Signed at Washington, DC, this 29th day of November 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–2971 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,896]

Cranford Woodcarving, Inc. Including Workers Whose Wages Were Paid by Tri-State Employment Services, Inc., a Subsidiary of The McCrorie Group Plants 1, 4, and 7, Including On-Site Leased Workers of Express Personnel, Hickory, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 22, 2005, applicable to workers of Cranford Woodcarving, Inc., a subsidiary of The McCrorie Group, Plants 1, 4, and 7, including on-site leased workers of Express Personnel, Hickory, NC. The notice was published in the **Federal Register** on December 15, 2005 (70 FR 74367).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wood components (e.g., carvings and turnings); they are not separately identifiable by articles produced.

Information provided by the company shows that Tri-State Employment Service, Inc., was contracted by Cranford Woodcarving, Inc., to provide payroll function and benefit services to workers on-site at the Hickory, NC location of Cranford Woodcarving, Inc.

Information also shows that all workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Tri-State Employment Service, Inc.

Based on these findings, the Department is amending this certification to include workers whose wages were reported by Tri-State Employment Service, Inc., at Cranford Woodcarving, Inc., a subsidiary of The McCrorie Group, Plants 1, 4, and 7, Hickory, NC.

The intent of the Department's certification is to include all workers of Cranford Woodcarving, Inc., were adversely affected by increased customer imports.

The amended notice applicable to TA–W–57,896 is hereby issued as follows:

All workers of Cranford Woodcarving, Inc. including workers whose wages were reported by Tri-State Employment Service, Inc., a subsidiary of the McCrorie Group, Plants 1, 4, and 7, including on-site leased workers of Express Personnel, Hickory, North Carolina, who became totally or partially separated from employment on or after September 2, 2004, through November 22, 2007, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of February 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–2974 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,607; TA–W–55,607a; and TA–W–55,607b]

Creo Americas, Inc., U.S. Headquarters, a Subsidiary of Creo, Inc., Billerica, MA, Including Employees of Creo Americas, Inc. Located in New York, NY, and Highland Lakes, NJ; Amended Notice of Revised Determination on Remand

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Revised Determination on Remand on April 5, 2005, applicable to workers of Creo Americas, Inc., U.S. Headquarters, a subsidiary of Creo, Inc., Billerica, Massachusetts. The notice was published in the **Federal Register** on April 25, 2005 (70 FR 21247).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker separation occurred involving an employee of the Billerica, Massachusetts facility of Creo Americas, Inc., U.S. Headquarters, a subsidiary of Creo, Inc., located in Highland Lakes, New Jersey. Mr. Jeffrey Blank provided customer service support for the production of professional imaging and software production at the West Virginia and Washington states facilities of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Billerica, Massachusetts facility of Creo Americas, Inc., U.S. Headquarters, a subsidiary if Creo, Inc. located in Highland Lakes, New Jersey. The intent of the Department's certification is to include all workers of Creo Americas, Inc., U.S. Headquarters, a subsidiary of Creo, Inc., Billerica, Massachusetts Atlas Textile Company, Inc., Commerce, California who were adversely affected by a shift in production to Canada.

The amended notice applicable to TA–W–55,607 is hereby issued as follows:

All workers of Creo Americas, Inc., U.S. Headquarters, a subsidiary of Creo, Inc., Billerica, Massachusetts (TA–W–55,607), including employees of Creo Americas, Inc., U.S. Headquarters, a subsidiary of Creo, Inc., Billerica, Massachusetts, located in New York, New York (TA–W–55,607A) and located in Highland Lakes, New Jersey (TA–W–55,607B), who became totally or partially separated from employment on or after September 7, 2003, through April 5, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 14th day of February 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–2973 Filed 3–1–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,648]

International Business Machines Corporation Tulsa, OK; Notice of Negative Determination on Remand

The United States Court of International Trade (USCIT) remanded to the Department of Labor (Department or DOL) for further investigation *Former Employees of International Business Machines Corporation* v. *Elaine Chao, U.S. Secretary of Labor,* No. 04–00079. In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor herein presents the results of the remand investigation regarding certification of eligibility to apply for worker adjustment assistance.

The group eligibility requirements for directly-impacted (primary) workers under Section 222(a) the Trade Act of 1974, as amended, can be satisfied in either of two ways:

I. Section (a)(2)(A) All of the Following Must Be Satisfied

A. 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;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) Both of the Following Must Be Satisfied

A. 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;

B. 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

C. One of the following must be satisfied:

1. 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;

2. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. 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.

The initial investigation to determine the eligibility of workers of the subject firm to apply for Trade Adjustment Assistance (TAA) was initiated on November 26, 2003 in response to a petition filed by a group of three workers. In an attachment to the original petition, petitioner Brenda Betts stated that International Business Machines Corporation (IBM) was transferring the accounting services performed at the subject facility to India and that ''Indians had been training at the [Tulsa] center all summer.'' (AR at 3). In addition, she included two news articles indicating IBM was exploring transferring more white collar jobs overseas (AR at 8–12), as well as her layoff notice from IBM, which indicates that the ''resource action'' (layoffs) were ''due to the need to rebalance skills, eliminate redundancies and deliver greater efficiencies.'' (AR at 7; *see also* AR at 16 and SAR at 361). The Department's initial negative determination regarding the former IBM employees was issued on December 2, 2003 and published in the **Federal Register** on January 16, 2004. 69 FR 2622. The Department based that determination on finding that the workers did not produce an article within the meaning of Section 222 of the Trade Act of 1974. Rather, the workers had provided accounting services. AR at 31.

On February 6, 2004, the petitioners requested administrative reconsideration of the negative determination of their eligibility to apply for TAA. In that request, the petitioners stated that ''these are jobs performing work for British Petroleum [BP] and have been covered under the NAFTA/TRA act since 1999;'' that BP was shifting production of oil to foreign sources; and that BP ''has approved moving this accounting work to Bangalore, India and that ''about 250 [IBM accounting] jobs have already been moved to India.'' AR at 32.

By letter dated February 11, 2004, the petitioners also appealed the original negative determination with the USCIT. By the time DOL learned of the CIT appeal, the reconsideration investigation was well underway. Concerned with the procedural complexity of a situation in which petitioners had appealed while administrative review had not been completed, the Department requested a voluntary remand so that the Department could issue its decision on the request for reconsideration. On March 30, 2004, the CIT granted the Department's request. DOL promptly issued its negative determination on the request for reconsideration, on March 31, 2004. The notice of negative determination was published in the **Federal Register** on April 16, 2003 (67 FR 20644). The negative determination was based on DOL's findings that the workers' firm did not produce an article within the meaning of Section 222 of the Trade Act and that the workers did not provide services in direct support of an affiliated TAA certified firm.

On May 14, 2004, the Department filed its second consent motion for voluntary remand, so that DOL could re-assess the eligibility of the petitioning worker group in light of the Department's revised service worker policy. Prior to April 2004, DOL certified petitioning service workers only where they had supported production at an affiliated TAA *certified* facility. Under the revised policy, workers who supported production at a TAA *certifiable* [1] facility would be eligible for TAA benefits.

Therefore, the second voluntary remand investigation focused on establishing whether the subject worker group supported production at an affiliated *certifiable* production facility. The Department issued a negative determination on remand, on August 2, 2004. The notice was published in the **Federal Register** on August 10, 2004 (69 FR 48527) (SAR 263–269). The determination was based on findings that the workers at the subject facility did not produce or support the production of an article by IBM and were not under the control of BP. Therefore, the Department concluded that the work performed by the former IBM employees could not be considered as in support of production at a BP facility.

On December 2, 2005, the CIT remanded this proceeding with instructions for additional investigation and analysis and directed that the Department complete the remand process within 60 days, by February 6, 2006. This remand determination is submitted in compliance with those directives.

The CIT concluded that the then-existing record supported the conclusion that the separated workers were controlled by BP. Opinion at 29–31. Accordingly, the Court directed the Department to reevaluate the existing record and to conduct such additional investigation ''as is necessary to fully develop the evidentiary record * * *.''

[1] The use of the term ''certifiable'' broadens the set of circumstances under which petitions from workers whose work supports the production of a trade-impacted article would be granted. In particular, the production workers whose activity is supported by affiliated support workers do not, themselves, have to be certifiable. Rather, the Department determines the support workers' eligibility using the sales, production, and import numbers for the *article* in question and the employment numbers for the support workers. Thus, the article produced could be trade-impacted, yet the production workers not certifiable, where the production workers did not experience an employment decline, while workers who supported production could be certified if it was established that increased imports of the article in question contributed importantly to their separation from employment.

Opinion at 42. In particular, the Court instructed DOL to ''consider whether—in light BP's continued presence there—the Accounting Facility may constitute an 'appropriate subdivision' of BP * * *.'' Opinion at 54, n. 53.

Further, the Court directed DOL to ''explain, *inter alia,* both its policy and its practice concerning ''control'' as a criterion for certification of leased workers'' (Opinion at 28 n.18) and to ''clearly articulate and apply a standard for 'control' that is consistent with this opinion (clarifying and updating that set forth in its new Leased Worker Policy).'' Opinion at 43. Further, the Court directed DOL to ''explain the origins of and legal bases for'' the criteria used to determine the former employees' eligibility for benefits. Opinion at 62. The Court's instructions have been addressed, as set forth below.[2]

In order to determine who exercised operational control over the workers of IBM's Tulsa Accounting Center, the Department reviewed the existing record and requested additional information from IBM, BP, and the petitioners regarding the day to day business activities of the workers of the IBM Tulsa facility. Opinion at 42, 58. To that end, DOL promptly sent out a series of questionnaires, following up as necessary through e-mail and by telephone. For example, the Department issued its first set of questions to BP and IBM on December 12, 2005 and received the first responses on December 19 and December 20, respectively. As documented in the SAR, DOL obtained cooperation from multiple IBM and BP officials, whose responsibilities and access to pertinent information made them sufficiently informed to be proper sources for the investigation. SAR 742, 761–764, 846.

Further, DOL obtained a copy of the contract (SAR at 396–439) between BP and Pricewaterhouse Coopers (PwC) (which IBM replaced when it acquired PwC in 2002), which included the Service Level Agreement/Operating Level Agreement (SLA) as ''Schedule 1''. Opinion at 58, SAR at 440–719.[3] In order to determine who exercised actual, operational control over the separated IBM workers, DOL used the text of these documents as a starting point, not the endpoint, for its inquiries.

The Court has referred to record evidence that ''casts some doubt on IBM's motivation [AR 8–11 and 32].'' Opinion at 36. In light of the Court's concern, the Department took steps to verify all input received from any one of the information sources by forwarding it to the other sources for review and comment. AR at 32. Consistent with the spirit of the CIT Opinion (at 63), the former IBM employees were kept fully informed and accorded every possible opportunity to participate in the remand investigation. SAR at 851–1000. Through these means, the Department sought to develop a true understanding of the ''real-world'' relationship between the former IBM employees, IBM management, and BP employees/management. DOL's efforts have been exhaustively documented in the SAR. Fully mindful of the remedial purposes of the Trade Act, the Department has carefully reviewed all record evidence in preparing its remand determination. Based on IBM's and BP's consistent cooperation and responsiveness to the Department's inquiries and careful review of the materials provided, DOL has determined that the information received from BP and IBM is credible and worthy of reliance.

As a preliminary matter, DOL recognizes that the petitioners, but not necessarily all former IBM employees at the Tulsa facility, had been BP employees prior to being outsourced to PwC in 2000 and that the outsourcing did not result in changes to their work assignments. DOL further understands that IBM's acquisition of PwC had no impact on the petitioners' work assignments. In addition, DOL recognizes that, in 1999, the Department certified accountants formerly employed by BP in Tulsa as eligible for TAA because their work had been performed in support of trade-impacted production activity at BP facilities.

The Department can understand the former IBM employees' frustration and concerns about the fact that workers doing similar work for BP were certified in 1999. However, there are two critical differences between the situation in 1999 and that in 2003. First, the passage of time can change the basis for the employer's personnel decisions. The reasons that led to the layoffs in 1999 are simply different from those present in 2003. Thus, even if plaintiffs were deemed to be under BP's control, they could not be certified. Second, there is the simple fact of the outsourcing. These IBM workers, unlike their colleagues from 1999, are not employees of BP. They are employees of IBM. While that fact does not irrevocably exclude them from coverage (the ''control'' analysis below will address that issue) the reality of the change in employer cannot be ignored. Outsourcing changes the nature of the relationship between a worker and his former employer. Benefits that workers would have been entitled to receive from their old employer are often lost. For example, the plaintiffs would not be entitled to claim benefits under BP's health insurance program. By the same measure, it would be reasonable to conclude that entitlement to TAA benefits would not follow the outsourced PwC/IBM workers if their new employer controlled their work and if their new employer was not producing an article.

In any case, DOL has made every effort to explore whether the plaintiffs were under the operational control of BP as the first step if determining if they are entitled to certification. As documented through the contract (SAR at 396–439) and other record evidence, the outsourcing that occurred in 2000 did result in the shift of operational control from BP to PwC/IBM. For example, contract Article XII, section 12.1, *General Responsibilities for PwC Employees,* states, in pertinent part: [Business Confidential] SAR at 425. Further, [Business Confidential] SAR at 426. Further, the SLA consistently provides [Business Confidential] SAR at 442,453,521–525. [Business Confidential] SAR at 442,453,521–525. [Business Confidential] SAR at 526.

Such conditions are consistent with a client (BP)-service provider (PwC/IBM) relationship. The uncontested fact that the petitioners provided services for BP after they were outsourced (SAR at 956, 998) does not necessarily mean that those workers were still, in effect, BP employees or under BP's control. In any service provider-client relationship, some degree of oversight and direction is exercised by the client. Thus, the client's exercise of *some* control does not establish that a ''client'' shares or has exclusive *operational* control over workers employed by an unaffiliated service provider, for the purposes of TAA certification. The following answer in IBM's response to the fifth set of questions submitted by the Department captures IBM's understanding of the relationship between BP and the IBM employees:

[Business Confidential] SAR at 790.

In addition, as a practical matter, the BP accountants certified for TAA benefits in 1999 and the IBM accountants who were denied benefits

[2] The Department has revised its leased worker policy so that DOL no longer maintains that the former IBM employees can be certified only if they are employed at a BP production facility. Accordingly, the CIT's direction for the Department to explain or justify its former position is moot. Opinion at 51–52, 54.

[3] DOL also obtained a copy of IBM's Annual Report for 2003 (SAR at 270–395), which documented the manner in which IBM ''rebalanced'' its staffing after acquiring PwC. SAR at 360–361 and 377. That information corroborates the other record evidence which indicates that the staffing reductions at IBM's Tulsa Accounting Center had nothing to do with BP.

in 2003 were in fundamentally different situations. As direct employees of BP, the BP accountants were indisputably eligible because their work supported their employer's production of trade-impacted articles during the relevant period. Determining the eligibility of the IBM accountants, on the other hand, is a far more complicated matter.[4] For the former IBM employees to be found eligible, the Department must be able to establish that ''client'' BP, not ''employer'' IBM, exercised effective operational control over the workers' performance of their duties. In essence, DOL must determine whether the outsourcing of BP workers effectively transferred control over those workers to PwC/IBM.

The Department will therefore focus on articulating and applying objective criteria for determining whether BP has exercised operational control over the former IBM workers. Opinion at 28. In the process of developing the criteria for review, the Department has reviewed the leased worker policy articulated in DOL's January 24, 2004 memorandum. Based on that review, the Department has determined that it is appropriate to revise that policy, as an interim response to the issues raised in this proceeding, so that DOL policy more fully reflects potential real-world situations. The Department retains the discretion to further revise this policy, so that the subject of ''operational control'' can continue to receive close scrutiny as DOL undertakes rulemaking to update the regulations implementing the eligibility requirements of the Trade Act. Given the time constraints imposed by the mandated remand period, this remand determination constitutes the ''public document'' (Opinion at 43) through which the Department announces its updated ''leased worker policy.''

Further, in response to the CIT's remand instructions (Opinion at 28, n. 18); the Department has re-evaluated the significance of ''the existence of a standard contract between the contractor firm and the subject firm which should be considered sufficient evidence to prove the existence of a joint employer relationship.'' *Id.* (citing the January 24, 2004 memorandum at SAR 261). Given the Department's focus on ascertaining *operational,* rather than formal, control, DOL has determined that the existence of a contract between the employer (such as a staffing agency, leasing agency or contractor) of a worker group and a producing firm is not an essential prerequisite for the Department to determine that the workers in question are, in effect, joint employees or leased workers of the producing firm. The presence or absence of a contract would simply be one element, albeit an important one, in the Department's analysis. While a contract, where one exists, may provide strong evidence about the intended nature of the employment relationship between two firms, the Department will also review the operational conditions in which workers of an independent firm perform their functions for a producing firm. In all situations, however, for certification, workers must still have been engaged in activities related to production of an article produced by a firm.

In developing the criteria for determining whether a worker is an employee or an independent contractor, DOL referred to pertinent case law; to the Internal Revenue Code (26 U.S.C. § 3121(d)); to Revenue Ruling 87–41; and to Restatement (Second) of Agency § 2, *Master; Servant; Independent Contractor* and § 220, *Definition of Servant* (1958). The Department found the case law related to the ''economic realities'' test particularly useful. For example, the Supreme Court, held in *Nationwide Mutual Insurance Co.* v. *Darden,* 503 U.S. 318, 323–324 (1992) (a case arising under the Employee Retirement Income Security Act):

> In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.

Id. (additional citations omitted).

Based on its review of relevant law, the Department has developed seven criteria that will be applied to determine the extent to which a worker group engaged in activities related to the production of an article by a producing firm is under the operational control of the producing firm. The body of law involving joint employment or independent contractor status is complex and difficult to apply. The Department has sought to distill that body of law into some basic principles, thus creating a test that is useable within the short statutory timeframes that govern TAA investigations. Applying the criteria to the record evidence, DOL has sought to determine what constitute the ''practical realities'' (Opinion at 40, n. 33) of the relationship between the former IBM workers and BP.

The Seven Criteria Are as Follows

1. Whether the subject workers were on-site or off-site of a facility of a production firm.

2. Whether the subject workers performed tasks that were part of the producing firm's core business functions, as opposed to independent, discrete projects that were not part of the producing firm's core business functions.

3. Whether the production firm has the discretion to hire, fire and discipline subject workers.

4. Whether the production firm exercises the authority to supervise the subject workers' daily work activities, including assigning and managing work, and determining how, where, and when the work of individual workers takes place. Factors such as the hours of work, the selection of work, and the manner in which the work is to be performed by each individual are relevant.

5. Whether the services of the worker group have been offered on the open market (*e.g.*, do workers of the subject group perform work that supports other clients?).

6. Whether the production firm has been responsible for establishing wage rates and the payment of salaries to individual workers of the subject worker group.

7. Whether the production firm has provided skills training to subject workers.

None of these factors is dispositive. The Department will look at such evidence as there is that goes to all these factors and will determine whether, on balance, the evidence supports a level of control by the producing firm that demonstrates that the workers of the contractor or secondary firm are, in fact, leased workers or joint employees of both firms. The Department recognizes that there may be cases in which evidence of every one of the criteria is not available.

1. *The former IBM workers were off-site of any facility of the producing firm.*

While the leased worker policy articulated in the January 24, 2004 memorandum addressed only on-site leased workers, DOL has determined that there may be circumstances where off-site leased workers, as well as on-site leased workers, who provide support for production at a trade-impacted facility can satisfy the ''operational control''

[4] [Business Confidential] SAR at 761.

criteria to be eligible for TAA benefits. The Department recognizes that co-location, while an important consideration when determining whether subject workers are controlled by a producing firm (Opinion at 45, 48–49), is not the conclusive factor.

DOL considers co-location to create a strong presumption of control, so long as the workers are not engaged in activities completely unrelated to the work of the facility, such as selling extraneous items (*e.g.*, food) on-site and so long as other evidence does not demonstrate that the workers worked independently of the producing firm.

In the present case, the former IBM employees were not located at a BP facility of any kind. The fact that IBM employees worked in the same location as they had when employed by BP and that BP maintained staff (*e.g.*, the BP Treasury unit) at the same street address where the former IBM employees had worked did not constitute co-location, because the IBM and BP facilities were completely separate, both physically (they were in different parts of the building) and functionally (for example, they had different telephone, computer and e-mail service). The information received from BP and IBM was consistent in that respect. SAR at 722, 742, 780, 791, 812, 834, 843). For example, [Business Confidential] SAR at 734. *See* also BP response. SAR at 843.

2. *The former IBM workers performed tasks that were not part of BP's core business functions.*

While undeniably important, the accounting services performed by the workers in question are not part of BP's core business activities of oil and gas exploration and production, petroleum refining and marketing, and petrochemicals production, and are exactly the kind of non-core activities that many production firms have successfully outsourced or have performed by independent firms. SAR at 1003, 1009. [Business Confidential] (SAR at 1005) [5]

3. *BP had no discretion to hire, fire or discipline the IBM workers.*

The discretion to hire, fire and discipline workers is a strong indicator of the level of control exercised by a producing firm on the employees of another firm. This finding, which does not appear to be a matter of contention, is extensively documented. For example, [Business Confidential] SAR at 723.

4. *BP did not exercise the authority to supervise IBM workers' daily activities during the relevant period.*

BP did not manage the individual IBM employees' work, nor did BP determine how, where, and when the work of individual workers took place. Moreover, the investigation confirmed that while IBM personnel did interact with BP personnel to some degree, that interaction was limited and not managerial in nature. As is normal in a service provider-client relationship, BP outlined the work requirements, and IBM decided, when, where, and who would do the work.

For example, [Business Confidential] SAR at 735.

[Business Confidential] SAR at 844. (emphasis added).

The Department followed up on every asserted instance of BP having exercised operational control over the former IBM employees. For example, [Business Confidential] SAR at 923. DOL communicated Ms. McAdoo's statement to IBM and BP. SAR at 789, 843. [Business Confidential] SAR at 789. [Business Confidential] SAR at 843. Once again, in any service provider-client relationship there must be some degree of interaction and oversight on the part of the client, but this does not necessarily constitute ''operational control.''

The former IBM employers were, in turn, informed of the IBM and BP responses to Ms. McAdoo's statement. SAR at 979, 985. Further, DOL relayed a follow-up question, requesting, for example, more specific information about the ''type of directions Twyla McAdoo received from Steve Funk?'' The employees responded:

[Business Confidential] SAR at 998.

In addition, DOL did consider the other examples of ''control'' provided by the former IBM workers. SAR at 998. Those examples were, as follows:

[Business Confidential] SAR at 998–999. [Business Confidential] SAR at 442, 453, 521–525.

See also SAR at 843.

Further, the apparent fact that [Business Confidential]

A client would naturally wish to inform a service provider of the information needed for the service provider's personnel to do their jobs. The client would also, understandably, want to be kept informed of the activities of the service personnel. Thus, [Business Confidential] Those factors could just as easily be present where the relationship was that of client and independent service-provider.

Further, the following question/response illustrates the extent to which BP's perception of the relationship differs from that presented by the former IBM employees:

[Business Confidential] SAR at 844.

Taken as a whole, the record evidence substantiates that, while there was interaction between BP personnel and the IBM personnel under the contract in question, the BP role was not supervisory or managerial in nature. Rather, the dealings between BP and IBM personnel were typical of what one might expect in a service provider-client relationship.

The former IBM employees have stated that they were expressly required by BP to affirmatively hold themselves out as ''doing business for BP'' as evidence of an agency relationship between BP and IBM and, accordingly, evidence that BP controlled the IBM workers in question. SAR at 140. In fact, in response to a DOL question, BP stated: [Business Confidential] SAR at 844.

[Business Confidential] SAR at 852.

Thus, the fact that the workers in question were specifically required to clarify to the parties they did business with that they were IBM employees is further evidence of a distinct service provider-client relationship. Moreover, the fact that IBM management had to address the problem of IBM employees describing themselves as BP employees by instituting this requirement is evidence that, while the workers (specifically the ones outsourced from BP) may have felt close ties to BP, both BP and IBM sought to make it clear that they worked for IBM and not BP.

Also cited as evidence of BP control of the workers is the petitioner's assertion that the subject facility was ''a 'shared' facility, with BP maintaining a physical presence there even after the 'outsourcing,' '' including a treasury and main frame computer (Order at 30). According to both IBM and BP officials, however, the Tulsa facility was not shared. While there were some BP employees and a BP Treasury office (as well as offices for other un-affiliated firms) in the same building as the IBM workers, the BP office was located on a separate floor, had separate phone and e-mail systems from the IBM offices, and was not there for the purpose of controlling the IBM workers. SAR at 843.

For example, BP has stated:

[Business Confidential] SAR at 843.[6]

[Business Confidential] SAR at 734. IBM further clarified this point where it stated: [Business Confidential] SAR at 789.

5. *The services performed by IBM workers were performed for clients other than BP.*

This fact does not appear to be in contention, and is another strong

[5] [Business Confidential] (SAR at 1017).

[6] [Business Confidential].

indicator that IBM, and not BP, controlled the workers in question. While the petitioners themselves may have worked only for BP, this is not the case for the entire worker group.

IBM has stated [Business Confidential] SAR at 761. *See* also SAR at 723, 790.

6. *BP was not responsible for establishing wage rates or paying salaries to individual IBM workers.*

This issue does not appear to be a matter of contention. The petitioners have indicated that PwC/IBM, not BP, set their wage rates and paid their salaries, once they were outsourced. SAR at 913. Therefore, the evidence generated for evaluation of this criterion indicates that BP did not exercise operational control over the former IBM employees.

7. *BP did not provide skills training to the workers of IBM.*

This finding, which has been corroborated by both IBM and BP officials, is another strong indicator that IBM controlled the workers in question. [Business Confidential]

Moreover, there is evidence that PwC/IBM provided training to the outsourced Tulsa employees, both to ensure both that they maintained the ability to perform the duties they had previously handled for BP and to help them acquire new skills for career development within their new firm. The ''Pricewaterhouse Coopers Questions and Answers for Outsourcing'' (SAR at 69) states:

[Business Confidential] (*Id.*) (emphasis in original).

Further, as instructed by the Court, DOL did consider the fact that the former IBM employees had been employed by BP, performing the same tasks as they subsequently performed for PwC/IBM after being outsourced. Opinion at 43, n. 38. While the situation presented is superficially similar to that presented in *Former Employees of Pittsburgh Logistics Systems, Inc.* v. *USDOL*, 27 ITRD 2125, 2003 WL 716272 *10 (February 28, 2003) (*See* SAR at 945), the IBM petitioners were not part of a subdivision that was ''integrated into the [BP] corporate structure'' (*Id.*) and did not report ''directly to [BP] employees on all operational matters.'' (*Id.*) Further, BP personnel did not manage ''all job tasks, direct[] which employees could work at specific locations and specifically relocate[] the [IBM] subdivision along with certain [BP] facilities * * * to [BP's] facilities, evaluate[] [IBM] employee job performance, and advise[] which [IBM] employees should receive merit salary increases.'' *Id.*[7]

Further, the situation of the petitioners in *Former Employees of Wackenhut Corp.* v. *USDOL*, Ct. No. 02–00758, is not precedent as it was decided under the former leased worker policy, which looked only at whether there was a contract and whether the workers were on-site.

Conclusion

After careful consideration of the record evidence, particularly that developed through the remand investigation, and the applicable Department policy, I affirm the original notice of negative determination of eligibility for trade adjustment assistance on the part of workers and former workers of International Business Machines Corporation, Tulsa, Oklahoma. Signed at Washington, DC this 6th day of February, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–2989 Filed 3–1–06; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,838]

Isabel Bloom LLC, Davenport, IA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 13, 2006 in response to a petition filed by a company official on behalf of workers at Isabel Bloom LLC, Davenport, Iowa.

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

Signed at Washington, DC, this 16th day of February, 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–2969 Filed 3–1–06; 8:45 am]

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[7] The Department has considered the issue of whether to characterize employee leasing firms as appropriate subdivisions of the producing firm. The Department believes that this mode of analysis does violence to the separate nature of independent corporations. This case is an excellent example. No one can reasonably suggest that IBM and BP are legally related. The Department believes its new leased worker policy, using an operational control analysis, arrives at the same result without doing violence to corporate legal formalities.

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,045]

Lexel Company Including On-Site Leased Workers of Westaff, Inc., Hutsonville, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 6, 2005, applicable to workers of Lexel Company, including on-site leased workers of Westaff, Inc., Hutsonville, Illinois. The notice was published in the **Federal Register** on December 21, 2005 (70 FR 75845).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of small electric motors (fractional H.P. electrical motors).

A previous certification, TA–W–52,202, was issued on August 7, 2003, for workers of Lexel Company, Hutsonville, Illinois which did not include on-site leased workers of Westaff, Inc. That certification expired August 7, 2005. This certification is being amended to change the impact date for workers of Westaff, Inc., from August 8, 2005 to September 28, 2004 (one year prior to the September 28, 2005 petition date). The impact date for workers of Lexel Company remains August 8, 2005.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to clarify the period of eligibility to apply for all workers of Lexel Company, including on-site leased workers of Westaff, Inc., Hutsonville, Illinois, who were adversely affected by increased customer imports.

The amended notice applicable to TA–W–58,045 is hereby issued as follows:

All workers of Lexel Company, Hutsonville, Illinois who became totally or partially separated from employment on or after August 8, 2005 through December 6, 2007, and including on-site leased workers of Westaff, Inc. at the Hutsonville site who