Signed at Washington, DC, this 20th day of August 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19674 Filed 8–27–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,588]

Murray Engineering, Inc. Complete Design Service, Flint, Michigan; Notice of Negative Determination on Remand

The United States Court of International Trade (USCIT) remanded to the Department of Labor for further investigation *Former Employees of Murray Engineering* v. *U.S. Secretary of Labor*, USCIT 03–00219. The Department concludes that the subject worker group does not qualify for eligibility to apply for Trade Adjustment Assistance (TAA) benefits for two reasons. First, the subject facility does not produce an article because designs are not an article for TAA purposes. Second, irrespective of whether the subject facility's designs are articles, the petition would be denied because there was neither a shift of production nor increased imports as required under section 222(a) of the Trade Act of 1974, as amended (Trade Act), and the workers do not qualify as adversely affected secondary workers under section 222(b) of the Trade Act.

On January 15, 2003, the petitioner filed a petition on behalf of workers of Murray Engineering, Inc., Complete Design Service, Flint, Michigan (''Murray Engineering'') for TAA. The petition stated that workers design automotive gauges, tools, fixtures, and dies.

The Department's initial negative determination for the former workers of Murray Engineering was issued on February 5, 2003. The Notice of Determination was published in the **Federal Register** on February 24, 2003 (68 FR 8620). The Department's determination was based on the finding that workers provided industrial design and engineering services and did not produce an article within the meaning of Section 222 of the Trade Act.

In a letter dated February 19, 2003, the petitioner requested administrative reconsideration of the Department's negative determination. The petitioner alleged that Murray Engineering produced a ''tangible drawing essential and integral to the making or building of a product'' and that the Department was misled by the ''Service'' in the company's name.

The Department denied the petitioner's request for reconsideration on March 31, 2003, stating that the engineering drawings, schematics, and electronically generated information prepared by the subject worker group were not considered production within the meaning of the Trade Act. The Department further stated that the fact that the information is generated on paper is irrelevant to worker group eligibility for TAA. The Department's Notice of Negative Determination Regarding Application for Reconsideration was published in the **Federal Register** on April 15, 2003 (68 FR 18264).

By letter of April 30, 2003, the petitioner appealed the Department's denial of the request for reconsideration to the USCIT asserting that ''machine drawings (plans) are an article.'' The petitioner asserts that the subject worker group should be eligible to apply for TAA due to imports of like or directly competitive articles and, alternatively, because they are adversely affected secondary workers.

The Department filed a motion requesting that the USCIT remand the case to the Department for further investigation, and the USCIT granted the motion.

The Department issued its Notice of Negative Determination on Remand on August 20, 2003. The Notice was published in the **Federal Register** on September 10, 2003 (68 FR 53395). The remand determination stated that the workers did not produce an article and were not eligible for certification as workers producing an article affected either by a shift of production or by imports, or as adversely affected secondary workers.

On May 4, 2004, the USCIT remanded the matter to the Department for further investigation, directing the Department to investigate: (1) The nature of the designs provided by Murray Engineering to its customers;(2) how the designs are sold to Murray Engineering's customers; (3) what proportion of the designs are printed or embodied on CD-Rom/diskette; and (4) how the petitioner's eligibility to apply for TAA is affected by the different formats in which the designs are embodied. The USCIT reserved judgment whether the Murray Engineering workers are qualified for certification as adversely affected secondary workers.

The designs created by Murray Engineering are used to make machines, tools, gauges, dies, molds and fixtures for hydraulic, pneumatic, mechanical, and electrical systems used in the manufacture of products. Each design is unique because each one is job specific and tailored to customer's specifications. Workers use computer software such as Unigraphics and Auto Cad to create each design.

According to the Murray Engineering company official, Murray Engineering customers are charged for the labor incurred in the creation of the designs and can either pay by design or pay by the hour. Printed copies of the design are provided to customers about two-thirds of the time and, in all instances, designs are provided on CD-Rom.

When a project is accepted by Murray Engineering, it is assigned to a designer to develop the designs. The assigned designer is responsible for understanding and adhering to the design specifications, understanding the client's product and manufacturing operations, and working with the client to develop the final design. The designer creates multiple designs for the customer, from which the customer would choose one, and Murray Engineering would then modify the chosen design as requested. The design process requires constant input and approval by the customer. Steps of the design process may be repeated before the final design is approved by the customer.

Once the designs are completed and meet the customer's requirements, the designs are saved on Murray Engineering's computer network. The designs are then hand-delivered to the customer in the format that the customer has requested. As noted above, in all cases the designs are provided on CD-Rom, and in two-thirds of the cases printed copies are provided. Data charts, test results, and other schematics may accompany the designs when the designs are sent to the customer.

The job descriptions provided by Murray Engineering for the Complete Design Service show that workers are engaged primarily in activity related to the preparation of designs of machines, tools, gauges, dies, molds and fixtures for hydraulic, pneumatic, mechanical, and electrical systems used in the manufacture of products. The positions are detail-oriented and require a wide range of technical skills (including designing, drafting, mathematical computation, and computer graphics). Additionally, some drafters and designers may be required to take additional training and acquire the skills and knowledge (including familiarity with the client's products and manufacturing operations) needed to create the design per specifications.

The USCIT's May 4, 2004 decision suggests that any item classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') is an ''article'' for all purposes of the Trade Act, including the TAA program. If one relies solely on HTSUS classification codes, one would conclude that the workers of Murray Engineering produce an article within the meaning of the TAA program because designs printed on paper and designs transmitted on diskette or CD-Rom are included under HTSUS classification codes. Designs recorded on paper are identified in heading 4911, HTSUS, and designs recorded on diskette or CD-Rom is identified in subheading 8524.39.40, HTSUS. Since Murray Engineering provides all designs to its customers on CD-Rom, the designs would be included under subheading 8524.39.40, HTSUS, and the two-thirds of the designs provided on paper would be included under heading 4911, HTSUS.

However, the Department believes that rote application of HTSUS classification codes is not the sole arbiter in this matter, and the Department bases this determination that the workers do not produce an article for TAA purposes upon a careful review of many sources of information rather than limiting its analysis to rote application of HTSUS classification codes.

The Department believes that HTSUS classification codes are not, in this case, determinative because the designs are subject to duty only to the extent that the medium upon which it is recorded is subject to duty. Clarifying this point, the duty would be levied without regard to the content or value of the designs themselves, but rather is determined by the medium itself. Thus, designs recorded on paper are subject to duty only to the extent that the medium upon which they are recorded (paper) is subject to duty (heading 4911, HTSUS). Likewise, designs recorded on diskette or CD-Rom are subject to duty only to the extent that the medium upon which they are recorded is subject to duty (subheading 8524.39.40, HTSUS). In contrast, telecommunication transmissions, such as electronic mail, television and radio signals, and Internet activity, are exempt from the HTSUS (General Note 3e(ii)) and, therefore, designs sent by such means are not subject to duty. This is an important distinction because workers of Murray Engineering, Complete Design Service are engaged in developing designs and not in the manufacture of the mediums on which the designs are conveyed to customers.

The Department believes it would lead to absurd results and would contravene the purposes of the TAA program to condition the workers' eligibility for benefits on the medium through which designs are provided to customers. Allowing the medium of conveyance to control whether designs are articles for purposes of determining TAA worker group eligibility would result in workers performing identical work as Murray Engineering workers being denied TAA benefits if their firm solely e-mailed designs to customers, without providing them on CD-Rom, diskettes, or paper. The Department believes this would be an unjust and absurd basis for distinguishing whether a group of workers would be eligible to apply for TAA. Therefore, the Department believes that it would be erroneous to conclude that the Murray Engineering designs are articles solely because they would, because of their medium of conveyance, fall under specified HTSUS classification codes.

Although HTSUS classification codes arguably support that designs are articles, other sources support the conclusion that designs are not articles for TAA purposes. These sources include: (1) Documents illustrating the company's self-identification as a service provider, the design creation process, and the workers' job descriptions; (2) information from the Department of Homeland Security, U.S. Customs and Border Protection (Customs); (3) the Central Product Classification system compiled by the United Nations; (4) the World Trade Organization's ''Services Sectoral Classification List'' and General Agreement on Trade in Services; and (5) the Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*.

Murray Engineering identifies itself as a company that provides industrial design and engineering solution services to manufacturing industries. The company official has consistently referred to Murray Engineering as a service provider and the Department notes that the company was unable to provide production figures because no such records are kept since it considers itself to be a service company. That Murray Engineering gives customers the option of paying by the hour rather than by the design further supports that Murray Engineering does not produce an article because common experience is that payment by hours of labor rather than by quantity of a finished product is not an option provided to customers purchasing articles.

The Department sought information from Customs, because Customs is an authority on import classification, on the classification of designs and whether Murray Engineering's designs are subject to duty under the HTSUS. Customs suggested that the Department review the U.S. Customs Service, Customs Bulletin and Decisions, Volume 36, No. 6 (February 6, 2003), Attachment A (a collection of Customs classification decisions). Throughout Attachment A, Customs valued carrier media bearing data or instructions, inclusive or exclusive of the value of the recorded data or instructions, only on the cost or value of the carrier medium itself. That Customs classifies and values imports based on physical characteristics supports that the Murray Engineering designs are not ''articles'' for TAA program purposes because they would be dutiable based on the medium of conveyance rather than the designs contained on the medium. As noted above, this is important because workers of Murray Engineering, Complete Design Service are engaged in design work and not in the manufacture of the medium of conveyance.

Pursuant to a suggestion by the U.S. International Trade Commission, the Department sought guidance from the United Nations' Central Product Classification system (CPC), which also supports that the Murray Engineering designs are not articles. The United Nations developed the CPC to provide unrestricted access to selected global data, including international trade statistics. The CPC classifies items into products and services. It is clear from a review of the CPC that design work is a service. The designs created by the workers of Murray Engineering are covered by Section Eight (''Business services; agricultural, mining and manufacturing services''), Group 867 (''Architectural, engineering and other technical services''), Class 8672 (''Engineering services''), Subclasses 86725 (''Engineering design services for industrial processes and production'') and 86726 (''Engineering design services n.e.c.''). The Explanatory note for Subclass 86726 states that ''[i]ncluded here are acoustical and vibration engineering designs, traffic control system designs, prototype development and detailed designs for new products and any other specialty engineering design services.'' The identification of design work as a service supports that designs are not an article.

Further, the Department referred to a World Trade Organization (WTO) classification system, the ''Services Sectoral Classification List,'' that is similar to the CPC and supports a conclusion that Murray Engineering does not produce articles. The ''Services

Sectoral Classification List'' identifies and describes types of services in various industries. This classification list was developed as a reference for the international trade community when dealing with services negotiations. A careful review of this list shows that it follows the CPC and lists ''Engineering services'' in Section 8672 and ''Related scientific and technical consulting services'' in Section 8675. The Department believes that the Murray Engineering design work logically falls within these classifications, supporting that the workers perform a service and do not produce articles.

Finally among sources of information in the international trade community, the Department referred to the WTO's General Agreement on Trade in Services (GATS) for guidance. The GATS provides further support for concluding that Murray Engineering does not produce articles. The GATS is a set of rules covering international trade in services. The GATS identifies ''architectural and engineering services'' as a sector that ''includes work by engineering firms to provide blueprints and designs for buildings and other structures and by engineering firms to provide planning, design, construction and management services for building structures, installations, civil engineering work and industrial processes.'' This description encompasses the design work performed by Murray Engineering and supports that designs are not articles because the work is categorized in a classification system that is specific to service work and, by its very purpose, excludes manufacture and trade of tangible goods.

In addition to sources of information above, the Department examined a source of information outside the international trade community but within the Department of Labor, the *Occupational Outlook Handbook*. The *Occupational Outlook Handbook* is published by the Department of Labor, Bureau of Labor Statistics (BLS), and it provides further support that a conclusion that designs are not articles. BLS published the ''Occupational Outlook Information'' handbook in 1946 to assist vocational counselors in finding employment for returning veterans. BLS published the *Occupational Outlook Handbook* for civilians in 1949. The purpose of the publication is to guide the general public—schools, colleges, employment service offices, vocational guidance counselors, and job-seeking individuals—in matters regarding employment, training, and career development. The Department believes this publication is useful for analyzing the proper classification of design work because it reflects the Department's broader view of how various jobs are classified.

The *Occupational Outlook Handbook* categorizes design work under the job functions of ''drafters.'' The *Occupational Outlook Handbook* states that ''[d]rafters prepare technical drawings and plans used by production and construction workers to build everything from manufactured products, such as toys, toasters, industrial machinery, and spacecraft. . . . Their drawings provide visual guidelines, show the technical details of the products and structures, and specify dimensions, materials, and procedures. Drafters fill in technical details, using drawings, rough sketches, specifications, codes, and calculations previously made by engineers, surveyors, architects, or scientists. . . . Some drafters use their knowledge of engineering and manufacturing theory and standards to draw the parts of the machine in order to determine design elements, such as the numbers and kinds of fasteners needed to assemble the machine.'' This description applies to the work performed by Murray Engineering workers.

The *Occupational Outlook Handbook* states, under the ''employment'' heading for the occupation of ''drafters,'' that ''[a]lmost half of all jobs for drafters were in architectural, engineering and related *services* firms that design construction projects or do other engineering work on a contract basis for other industries.'' (Emphasis added.) This description applies to Murray Engineering workers and supports that drafting work is a service rather than involving the production of an article.

Even if one concludes that the Murray Engineering designs are articles for TAA purposes, the subject worker group cannot be certified because the certification criteria are not met under either under Section 222(a) of the Trade Act or, for adversely affected secondary workers, under Section 222(b) of the Trade Act.

The Department also investigated, assuming for argument that designs are articles, whether the certification criteria under Section 222(a) of the Trade Act have been met. This investigation inquired into whether Murray Engineering shifted production from the subject facility to another country, or whether the subject firm or its major declining customers increased imports of products like or directly competitive with those made at the subject facility. The investigation revealed that Murray Engineering did not shift design work abroad or import designs during the relevant time periods (2001 and 2002). The Department conducted a survey of Murray Engineering's major declining customers regarding their purchases of designs for periods 2001 and 2002. The customers surveyed constituted a significant portion of the subject company's sales declines during the relevant time period. All the customers reported no import purchases of designs during the surveyed time periods.

Regarding TAA eligibility as adversely affected secondary workers under section 222(b) of the Trade Act, the subject worker group can be certified as eligible to apply for TAA as adversely affected secondary workers only if Murray Engineering either: (1) Supplied components or unfinished or semi-finished goods to a firm employing workers who are covered by a certification of eligibility for adjustment assistance; or (2) assembled or finished products made by such a firm. In the case at hand, neither criterion is met because Murray Engineering did no assembly or finishing work, nor did any of Murray Engineering's customers' workers receive a certification of eligibility to apply for TAA during the relevant time period.

In order to be eligible as suppliers of components or unfinished or semi-finished goods, as petitioner claims the subject worker group to be, the subject worker group must have produced a component part of the product that is the basis of the TAA certification. Because Murray Engineering did not produce a component part of a final product, they were not secondary suppliers of a TAA-certified facility, as required by section 222(b) of the Trade Act. Even if the design specifications were sometimes mounted or affixed to their customers' manufacturing equipment, the display of the design specifications were not necessary for the equipment to function properly and did not enhance the equipment's performance; thus, the designs were not component parts.

Further, Murray Engineering did no business with a TAA-certified company during the relevant time period. The petitioning worker specifically claims that Murray Engineering provided designs to Lamb Technicon, a TAA-certified company (TA–W–40,267 & TA–W–40,267A). However, Murray Engineering did business with Lamb Technicon most recently in 1999, which is before the relevant time period for the Murray Engineering petition at issue in this case. Therefore, Lamb Technicon's certification (TA–W–40,267 & TA–W–40,267A) is not a valid basis for

certifying Murray Engineering workers as adversely affected secondary workers eligible to apply for TAA.

Conclusion

After careful reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for TAA for workers and former workers of Murray Engineering, Inc., Complete Design Service, Flint, Michigan.

Signed at Washington, DC this 19th day of August 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19672 Filed 8–27–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,003 and TA–W–55,003A;]

Pomona Textile Co., Inc. Production Plant, Pomona, California; Pomona Textile Co., Inc. Sales Office, Burbank, California; Notice of Revised Determination on Reconsideration

By letter dated July 22, 2004 a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination signed on July 7, 2004 was based on the finding that imports of nylon and polyester tricot 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 August 3, 2004 (69 FR 46574).

To support the request for reconsideration, the company official supplied additional information. Upon further review and contact with the subject firm's major customer, it was revealed that the customer significantly increased its import purchases of nylon-polyester tricot while decreasing its purchases from the subject firm during the relevant period. The imports accounted for a meaningful portion of the subject plant's lost sales and production.

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 additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Pomona Textile Co., Inc., Pomona, California, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

''All workers of Pomona Textile, Co, Inc., Production Plant, Pomona, California (TA–W–55,003) and Pomona Textile Co., Inc., Sales Office, Burbank, California (TA–W–55,003A), who became totally or partially separated from employment on or after May 28, 2003 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 in Washington, DC this 18th day of August, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19673 Filed 8–27–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,347]

Romar Textile Inc., Ellwood City, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 30, 2004 in response to a worker petition filed by a company official on behalf of workers at Romar Textile, Inc., Ellwood City, Pennsylvania.

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

Signed at Washington, DC this 20th day of August, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19678 Filed 8–27–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,398]

Thomasville Furniture Industries, Inc., Plant V, Thomasville, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 6, 2004 in response to a petition filed on behalf of workers at Thomasville Furniture Industries, Inc., Plant V, Thomasville, North Carolina.

The petitioning group of workers is covered by active certifications issued on January 13, 2004 which remain in effect (TA–W–53,515G and TA–W–53,515H, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 17th day of August 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19675 Filed 8–27–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0099(2004)]

Respiratory Protection Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its request for an extension of the information collection requirements contained in the Respiratory Protection Standard (29 CFR 1910.134).