• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submission of responses.

III. Current Action

The Department is requesting an extension of the currently approved ICR for the Final Rule Relating to Notice of Blackout Periods to Participants and Beneficiaries. The Department is not proposing or implementing changes to the regulation or to the existing ICR. A summary of the ICR and the current burden estimates follows:

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Final Rule Relating to Blackout Notices to Participants and Beneficiaries.

OMB Number: 1210–0122.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 85,150.

Frequency of Response: On occasion.

Responses: 11,956,000.

Estimated Total Burden Hours: 166,129.

Total Annual Cost (Operating and Maintenance): $9,351,400.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: December 14, 2005.

Susan G. Lahne,

Senior Pension Law Specialist, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 05–24280 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,377]

E.I. Dupont Victoria, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 18, 2005 in response to a worker petition filed by the Texas Work Force Commission on behalf of workers at E.I. DuPont, Victoria, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 5th day of December, 2005

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7608 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,129 and TA–W–50,129A]

IBM Corporation, Global Services Division, Piscataway, NJ; IBM Corporation, Global Services Division, Middletown, NJ; Notice of Negative Determination on Remand

The United States Court of International Trade (USCIT) remanded to the Department of Labor (Labor) for further investigation *Former Employees of IBM Corporation, Global Services Division* v. *U.S. Secretary of Labor,* Court No. 03–00656. The USCIT's Order was issued on August 1, 2005.

A petition for Trade Adjustment Assistance (TAA), dated November 13, 2002, was filed on behalf of workers at IBM Corporation, Global Services Division, Piscataway and Middletown, New Jersey (the subject firm). The petitioning workers had been employed by AT&T and had handled the same responsibilities for IBM, after being outsourced by AT&T to IBM in 2000.

In the petition, the workers alleged that the subject firm was shifting computer software production to Canada and importing those products from Canada. Upon institution of the petition on November 19, 2002, the Department conducted an investigation to determine whether the subject workers were eligible to apply for TAA. The relevant period for purposes of the investigation was determined to be November 2001 through November 2002.

For workers of the subject firm to be certified as eligible to apply for TAA, the following criteria must be met:

(1) A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; *and*

(2) The sales or production, or both, of such firm or subdivision have decreased absolutely, imports of articles like or directly competitive with articles produced by such firm or subdivision have increased, and the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision; *or*

(3) There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States, is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act or there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

29 U.S.C. Section 222

The investigation revealed that the workers were engaged in the analysis and maintenance of computer software and information systems (identifying product requirements, developing network solutions, and writing software). The Department determined that the workers did not produce an article within the meaning of Section 222 of the Trade Act. The Department's determination was issued on March 26, 2003. The Notice of determination was published in the **Federal Register** on April 7, 2003 (68 FR 16834).

By application of April 29, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for TAA. In the request for reconsideration, the petitioner alleged that the workers did produce an article and argued that the denial was the result of an overly narrow and antiquated interpretation of production by the Department.

The Department reviewed the petitioner's request for reconsideration and affirmed that the workers did not produce an article within the meaning of Section 222 of the Trade Act. Prior to making the determination, the Department reviewed the legislative intent of the TAA program as well as the language of the Trade Act. The Department also reviewed the Harmonized Tariff Schedule of the United States (HTSUS) and the North American Industry Classification System (NAICS), and sought guidance from the U.S. Customs Service (Customs). On June 26, 2003, the Department issued a Notice of Negative Determination Regarding Application

for Reconsideration. The Department's Notice of determination was published in the **Federal Register** on July 15, 2003 (68 FR 41845).

By letter dated September 11, 2003, the Plaintiffs requested judicial review by the USCIT, asserting that the workers of the subject firm produced an article within the meaning of the Trade Act and characterizing the Department's basis for denying certification for the subject workers as irrational.

The USCIT's August 1, 2005 Order directed the Department to (1) further investigate the nature of the software produced by the Plaintiffs, including whether the software was embodied in any kind of physical medium, (2) explain the differences between the activities performed by the Plaintiffs and those performed by other petitioners involved in developing software who had received TAA benefits in the past, and (3) explain and support the Department's position with respect to the characterization of the software at issue as an article or a service.

Remand Investigation Findings

During the remand investigation, the Department obtained additional information and clarification, from two subject firm officials, SAR 1, 2–6, 19–42, 48–50, 57–59, 62–67, 70–73, and Plaintiffs, SAR 1, 7–18, 42–47, 51–56, 60–61, 68–69 and position descriptions of the petitioning workers. SAR 22–42. The Department also conducted a conference call with subject firm officials to clarify a technical matter regarding the software. SAR 1. Further, the Department took action to reconcile conflicting information. SAR 73.

In order to determine whether the Plaintiffs engaged in activities which constitute production, the Department requested that the Plaintiffs and the subject firm provide the Department with information about the workers' functions, and copies of the workers position descriptions. SAR 4, 8. Information regarding the workers' functions was received from all three Plaintiffs. SAR 17, 43, 53.

According to the Plaintiffs, the separated workers were Information Technology (IT) Specialists, SAR 17, 43, 53, who identified software program specifications, created source code, generated unit and string testing, and ensured that system input and processing were accurate. SAR 17, 18, 43, 52, 53. The software and source code were stored in disk drives (also known as a Direct Access Storage Device) at a mainframe data center located at the client's facility and were ''viewable on remote terminals.'' Workers could access the software and code regardless of where they were stored. Corrections were made by ''changing the source code and compiled software that reside on the Direct Access Storage Devices.'' SAR 54, 55. ''Back-ups of programs were also kept on tapes and CDs * * * Code was delivered on the shared directories of hard drives, where it could be accessed by those who needed to view or test. CDs were also used in some instances.'' SAR 66.

Information provided by the subject firm, including the various position descriptions which account for a significant majority of the displaced workers, confirms that the workers were IT Specialists, with various levels of expertise, who provided services and assisted in the construction, implementation, and integration of software systems. More senior workers may also have identified new IT services opportunities and developed tools and methods for managing, analyzing, designing and implementing IT solutions. SAR 22–42.

Nature of the Software Produced by the Plaintiffs

Software consists of source code (text written by software developers commanding the computer to do a certain task) and object code (text written in the language of the computer which enables the computer to execute the command, hence, also known as the execution file). The object code operates as a ciphering key because, without the proper object code, the source code cannot be executed. In some instances where computers cannot interface, an object code may be required to read or translate another object code before the source code can be executed.

The software at issue is client (AT&T) legacy (old, pre-existing) mainframe software and midrange software for network applications and systems (software used to run and repair the client's older systems), SAR 1, 20, and was designed to operate on the client's mainframe computers. SAR 17, 52, 53, 55. The software could be accessed remotely by the workers. SAR 55, 66, 73. The source code at issue was not provided to the client on a physical medium.

The information initially provided regarding whether the software was embodied on a physical medium appeared to be inconsistent. According to a Plaintiff, Mr. Plumeri, ''[t]he code was stored on either mainframe, Windows or Unix based servers. Backups of programs were also kept on tapes and CDs * * * Code was delivered on the shared directories of hard drives, where it could be accessed by those who needed to view or test. CDs were also used in some instances.'' SAR 66. The other two Plaintiffs, Mr. Fusco and Ms. Berger, stated that the ''software, since it was designed to run on mainframe computers, was embodied on the disk drives'' in the client's off-site data center. SAR 17, 52, 54. The subject firm, moreover, stated that the software was electronically stored and delivered to the client's internal servers and the software is not embodied or delivered to AT&T in any kind of physical medium. SAR 20, 71.

In order to reconcile the apparent conflict, the Department contacted the subject firm for an explanation. SAR 1, 73. According to the subject firm, source code and documentation related to the development of the software at issue is stored in and shared through an internal server, and while back-up copies are saved on CD, the CDs are not shared with the client. SAR 73.

The subject firm officials also explained that the CDs presented to the client contained only those documents, such as billing invoices and work schedules, generated for contract administration purposes, along with the object code the client needed to access the business documents. In that very narrow regard, there was software sent from the subject firm to the client through a physical medium. However, that software was not source code and was not related to the software that was produced by the former employees and transmitted electronically to the client. There was no software reduced to a physical medium for the purpose of serving the *client.* SAR 73.

Differences Between Activities Performed by the Plaintiffs and Those Performed by Software Development Petitioners Who Received TAA Benefits in the Past

Information provided for the record by the Plaintiffs and the subject firm substantiated that the workers were IT Specialists performing software design and implementation activities (software architecture, systems engineering, design, development, coding, testing, installing and product support). SAR 17, 21, 43, 52, 53. The record evidence does not indicate that the workers were engaged in production or the support of production of an article at an affiliated facility.

The Department's practice of certifying non-production workers who support an affiliated domestic production facility has been consistent. In past cases where petitioners involved in developing software were certified as eligible to apply for TAA, the workers supported an affiliated domestic

production facility. For example, recently, the Department certified software writers in *Former Workers of Ericsson, Inc.* v. *Elaine Chao, United States Secretary of Labor* (Court No. 02–00809). In *Ericsson*, the workers wrote software code which was embodied on a physical medium (CD-Rom). The CD-Rom was mass-produced at an affiliated, domestic facility and then distributed to customers. The workers of the subject firm were certified because they supported an affiliated domestic production facility whose workers independently qualified for TAA (mass-production of the CD-Rom shifted to a qualifying country).

The record, as fully developed on remand, strongly supports the conclusion that the Plaintiffs did not meet the criteria satisfied in *Ericsson* and related software cases. Therefore, the Department properly determined that the plaintiffs were not eligible to apply for TAA benefits.

Department's Position With Respect to the Characterization of the Software at Issue as an Article or as a Service

While the Trade Act does not include a definition of ''article'' among the definitions applicable to the TAA program, the term is integral to making TAA determinations and, as such, the Department has given the meaning of ''article'' considerable thought. The USCIT has recognized that, as used in the Trade Act, the term ''article'' embraces a tangible commodity. *See Nagy* v. *Donovan*, 571 F. Supp 1261, 1263 (CIT 1983). This position was recently supported in *Former Employees of Gale Group, Inc.* v. *U.S. Secretary of Labor*, Court No. 04–00374, 2005 WL 3088605 * 5 (November 18, 2005) and *Former Employees of Merrill Corp.* v. *U.S. Department of Labor*, 389 F. Supp.2d 1326, 1342–1343 (CIT 2005).

In Gale Group, the USCIT held that workers who ''performed electronic indexing services'' were not eligible for TAA benefits, because they did not produce an article for the purposes of 19 U.S.C. 2272(a)(2)(B). *Gale Group* * 4. Further, the USCIT held that the denial of TAA benefits was a reasonable interpretation supported by substantial evidence and in accordance with law, notwithstanding plaintiffs' arguments that other sources of law (i.e., the American Job Creation Act of 2004; various state tax cases; and determinations by the International Trade Commission (ITC) under the ITC's Trade Act § 337 authority to protect intellectual property) could support a ruling in their favor.

Trade Act § 337 was amended in 1988, for the express purpose making it ''broad enough to prevent every type and form of unfair practice.'' S. Rep. 595, 67th Congress, 2d Session, at 3. Therefore, it was foreseeable that the ITC, applying that expanded remedial authority, would find that it was not limited to acts that occur during the physical process of importation. For example, the ITC has held that, while the Commission ''accommodates, where possible, the policies and views of [the U.S.] Customs [Service] (which ''has determined not to regulate electronic transmissions''),'' there were circumstances where it was ''appropriate to reach such importations.'' *In Re Certain Hardware Logic Emulation Systems and Components Thereof*, USITC Inv. No. 337–TA–383, 1998 WL 307240, page 11 (March 1998).

Trade Act § 222, which controls the present proceeding, has not undergone any such amendment. Indeed, there have been several recent legislative efforts (most recently in June 2005) to amend the Trade Act so that it does cover service workers as well as production workers. However, those efforts, to date, have been unsuccessful. Thus, the Department's disposition of the present case is properly controlled by existing Trade Act § 222, under which the Department applies the HTSUS to require that an ''article'' be a tangible object, not by the ITC's application of its broad Trade Act § 337 authority in intellectual property cases.

Throughout the Trade Act, an ''article'' is referenced as something that can be subject to a duty. Telecommunications transmissions (including electronically transmitted software code) are specifically exempted from duty as they are not goods subject to the provisions of the HTSUS General Note 3(I). Because the software code at issue is electronically manipulated and delivered to the client only in an electronic form, the Plaintiffs do not produce an article. *See*, *e.g.*, *Former Employees of Dendrite International*, 70 FR 21247–3 (April 25, 2005).

Plaintiffs Argue That the Department's Interpretation of ''article'' is Overly Narrow

The Department's interpretation of ''article'' to require a tangible state is consistent with Congressional intent and supported by legislative history of the Trade Act. The Trade Act was designed to counteract the effects of imports upon the manufacturing sector and other labor-intensive industries. *See* S. Rep. No. 1298, 93rd Cong. (1974), reprinted in 1974 U.S.C.A.N. 7186. Since Congress took explicit legislative action to set criteria for TAA eligibility, any expansion of Trade Act's scope should be the result of legislation. Further, the Department is obligated to be faithful to the legislative will and is bound to the language of the statute. *See Machine Printers and Engravers Ass'n* v. *Marshall*, 595 F.2d 860, (D.C. Cir. 1979). As already noted, while legislation has been proposed that would expand the scope of the Trade Act to include service workers such as the plaintiffs, to date, no such amendment has been adopted.

The Department's reliance on the HTSUS to exclude the plaintiffs from eligibility is appropriate. *See Former Employees of Murray Engineering* v. *Chao*, 358 F. Supp.2d 1269, 1272 n.7 (CIT 2005) (''the language of the Act clearly indicates that the HTSUS governs the definition of articles, as it repeatedly refers to ''articles'' as ''items subject to a duty''); HTS, General Note 3(I) (exempting ''telecommunications transmissions'' from ''goods subject to the provisions of the [HTSUS]''). For the Department to abandon the use of the HTSUS and abrogate its current practice would be inappropriate unless the Department had an adequate substitute, such as one contained in the Code of Federal Regulations.

The Department's treatment of service (including software) cases and its requirement that articles be tangible has been consistent. Service workers may be certified only if they directly support production of an article. Under the Department's methodology, non-production workers may be eligible for TAA certification as ''support service workers'' if:

(1) Their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control;

(2) The reduction in the demand for their services originated at a production facility whose workers independently met the statutory criteria for certification; and

(3) The reduction directly related to the product impacted by imports.

Former Employees of Henderson Sewing Mach. v. *United States*, 265 F. Supp. 2d 1346, 1359 (CIT 2003) (citing *Former Employees of Chevron Prods. Co.* v. *United States Sec'y of Labor*, 245 F. Supp. 2d 1312, 1328–29 (CIT 2002) (citing *Bennett* v. *U.S. Sec'y of Labor*, 20 CIT 788, 792 (1996); *Abbott* v. *Donovan*, 570 F. Supp. 41, 49 (1983))).

The Court in *Henderson Sewing* sustained the Department's interpretation of the statute to preclude certification of petitioners as support service workers in the instance where no production employee independently

qualified for certification. *Id.* at n.16. (citing *Abbott*, 570 F. Supp. at 49 (citing *Woodrum*, 564 F. Supp. 826) (''the Court must accord substantial deference to the interpretation of the statute [19 U.S.C. 2272(a)] by the agency [Labor] charged with its administration''); *Bennett*, 20 CIT at 792 (stating in pertinent part that ''plaintiff[s] are eligible for certification [as support service workers] when * * * their separation is caused by a reduced demand for their services from a production department whose workers independently meet the statutory criteria for certification'' and holding that ''Labor permissibly and reasonably interpreted [19 U.S.C. 2272(a)] in formulating the test for certifying support service workers'').

The Department has consistently determined that workers engaged in the design and development of software may be certified if they support an affiliated, domestic firm at which workers are engaged in producing a trade-impacted ''article.'' *See*, *e.g.*, *Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance* in: *Ericsson, Inc., Messaging Group, Woodbury, N.Y.*, 68 FR 8619–8621 (TA-W–50,446) (Feb. 24, 2003); *Computer Sciences Corporation at Dupont Corporation*, 67 FR 10767 (TA–W–39,535) (March 8, 2002); *e-Gain Communications Corporation, Novato California*, 68 FR 50195 (TA–W–51,001) (Aug. 20, 2003).

Workers in these cases were certified based, in part, upon a finding that the subject facilities produced hardware or software embodied in some tangible format. Workers in the case at hand, however, do not directly support certifiable production workers eligible for TAA benefits, and this distinction explains the different results in cases involving workers engaged in similar activity. While the case results may differ, based on the particular facts of each case, the Department's application of the statute has been consistent.

The Department has carefully investigated the matter on remand and has found no basis to support finding that workers of IBM Corporation, Global Services Division, Piscataway and Middletown, New Jersey are engaged in the production of an article or support for the production of an article. Consequently, they are not eligible for certification.

Conclusion

In the case of IBM Corporation, Global Services Division, Piscataway and Middletown, New Jersey, it has been clearly established that the workers of the subject facility did not produce an article or support the production of an article within the meaning of the Trade Act and that they are not eligible for certification.

As the result of the findings of the investigation on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of IBM Corporation, Global Services Division, Piscataway and Middletown, New Jersey.

Signed at Washington, DC, this 9th day of December, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7600 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,043]

Intermark Fabric Corp., Plainfield, CT; Notice of Revised Determination on Reconsideration

By application of November 29, 2005 a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA).

The initial investigation resulted in a negative determination signed on November 2, 2005 was based on the finding that imports of imitation suede and velvets for upholstery, drapery and apparel did not contribute importantly to worker separations at the subject plant and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on November 23, 2005 (70 FR 70882).

In the request for reconsideration, the petitioner provided additional information regarding subject firm's customers and requested to investigate a secondary impact on the subject firm as an upstream supplier in the textile industry. A review of the new facts determined that the workers of the subject firm may qualify eligible for TAA on the basis of a secondary upstream supplier impact.

Having conducted an investigation of subject firm workers on the basis of secondary impact, it was revealed that Intermark Fabric Corp, Plainfield, Connecticut supplied imitation suede and velvets that were used in the production of upholstery fabrics, and a loss of business with domestic manufacturers (whose workers were certified eligible to apply for adjustment assistance) contributed importantly to the workers separation or threat of separation.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained in the investigation, I determine that workers of Intermark Fabric Corp, Plainfield, Connecticut engaged in production of imitation suede and velvets qualify as adversely affected secondary workers under section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

All workers of Intermark Fabric Corp, Plainfield, Connecticut, who became totally or partially separated from employment on or after September 28, 2004, through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of December, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7606 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–30–P