (c) provide telecommunications carriers with a degree of certainty regarding law enforcement's needs over a reasonable period of time, (d) be based on the geographic areas affected, and (e) not dictate a solution to the industry.

The methodology consisted of these steps:

- Collecting information on historical interception activity.
- Determining geographic areas for identifying capacity requirements.
- Deriving a basis for determining capacity requirements for wireline carriers.
- Deriving a basis for determining capacity requirements for wireless carriers.
- Deriving growth factors for projecting future capacity requirements from historical information.
- Establishing threshold capacity requirements.

B. Collecting Information on Historical Interception Activity

To comply with CALEA's mandate to project future capacity needs, law enforcement believed it was essential to first establish a historical baseline of interception activity from which future interception needs could be projected. This effort entailed a detailed review and analysis of the available information on recent federal, state, and local law enforcement interceptions throughout the United States. Such information had never before been collected in a single repository. Amassing this detailed and extremely sensitive information required an unprecedented and time-consuming effort. It involved identifying sources from which accurate information could be retrieved efficiently. The information required included the numbers of all types of interceptions (communications, pen register, and trap and trace) performed by federal, state, and local law enforcement agencies, in terms of the actual number of telephone lines intercepted at each locality. (For purposes of this notice, the work ''line'' refers to the transmission path from a subscriber's terminal to the network via a wireline or wireless medium.)

The Wiretap Report, published annually by the Administrative Office of the United States Courts, was a valuable source of historical information on criminal Title III (call-content) court orders; however, it did not identify the actual number of interception lines associated with each court order or, more important, the vastly greater number of lines associated with call-identifying interceptions (pen register and trap and trace) that have been performed by all law enforcement agencies. Even though law enforcement used information on the number of court orders reported in the Wiretap Report for forecasting purposes as described subsequently in this section, the report does not contain the necessary line-related information needed to identify the level of past

interceptions for establishing a historical baseline of activity.

To obtain line-related information regarding past simultaneous interceptions, records of interception activity were acquired from telecommunications carriers, law enforcement officials, and what was most important, from the federal and state Clerks of Court offices (the official repositories for all interception court orders) through a survey.

The objective of the survey effort was to determine the numbers of all types of interceptions (communications, pen register, and trap and trace) conducted between January 1, 1993, and March 1, 1995, for all geographic areas. Highly sensitive information pertaining to each interception was collected, including interception start/end dates and area code and exchange. The time period of January 1, 1993 to March 1, 1995 was chosen to obtain recent interception information that was reasonably retrievable given the time constraint imposed by CALEA with regard to publishing a Notice of Capacity.

Approximately 1,500 telecommunications carriers, representing nearly all wireline and cellular telephone companies (as of March 1995), were requested to provide information that would identify where and how many interceptions had occurred within their networks during the period surveyed. Records were submitted by approximately 66 percent of the telecommunications carriers surveyed. To ensure receipt of information from a comprehensive representation of the telecommunications industry, law enforcement worked closely with telecommunications carriers serving large markets or unique geographic areas. Such carriers included the Regional Bell Operating Companies (RBOCs), GTE, and the largest providers of cellular service.

Sensitive interception records maintained under seal within the Clerks of Court offices were acquired through two separate efforts. Federal court order information was collected under special court orders directing the unsealing of this information for the limited purpose of issuing capacity notices required under section 104 of CALEA. State and local law enforcement records were collected with the assistance of the offices of the State Attorney Generals and District Attorneys or state wide prosecutors. This effort resulted in the collection of information on all federal law enforcement interception activity for the period surveyed and information on interceptions by state and local law enforcement from most states. (Some states' laws do not authorize the conduct of all types of interceptions, e.g., call-conduct interceptions, and other states do not maintain retrievable records of all historical interception activity.)

C. Determining Geographic Areas for Identifying Capacity Requirements

Section 104(a)(2)(B) of CALEA requires law enforcement to identify, to the maximum extent practicable, the capacity needed at ''specific geographic locations.'' In addressing this mandate, law enforcement decided that using point-specific sites, such as switch locations, city blocks, or neighborhoods, would not be appropriate because it would not properly take into account movement in criminal activity and could lead to the compromise of sensitive investigations. Also, law enforcement believed that any geographic designation used should not be subject to frequent change, should relate to discernible and officially recognized geographic territorial boundaries, and should be commonly understood by the affected parties.

It was also considered essential that the geographic designations be ones that (a) historically have not been affected by regulatory changes in the telecommunications marketplace, (b) would allow flexibility for telecommunications carriers in developing solutions, and (c) would not be affected by changes in the configurations of telecommunications networks.

Law enforcement concluded that, for wireline carriers, county boundaries or their equivalent best met the criteria above and should be used to define the geographic locations for projecting future capacity requirements. (For purposes of this notice, the term ''county'' includes boroughs and parishes, as well as the District of Columbia and a few independent cities in Missouri, Maryland, Nevada, and Virginia that are not part of any county. U.S. territories such as American Samoa, Guam, the Mariana Islands, Puerto Rico, and the U.S. Virgin Islands are treated similarly.) Further, using the geographic designation of a county in this way was deemed appropriate because it is used by both telecommunications carriers and law enforcement. Telecommunications carriers pay county taxes and fees and are affected by county regulations. Likewise, law enforcement's legal territorial jurisdictions frequently are drawn based on county boundaries, and resources for law enforcement are often allocated on a county basis.

For wireless carriers, individual county boundaries were not considered to be a feasible geographic designation for identifying capacity requirements. Instead, law enforcement determined that wireless market service areas—Metropolitan Statistical Areas (MSAs), Rural Service Areas (RSAs), Major Trading Areas (MTAs), and Basic Trading Areas (BTAs)—would be the most appropriate geographic designations. Although wireless market service areas comprise sets of counties, the use of such market service areas best takes into account the greater inherent mobility of wireless subscribers. Furthermore, what is most important is that historical information on wireless interceptions could only be associated with market service areas.

The approach selected—using counties for wireline carriers and market service areas for wireless carriers—was also responsive to comments on the Initial Notice urging that the two types of telecommunications carriers be treated separately; thus, different geographic designations should appropriately apply.

D. Deriving a Basis for Determining Capacity Requirements for Wireline Carriers

Having established the county as the appropriate geographic area for identifying capacity requirements for wireline carriers, law enforcement had to decide on a basis for determining capacity requirements for each county. Section 104(a)(2)(A) of CALEA stated that the capacity requirements could be based on type of equipment, type of service, number of subscribers, type or size of carrier, or nature of service area, but allowed the use of ''any other measure.'' Law enforcement chose to use the historical interception activity associated with telecommunications equipment located within a county as the most logical basis for making determinations about projected capacity requirements in a county.

Each wireline interception reported during the historical period surveyed (January 1, 1993, to March 1, 1995) was associated with a telecommunications switch, based on its area code and exchange (frequently referred to as its ''NPA/NXX code'') as found in the April 1995 version of the Local Exchange Routing Guide (LERG) published by Bellcore. The LERG contains information on the switching systems and exchanges of wireline carriers and is considered to be an authoritative source in the telecommunications industry. Thereafter, telecommunications switches were

associated to counties by using the vertical and horizontal coordinates marking the switch's physical location.

CALEA also required that capacity requirements be expressed in terms of ''simultaneous'' interceptions. Law enforcement chose to consider interceptions occurring on the same day, rather than at exactly the same moment, as being simultaneous. This time frame was logical from a law enforcement perspective, because interception court orders are authorized for a certain number of days as opposed to some other unit of time Additionally, the time frame of 1 day was compatible with the historical data that was recorded only by days.

The daily interception activity of each switch in a county was examined, and the single day with the most interceptions during the period surveyed was used to identify the switch's highest number of simultaneous interceptions. Thereafter, the highest number of simultaneous interceptions identified for each switch in the country was totaled to produce a historical baseline for the county. Law enforcement believed that this approach provided a reasonable representation of past interception needs for the geographic area during the period surveyed. This approach also avoided the problems that would be inherent in trying to specify capacity requirements for interceptions on a site-specific or equipment-specific basis because of the fluid nature of interceptions conducted over time and because of changes in equipment and the services that they support. After determining the county's historical baseline, law enforcement sought to establish an appropriate means of utilizing that activity as a basis for projecting future capacity requirements. In the Initial Notice, capacity requirements were expressed as a percentage of the engineered capacity of equipment, facilities, and services. It was thought that in so doing, some flexibility would be beneficial to carriers in addressing the capacity requirements. Comments on the Initial Notice, however, questioned the meaning of engineered capacity and recommended that capacity requirements be expressed as fixed numbers rather than as percentages. In response, law enforcement re-examined this issue and found that using fixed numbers for each county would be a clear way to express capacity requirements without tying them to the constantly changing components of the telecommunications network.

E. Deriving a Basis for Determining Capacity Requirements for Wireless Carriers

Having established the market service area as the appropriate geographic area for identifying future capacity requirements for wireless carriers, law enforcement had to decide on a basis for determining capacity requirements for each market. Each cellular interception reported during the period surveyed (January 1, 1993 to March 1, 1995) was associated with a cellular market service area using the August 1995 version of the Cibernet database, which contains information on roaming and billing arrangements for cellular networks and is considered to be an authoritative source in the telecommunications industry. Thereafter, the single day with the most interceptions during the period surveyed was identified and used to establish the historical baseline for the market service area.

Due to the similarities between cellular and PCS, law enforcement used the historical interception activity of cellular carriers to develop projections of future capacity requirements for PCS carriers. Cellular markets are defined by MSAs and RSAs, and PCS markets are defined by MTAs and BTAs. Historical cellular interception activity was mapped to a PCS market service area. Again, the single day with the most interceptions during the period surveyed was identified and used to ascribe to it a historical baseline for the market service area.

To be responsive to comments on the Initial Notice objecting to the use of percentages of engineered capacity, law enforcement found that using numbers rather than percentages was also an appropriate means by which to express capacity requirements for wireless carriers.

F. Deriving Growth Factors for Projecting Future Capacity Requirements From Historical Information

Section 104 of CALEA requires the Attorney General to project future requirements for actual and maximum capacity. As discussed previously in this notice, law enforcement derived a baseline for these estimates from the historical interception activity in geographic areas defined as counties for wireline carriers and market service areas for wireless carriers during the period surveyed. To project future capacity requirements, growth factors were developed and applied to the historical information.

As noted, comments on the Initial Notice recommended that capacity requirements be stated separately for wireline and wireless carriers. In response, law enforcement created new formulas based on a revised set of growth factors that took account of this distinction.

1. Formulas

As discussed below, four growth factors are used in this Second Notice in formulating future capacity requirements: $A_{wireline}$, $A_{wireless}$, $M_{wireline}$, and $M_{wireless}$. The ''A'' factors were applied to historical interception activity to estimate future actual capacity requirements as of October 1998, the ''M'' factors were used to estimate future maximum capacity requirements.

The formulas are as follows:

Wireline: Future Actual Capacity Requirement in a County Equals The Historical Interception Activity in the County Multiplied by $A_{wireline}$.

Future Maximum Capacity Requirement in a County Equals The Future Actual Capacity Requirement in the County Multiplied by $M_{wireline}$.

Wireless: Future Actual Capacity Requirement in a Market Service Area Equals The Historical Interception Activity in the Market Service Area Multiplied by $A_{wireless}$.

Future Maximum Capacity Requirement in a Market Service Area Equals The Future Actual Capacity Requirement in the Market Service Area Multiplied by $M_{wireless.}$

All the resulting requirements for future actual and maximum capacity were rounded up to the next whole number.

2. Growth Factors

The growth factors used herein were derived solely from analysis related to the historical interception information. Three sources of historical information were deemed to provide relevant information to be considered as growth factors: (a) the number of court orders for call-content interceptions which was obtained from the *Wiretap Reports* published by the Administrative Office of United States Courts for the time period 1980 through 1995; (b) the number of court orders for call-identifying information from pen register and trap and trace devices, which was obtained from reports published by the Department of Justice documenting pen register and trap and trace usage by DOJ agencies for the time period 1987 through 1995; and (c) the historical baseline number of call-content interceptions and interceptions of call-identifying information, which was obtained from the survey of law enforcement and industry for the time

period January 1, 1993 through March 1, 1995.

To project the future numerical level of court orders, statistical and analytical methods were applied to the historical interception information. It should be understood that the projections for the number of potential future court orders do not mean that they are the numbers of orders that law enforcement will in fact perform in these years or intends to perform. Rather, they are part of a statistical method used to derive growth factors that would be useful ultimately in calculating future actual and maximum capacity requirements.

A commonly-used analytical tool for projections, known as Best-Fit-Line analysis, was used to track the number of court orders over time and then to project the number into the future. As discussed below, projections were made for call-content court orders for wireline and wireless for the year 1998 and the year 2004. The projections were also made for the vastly greater number of pen register and trap and trace court orders for wireline and wireless for the year 1998 and the year 2004. Composite growth figures for wireline and wireless interceptions were then calculated by weighting the court order projections by the relative number of call-content interceptions and interceptions of call-identifying information during the period survey. The resulting $A_{wireline}$ and $A_{wireless}$ growth factors were based on the 1998 projections. The $M_{wireline}$ and $M_{wireless}$ growth factors were based on the 2004 projections. The year 1998 was selected to comply with the statutory language of CALEA requiring law enforcement to estimate actual capacity requirements by that time. The year 2004 was selected because it provided a 10 year period after the passage of CALEA, a period that was considered reasonable for projecting maximum capacity requirements. It was also considered to be a rational period for constituting a stable capacity ceiling and a design guide.

The value derived for $A_{wireline}$ is 1.259; the value derived for $A_{wireless}$ is 1.707; the value derived for $M_{wireline}$ is 1.303; and the value derived for $M_{wireless}$ is 1.621. These growth factors can also be translated into, and understood in terms of, annual growth rates for capacity requirements. For wireline, if computed annually, growth rates are 5.92 percent for the period from 1994 through 1998, and 4.55 percent for the period from 1998 through 2004. For wireless, if computed annually, growth rates are 14.30 percent and 8.38 percent respectively, for the same time periods. Of relevance in determining the differences in growth rates are the expectations of overall business growth for wireline and wireless telephone services. Market projections for wireline show a steady rate of 3.5 percent annual increase, while wireless annual growth is projected to be 12.0 percent during each of the next 10 years.

(For more information on how the growth factors were derived, refer to Appendix E which is available in the FBI's reading room.)

G. Establishing Threshold Capacity Requirements

In its review of historical interception activity, law enforcement recognized that numerous counties and market service areas had no interception activity during the time period surveyed. Under the methodology described above, these counties and market service areas would have future actual and maximum capacity requirements equal to zero. However, the establishment of future capacity requirements of zero would not provide even a minimal growth flexibility and would largely undermine the intent of CALEA, which is to preserve law enforcement's ability to conduct some level of interceptions. Additionally, it is possible that law enforcement may have conducted interceptions in some of these areas before or after the period surveyed, and it may well have to do so again. History has shown that criminal activity or exigent circumstances can occur anywhere. Therefore, law enforcement must be capable of conducting a number of interceptions in all areas. Consequently, threshold future capacity requirements were developed for counties and market service areas that otherwise would have had a capacity requirement of zero under the above methodology.

For wireline telephone service offered in counties, law enforcement examined the distribution of historical interception activity and found that many counties had no interceptions, and many others had only one interception. To avoid having counties with no future capacity requirement, law enforcement decided to treat counties with zero historical interceptions as if they had one interception. Hence, when the growth factors were applied, it produced a future actual capacity requirement of two simultaneous interceptions and a future maximum capacity requirement of three simultaneous interceptions.

For the wireless market service areas, law enforcement took a similar approach. Here, too, it found that many market service areas had no interceptions during the time period surveyed. Law enforcement chose to treat these market service areas as if they had one interception. Hence, when the growth factors for wireless carriers were applied to these market service areas, the result was a future actual capacity requirement of two simultaneous interceptions and a future maximum capacity requirement of four simultaneous interceptions.

III. Statement of Capacity Requirements

A. Capacity Requirements for Wireline Carriers

Law enforcement is providing notice for the estimated number of communication interceptions, pen register and trap and trace device-based interceptions that may be conducted simultaneously in a given geographic area and has selected counties as the appropriate geographic basis for expressing capacity requirements for telecommunications carriers offering local exchange service (ie., wireline carriers). Appendix A lists all actual and maximum estimates by county. (Appendix A is available in the FBI's reading room for review.) These estimates represent the number of simultaneous call-content interceptions and interceptions of call-identifying information for each county in the United States and its territories. Wireline carriers may ascertain the actual and maximum estimates that will affect them by looking up in Appendix A the county (or counties) for which they offer local exchange service. Capacity requirements based on final estimates will remain in effect for all telecommunications carriers providing wireline service to these areas until such time as the Attorney General publishes a notice of any necessary increase in maximum capacity pursuant to section 104(c) of CALEA.

County capacity requirements represent the estimated number of all types of interceptions that may be conducted simultaneously anywhere within the county. When effective, the county capacity requirements apply to all existing and any future wireline carriers offering local exchange service in each county, regardless of the type of equipment used or the customer base. Law enforcement recognizes that some carriers may seek further clarification on applying the county capacity requirements based on the configurations of their networks and their recommended solutions. Section 103(b) of CALEA forbids law enforcement from requiring any specific design of equipment, facilities, services, features or systems. Because individual carriers configure their networks differently, and may pursue different

solutions, the Telecommunications Industry Liaison Unit of the FBI will be available to discuss the application of these capacity requirements to a specific telecommunications carrier's network upon request.

B. Capacity Requirements for Wireless Carriers

Law enforcement is providing notice for the estimated number of communication interceptions, pen register and trap and trace device-based interceptions that may be conducted simultaneously in a given geographic area and has selected market service areas— MSAs, RSAs, MTAs, and BTAs—as the appropriate geographic basis for expressing actual and maximum capacity requirements for telecommunications carriers offering wireless services, specifically those providing cellular and PCS service (i.e., wireless carriers). Appendix B lists all actual and maximum estimates for MSAs and RSAs; Appendix C lists all actual and maximum estimates for MTAs; and Appendix D lists all the actual and maximum estimates BTAs. (Appendices B, C, D are available in the FBI's reading room for review.) These estimates represent the number of simultaneous call-content interceptions and interceptions of call-identifying information for each market service area. Capacity requirements based on final estimates will remain in effect for all wireless carriers providing service to these areas until such time as the Attorney General publishes a notice of any necessary increases in maximum capacity pursuant to section 104(c) of CALEA.

In all cases, the statement of interception capacity for a wireless market service area reflects law enforcement's estimated number of interceptions that may be conducted simultaneously anywhere in the service area. Law enforcement must be capable of conducting interceptions at any time, regardless of the location of a subject's mobile telephone device within the service area. When effective, the market service area capacity requirements apply to all existing and any future telecommunications carrier offering wireless service in each market. Law enforcement recognizes that some carriers may seek further clarification about how to apply the market service area requirements based on the configurations of their networks. Section 103(b) of CALEA forbids law enforcement from requiring any specific design of equipment, facilities, services, features or systems. Because individual carriers configure their networks differently, and may pursue different solutions, the Telecommunications Industry Liaison Unit of the FBI will be available to discuss the application of these capacity requirements to a specific telecommunications carrier's network upon request.

IV. Related Issues

A. Carrier Statement

Section 104(d) of CALEA requires that within 180 days after the publication of a Final Notice pursuant to subsections 104(a) or 104(c), a telecommunications carrier shall submit a statement identifying any of its systems or services that do not have the capacity to accommodate simultaneously the number of call-content interceptions and interceptions of call-identifying information set forth in the notice. The information in the Carrier Statement will be used, in conjunction with law enforcement priorities and other factors, to determine the telecommunications carrier that may be eligible for cost reimbursement according to section 104.

A Telecommunications Carrier Statement Template has been developed with the assistance of the telecommunications industry to facilitate submission of the Carrier Statement. The template is not mandatory, but law enforcement encourages industry to use the template when identifying any of its systems or services that do not have the capacity to accommodate simultaneously the number of call-content interceptions and interceptions of call-identifying information set forth in the Final Notice. A diskette containing the template will be provided by TILU on request by telecommunications carriers.

The information to be solicited will include the following: Common Language Location Identifier (CLLI) code or equivalent identifier, switch model or other system or service type, and the city and state where the system or service is located. Unique information required for wireline systems and services will include the host CLLI code if the system or service is a remote, and the county or counties served by the system or service. Unique information required for wireless systems and services will include the MSA or RSA market service area number(s), or the MTA or BTA market trading area number(s) served by the system or service.

The confidentiality of the data received from the telecommunications carriers will be protected by the appropriate statute, regulation, or nondisclosure agreements.

After reviewing the Carrier Statements, the Attorney General may, subject to the availability of appropriations, agree to reimburse a carrier for costs directly associated with modifications to attain capacity requirements in accordance with the final rules on cost recovery. Decisions to enter into cost reimbursement agreements will be based on law enforcement prioritization factors.

On April 10, 1996, the Carrier Statement Notice was published in the Federal Register for comment under the Paperwork Reduction Act (PRA). A sixty day comment period ensued ending on June 10, 1996. The Carrier Statement Notice is subject to the approval of the Office of Management and Budget (OMB) under the auspices of the PRA. A Second Carrier Statement Notice for comment is currently being prepared for publication in the Federal Register. This comment period will consist of thirty days. At the conclusion of the comment period, OMB will issue a clearance number which will be published in the Final Notice of Capacity.

B. Cost Recovery Rules

CALEA authorizes the appropriation of $500 million for FY 1995 through FY 1998 for reimbursing telecommunications carriers for certain reasonable costs directly associated with achieving CALEA compliance. Section 109(e) directs the Attorney General to establish regulations, after notice and comment, for determining such reasonable costs and establishing the procedures whereby telecommunications carriers may seek reimbursement. In accordance with the section 109(e) mandate, the proposed rule was published in the Federal Register, 61 FR 21396, on May 10, 1996.

As authorized by section 109, and on execution of a cooperative agreement, it was proposed that a telecommunications carrier be reimbursed for the following: (1) All reasonable plant costs directly associated with the modifications performed by the carrier in connection with equipment, facilities, and services installed or deployed on or before January 1, 1995, in order to comply with section 103; (2) additional reasonable plant costs directly associated with making the requirements in section 103 reasonably achievable with respect to equipment, facilities, or services installed or deployed after January 1, 1995; and (3) reasonable plant costs directly associated with modifications of any telecommunications carriers' systems or services, as identified in the Carrier Statement, that do not have the capacity to accommodate simultaneously the number of call-

content interceptions and interceptions of call-identifying information set forth in the Final Notice(s).

V. The Initial Notice of Capacity

A. Statement of Capacity Requirements in the Initial Notice

The capacity requirements presented in the Initial Notice were expressed as percentages of engineered capacity and were reported by category of historical interception activity levels, with each geographic area being assigned to one of three categories: I, II, and III.

Category I included the few densely populated areas that historically have had high levels of interception activity. Category II included other densely populated areas and some suburban areas where interception activity had been moderate. Category III covered all other geographic areas. All telecommunications carriers would have been required to meet the minimum requirements established for Category III. In addition, they were to be notified of those geographic areas within the areas they serve that fall in Categories I or II.

The percentages of engineered capacity applied to the equipment, facilities, and services that provide a customer or subscriber with the ability to originate, terminate, or direct communications. The purpose of using percentages was to account for the dynamic nature and diversity of the telecommunications industry.

This approach yielded the following projections of actual and maximum capacity requirements: for Category I, 0.5 percent for actual, 1 percent for maximum; for Category II, 0.25 percent for actual, 0.5 percent for maximum; for Category III, 0.05 percent for actual, 0.25 percent for maximum.

B. Discussion of Comments on the Initial Notice of Capacity

On October 16, 1995, law enforcement's proposed future actual and maximum capacity requirements were presented in an Initial Notice published in the Federal Register as mandated by section 104 of CALEA. Comments on the Initial Notice were accepted through January 16, 1996. Fifty-one parties consisting of individuals, companies, and industry associations submitted comments. The following issues were identified from the comments received in response to the Initial Notice of Capacity.

1. The Use of Percentages in Lieu of Fixed Numbers

In the Initial Notice, capacity requirements were expressed as percentages of engineered capacity. Twenty-one comments were received on the use of percentages in lieu of fixed numbers. Eighteen of the comments indicated that law enforcement should use specific numbers instead of percentages for expressing its actual and maximum capacity needs and the percentages should be translated into specific numbers for each area, or for each switch before a Final Notice is issued. Two of the comments noted that supplying actual capacity figures would not require disclosure of sensitive information to the public. One comment stated that percentages would unnecessarily complicate the implementation and enforcement of CALEA. One comment stated that percentages do not meet the intent of CALEA.

After consideration of the aforementioned comments, law enforcement has concluded that capacity requirements for wireline and wirless carriers will be expressed as fixed numbers rather than as percentages.

2. Engineered Capacity

Twenty comments were received on law enforcement's expression of actual and maximum capacity requirements as a percentage of the ''engineered capacity'' of the equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications. Ten of the comments stated that the definition of engineered capacity was too vague and needed to be clarified. Six of the comments stated that engineered capacity applied to land line facilities only and needed to be clarified for wireless carriers. Two of the comments supported the use of ''installed lines'' as the measure of capacity. One comment preferred the use of voice channels as a measurement of engineered capacity for wireless systems. One comment stated that the definition of engineered capacity must be tailored to each industry segment.

In response to the aforementioned comments and from comments on the issue of percentages, law enforcement chose to use fixed numbers as the expression of its capacity needs and thus, the use of terms such as ''engineered capacity'' no longer have any relevance.

3. Geographic Categories

In the Initial Notice, capacity requirements were stated by category of historical interception levels with each geographic area being assigned to one of three categories: I, II, or III. Nineteen comments were received on enforcement's use of geographic categorization to state its capacity requirements. Nine of the comments stated that the notice did not indicate which geographic areas fell into a particular category and that further clarification was needed on the basis for determining categories. One of the comments noted that geographic designations were irrelevant in a wireless environment. Four of the comments remarked that counties did not necessarily correspond to a particular switch service area. One comment stated that geographic areas should be clearly defined and reasonably small. One comment requested clarification on determining capacity when geographic areas overlapped categories. Three comments stated that rural and remote areas should be classified as having Category III (lowest level) requirements.

Law enforcement considered the comments and has concluded that it will no longer use categories for stating capacity requirements. Instead, specific geographic locations to include counties for wireline carriers and market service areas for wireless carriers will be used for stating capacity requirements.

4. The Issuance of Separate Capacity Requirements to the Wireless Industry

Four comments were received on the application of the capacity requirements to the wireless industry. Two of the comments recommended that the wireline and wireless industry segments be treated separately for the purpose of issuing capacity requirements. For example, it was suggested that the geographic divisions proposed in the Initial Notice were based on a wireline central office architecture, which was inappropriate given the network structures for wireless carriers. Furthermore, two of the comments requested clarification as to how wireless carriers were expected to calculate capacity for their systems.

After consideration of the comments, law enforcement has concluded that separate capacity requirements will be established for wireless carriers.

5. Capacity Requirements in Areas With No Interception History

Three comments were received requesting that the notice address areas that lacked interception history. One comment stated that if there was no prior interception history, the capacity number should be zero while another comment suggested that a fourth category should be created for areas with sparse populations. One comment requested that law enforcement clarify whether areas with no interception

history should be required to provide capability without specific capacity.

In its review of historical interception activity, law enforcement recognized that numerous geographic areas had not conducted interceptions during the time period surveyed, January 1, 1993 to March 1, 1995. However, law enforcement also recognized that interceptions may have occurred in these geographic areas before or after the time period surveyed and may well occur again in the future. Because history has shown that criminal activity and exigent circumstances can occur anywhere at any time, it is essential that the ability to conduct some level of interception exists in all geographic areas. Therefore, minimum capacity requirements were established for those areas that did not exhibit interception activity during the period surveyed.

6. Application of Capacity Requirements to Other Technologies

Nine comments were received on the application of the capacity requirements to other services, such as mobile satellite, Cellular Digital Packet Data (CDPD), Electronic Messaging, and Special Mobile Radio (SMR) systems. Four of the comments noted that the Initial Notice of Capacity lacked any discussion of data services and advanced services, such as CDPD, and that further clarification was needed on how to calculate capacity requirements for such services. One comment stated that the Initial Notice was too general to measure the potential impact on mobile satellite services. Four of the comments requested clarification as to how the capacity requirements would apply to SMR carriers in the manner specified.

In response to the aforementioned comments, law enforcement is issuing a Notice of Capacity applicable to carriers that offer services of the most immediate concern; those carriers offering local exchange services and certain commercial mobile radio services, specifically cellular and PCS services. Before issuing Notices applicable to carriers other than these, law enforcement will consult with such carriers in order to assess whether the expression of capacity requirements herein has any applicability to the way their services are offered.

7. Interface Recommendations

Seven comments were received on law enforcement's interface recommendations. Two of the comments requested that interface recommendations be defined. Two comments stated that telecommunications carriers needed another opportunity to comment once the interface recommendations were made available because the interface recommendations document was considered to be a prerequisite to compliance. One comment noted that capacity requirements should include delivery channels. One comment stated that the Initial Notice did not define the capability to which the capacity requirements applied.

Law enforcement is mandated by section 104 of CALEA to issue notices of actual and maximum capacity requirements. The Notice pertains solely to the fulfillment of this CALEA statutory mandate. Although law enforcement recognizes the importance of the comments regarding the interface and the capability requirements, such issues are not within the purview of the Capacity Notice.

8. Definition of Expeditious

One comment was received on the definition of expeditious as used in section 104 of CALEA regarding the expeditious expansion to maximum capacity. The comment requested that the term ''expeditiously increase'' be explained. The comment also requested clarification to determine the level of effort expected from telecommunications carriers and what times of day would be required to effectuate interceptions.

In response to the comment to define ''expeditious expansion to maximum capacity,'' law enforcement considers five business days from receipt of a court order by a telecommunications carrier from a duly authorized law enforcement official, to be a reasonable amount of time to allow for incremental expansion up to the maximum capacity. The level of effort (and the time of day) required from telecommunications carriers to effectuate interceptions will be dependent on CALEA solutions and times specified in electronic surveillance court orders.

9. Definition of Simultaneous

One comment was received on the definition of simultaneous interception. The comment stated that the Initial Notice did not adequately define the term ''simultaneous surveillance'' so that switch capacity could be calculated.

As described in the methodology section of the instant notice, law enforcement considers interceptions occurring on the same day to be simultaneous.

10. How Surveillances Were Calculated

Two comments were received requesting clarification on how surveillances were calculated. One comment stated that law enforcement should clarify if multiple wiretap orders on the same target from different law enforcement agencies each accounted for one unit of capacity. One comment asked for clarification as to whether interception of a conference call with many multiple parties could be counted as multiple interceptions.

In calculating surveillance numbers, law enforcement considered every line specified in an electronic surveillance-related court as one unit of capacity. This unit of capacity does not include the services and features (such as a conference call with multiple parties) an investigative subject may activate.

11. Separate Requirements for Communications (Call-Content), Pen Registers, and Trap and Traces and Inclusion of National Security Interceptions

Four comments were received on the issue of releasing separate requirements for communications, pen register, and trap and trace interceptions. Two comments stated that clarification was needed to ensure that all lawful interception requirements were covered and that the requirements were the aggregate of communications, pen register, and trap and trace interceptions. One comment stated that the notice should include all surveillance types, both criminal and national security. One comment supported the notion that capacity requirements should be separated by communications, pen register, and trap and trace interceptions.

Law enforcement chose not to issue capacity requirements by surveillance type due to the unpredictable nature of the types of surveillances that may be needed for a particular investigation. Additionally, law enforcement will not issue capacity requirements for interceptions associated with national security surveillances in an unclassified document.

12. Relationship Between Notices of Capacity and the Carrier Statement

The comment received on the Carrier Statement requested clarification to assess the relationship between the Notice and the Carrier Statement.

In response to the aforementioned comment, Carrier Statement issues have been reviewed in section IV.A of this Second Notice.

13. Historical Baseline of Interception Activity

Eleven comments were received on the historical baseline of interception activity that law enforcement used to calculate its capacity requirements. Six

of the comments requested that the underlying data be made available. One comment noted that the capacity requirements must be consistent with historical information provided to law enforcement. Two comments requested that law enforcement compare law enforcement data to carrier data and that the two data sources be reconciled. One of the comments urged that the capacity requirements be established for actual numbers of simultaneous interceptions for the central office and that those numbers be based on data and information supplied by the carriers. Another comment stated that the capacity requirements should be based on historical activity.

As stated in the methodology section of this notice, law enforcement has based the capacity requirements on the historical baseline of interception activity for specific geographic areas, and included reasonable growth factors to establish capacity levels for the future. Historical baselines are provided in the appendices of the Second Notice.

14. Methodology

Eight comments were received questioning the methodology used for determining capacity requirements. Specifically, the comments asked law enforcement to explain its methodology and justify how actual and maximum capacity requirements were determined.

In response to these comments, a methodology section included as part of the Second Notice describes that means by which capacity requirements were determined.

15. Funding and Cost Impact

Fifteen comments were received on the issues of funding and cost impact. Three of the comments requested clarification on the cost impact of complying with CALEA if Congress did not appropriate funding. Two comments requested that law enforcement provide an equitable distribution plan for fund disbursement, while another suggested that law enforcement provide a reasonable assessment of the level of funding that was available for upgrades. Ten of the comments addressed the costs associated with compliance.

Issues pertaining to cost recovery and funding are not the subject or intent of this Notice. Detailed information on funding and cost recovery issues is provided in the proposed cost recovery rules that were published in the Federal Register, 61 FR 21396, on May 10, 1996. A summary of these rules is included in section IV.B of the Second Notice.

16. Impact on Small Carriers

Three comments were received on the effect that CALEA may have on small telephone companies. In particular, the comments indicated that high implementation costs might make compliance difficult to achieve. In addition, the comments stated that unnecessarily high capacity requirements might stifle the advancement of new and emerging telecommunications technologies in rural markets.

Law enforcement recognizes that many small carriers provide service to geographic areas that historically have had minimal or no electronic surveillance activity. The capacity requirements stated in this notice are based on the historical interception activity for a given area. In order for law enforcement to effectively respond to future incidents of unusual and unexpected criminality, minimum capacity requirements have been established for areas with no history of interceptions.

In response to the comment regarding the effect of capacity requirements on new and emerging technologies, law enforcement also recognizes that CALEA prohibits law enforcement from specifying the design of equipment, facilities, features, or systems, or adoption of any equipment, facility, service or feature by a telecommunications carrier.

17. Manufacturers' Concern

Three comments were received expressing manufacturers' concerns with the capacity requirements. One of the comments noted that the Initial Notice might require capacity expansion beyond current manufacturers' capabilities. One comment stated that SMR manufacturers might not have the products required for SMR carriers to comply with the capacity requirements. One comment stated that equipment should be designed only from the perspective of the worst case scenario.

Law enforcement has provided capacity estimates in this Second Notice that can be used by manufacturers in designing and developing CALEA-compliant solutions for wireline and wireless (cellular and PCS) technologies. Other technologies, such as SMR, will be addressed in subsequent Notices of Capacity.

18. Definitions of Installed or Deployed and Significant Upgrade

One comment requested clarification on the terms ''installed'' or ''deployed'', inquiring as to whether equipment ordered before January 1, 1995, but not delivered until after January 1, 1995, would be considered installed or deployed. Another comment stated the term significant upgrade must be clearly defined.

The terms installed or deployed and significant upgrade pertain to the assistance capability requirements and, therefore, are not within the purview of the Notices on Capacity. (It should be noted that the definition of installed or deployed was included in the proposed cost recovery rules published in the Federal Register, 61 FR 21396, on May 10, 1996.)

Louis J. Freeh,

Director, FBI.

[FR Doc. 97–318 Filed 1–13–97; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[Unemployment Insurance Program Letter (UIPL) No. 9–97]

Unemployment Compensation for Federal Employees (UCFE)—Coverage Ruling for Human Subjects for Research Studies Conducted by U.S. Department of Agriculture, Agricultural Research Service

Pursuant to Employment and Training Order No. 2–92, the Director, Unemployment Insurance Service, has determined that human subjects who participate in nutritional research studies conducted by the U.S. Department of Agriculture, Agricultural Research Service, do not perform ''Federal Service'' within the meaning of 5 U.S.C. 8501(1) for UCFE program purposes. The UCFE Coverage Ruling No. 97–1 is published below.

Dated: January 6, 1997.

Timothy M. Barnicle,

Assistant Secretary of Labor.

Directive: Unemployment Insurance Program Letter No. 09–97.

To: All State Employment Security Agencies.

From: Mary Ann Wyrsch, Director, Unemployment Insurance Service.

Subject: Unemployment Compensation for Federal Employees (UCFE) Program Coverage Ruling No. 97–1, Human Subjects for Research Studies Conducted by the U.S. Department of Agriculture, Agricultural Research Service (ARS).

1. *Purpose.* To provide State Employment Security Agencies (SESAs) with a copy of the above UCFE program coverage ruling.

2. *Background.* For a complete discussion of the background of the UCFE Program Coverage Ruling No. 97–1, please refer to the *Discussion/Analysis* section of the attachment to this directive.