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March 26, 1992

MEMORANDUM TO JEFF HOLMSTEAD

FROM: NANCY MITCHELL

RE: FYI -- Please find enclosed responses from American Defense Preparedness Association members regarding likely candidates for 90-day regulatory review. It's worth looking over.

o Companies who participated in this effort with ADPA include:

FMC	Hercules Aerospace	Alliant Tchsystems
TRW	Hughes Aircraft	ESCO
The Boeing Co.	Ball Aerospace	Martin Marietta Co.
Mobil Corp.	Rockwell Int'l	

ISSUE	EXISTING REGULATION	VERSUS	REGULATION	DISCUSSION
1. Environment	Federal Acquisition Regulation (FAR) 31.205-9		Joint Dept of Defense & ad hoc civilian agency FAR 31.205-9 proposed amendments	Who pays for environment clean up clean up costs relating to DoD contracts years later? Hard to trace to specific source. Proposed FAR is even more restrictive than current one, by not allowing costs resulting from "a liability to a third party." Costs/settlements often involve millions of dollars. This assumes satisfactory arrangement between contractor and regulatory agency's approval for interim operation.
2. Environment	FAR 31.205-9		Proposed amendments FAR 31.205-9	Doesn't allow costs if contractor fails to minimize damage for past environmental damage, often more than 50 years ago before problems recognized or records kept. Proposed rules shift burden of proof.
3. Environment	FAR 31.205-15		Proposed amendments FAR 31.205-9	Blanket prohibition of costs doesn't address situation where reasons for permit violation beyond control of contractor; and proposed amendments conflict with 31.205-15 which would make fines from permit violations allowable if caused by inadequate Government equipment.

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1. Environmental Regulations	NESAPS, OSHA, AHERA, Clean Air Act, TSCA, State laws and regulations.			Recommend tax on foreign suppliers who are not required to meet stringent (US) regulations
2. CFC Reduction	DoD Mil Spec MIL-STD-2000		CFC Reduction--Montreal Protocol	Relax DoD specifications for cleaning circuit boards that call for using CFC. DoD is telling industry to develop better method for the US Government to test and approve. So far, no good substitute found that also meets DoD specifications. Aqueous based flux does not require CFCs; rosin-based flux does.

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1. Commercial Satellites	US Munitions List (Department of State)		Export Administration Regulations (EAR) Commodity Control List (Dept of Commerce	President's Directive of 16 Nov 90 says dual use items (military and civilian) should be moved from Dept of State to Commerce. USA is only COCOM country to list commercial spacecraft as a munition. Should be taken of munition list.
2. Certified Indirect Cost Submissions	DFAR		Defense Logistics Agency guidance and Defense Contract Audit Agency Guidance	DFAR allows for certification of indirect cost proposal based on certifying officer's best knowledge and belief. Recent DLA and DCAA guidance penalizes industry for inadvertent errors, thus incurring "significant" costs to ensure 100% accuracy to avoid all penalties.
3. EXIM Bank Charter	Export-Import Bank Charter			Does now allow for guaranteeing loans to defense-related exports. Other countries provide low-cost loans to their defense industry, giving them an advantage over US companies in world marketplace.
4. Dept of Defense Non- Recurring Costs Policy	DoD Recoupment of Non-Recurring Costs Policy			DoD policy should be restricted to essential provisions of the Arms Export Control Act (AECA), it is agreed, but with an enlightened waiver policy. The current DoD surcharge policy, if adjusted, could save Top 100 DoD contractors an estimated \$130 million, thus encour- aging more R&D, more jobs, improved competitiveness.

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1. Environmental Regulation Conflict	Federal Clean Air Act Amendments of 1990		California Clean Air Laws	California already has in place a permit program which may be different from the federal program, when implemented. Industry could find itself having to comply with two different programs.
2. Risk Assessments	EPA Standards		State Standards	"EPA should adopt a uniform standard for health risk assessments and permit the same data to serve multiple permitting and public disclosure functions. However, this effort must be coordinated with the various state environmental agencies and a mechanism must be in place to ensure that the federal standard cannot be preempted by a state standard."
3. Research, Development and Demonstration Permits for New Technologies	Resources Conservation and Recovery Act (RCRA)			Theoretically a company developing a new technology applies first for an RD&D permit, followed (after demonstration) by an RCRA permit. But the process is so slow, companies work the two permit processes in parallel. There is also no mechanism to "operate the new technology during the period following the completion of the RD&D tests and the issuance of a final RCRA Operating Permit." In effect, this means that proven, new technologies must sit on the shelf for about two/three years
4. Interim Improvements of Hazardous Waste Treatment Facilities				Existing regulations do not give EPA authority to issue a new facility or a new hazardous waste management unit temporary authorization, while waiting over two years for an operating permit to be issued. "Meanwhile, the facility may have to continue handling the waste in a less environmentally sound manner. EPA needs to establish a provision similar to the emergency provisions under 40 CFR 270.61 to prevent imminent and substantial endangerment to human health or the environment and the temporary authorization provision under 40 CFR 270.42(e) for modification to existing facilities..."

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1. FAR Supplements				Many agencies supplement the Federal Acquisition Regulation: DoD, DoE, EPA, etc. "It is costly for contractors to develop management control systems for various 'customers' who impose unique supplements to the FAR" with no value added.
2. Support to Socioeconomic Programs				Although the goals are worthy, the costs of administration and bureaucracy are burdensome, especially to smaller companies. "There is also a need to reduce the atmosphere of 'punishment' for non-compliance. Suggest incentives for progress rather than punishment for problems. Also, recommend prohibition of local agency enhancements to federal programs.

ISSUE	EXISTING REGULATION	VERSUS	REGULATION	DISCUSSION
1. Hiring ex-US Govt Personnel	54 FR 20488; 55 FR 36782; FAR 52.203-8			Regulations and law restrict companies from hiring ex-government personnel with access to procurement information. Implementation is via extensive internal system of ongoing certifications. Foreign competitors are not similarly burdened. US system discourages employment of competent personnel at all levels.

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1. Environmental Conflict	DFAR 223.370-3		Various OSHA/EPA Standards	DFAR 223.370-3 required Dept of Defense contractors to use DoD-produced Contractors' Safety Manual. There is conflict with OSHA/EPA guidelines/regs.
2. Environmental Conflict	CERCLA (Comprehensive, Environmental Response; Compensation and Liability Act) SUPERFUND		RCRA (Resources Conservation and Recovery Act)	Dept of Defense facilities on the National Priority List (NPL) must comply with two, separate cleanup programs with different standards and required studies.
3. Accounting Standards	Generally Accepted Accounting Principles (GAAP)		Cost Accounting Standards (CAS)	Contractors who make both military and civilian products must frequently keep two sets of books, based on two accounting systems. Dept of Def "contracting officers should have the authority to waive CAS on a case-by-case basis and authorize a single accounting system when after reviewing a contractor's accounting system it is determined that the Government will also benefit if a single system is authorized." Depreciation is case in point. Use of GAAP (required by tax code) by Dept of Def contractors allows for accelerated depreciation; this could help lower contract costs to Government.
4. Source Selection Information	FAR 3.104-4(k) (implements Procurement Integrity Act)		DoD Dir 5200.xx, 32 CFR 286h.3(b)(6)	FAR says release information contractors, except what's been marked "Source Selection Information," that is, the criteria used to select the winning bid from among all submitted. the DoD directive says some info will not be released, whether it's marked or not. Considering criminal sanctions, there should be no contradiction whatsoever.

ISSUE	EXISTING REGULATION	VERSUS	REGULATION	DISCUSSION
1. Anti-Discrimination Regulations for Retirement Plans	Internal Revenue Service Code, Section 401(a)(4) and related code sections		IRS Notice 92-92 (delays regulations until 1 Jan 93)	Regulation aims to ensure retiremen plans are non-discriminatory, a worthy goal. Yet, one company has spent est \$300,000 just collecting data, and is expecting to spend another \$200,000. Results of implementation in some cases will be more, not less, discrimination, due to quirks in law. Regulations could be rescinded/changed to achieve desired result at lowest cost.

ISSUE	EXISTING REGULATION	VERSUS	REGULATION	DISCUSSION
1. Environment Regulations	500-1,000 new pages per year published in Title 40 CFR			Now must comply with 11,599 pages of regulations, up from less than 2,000 in 1974. There is lack of communication and coordination among US Govt agencies. It is not uncommon to spend over \$100,000 on consulting fees to answer a single request from the agencies for no apparent reason. "What is needed is a fair, balanced and harmonious approach to protecting the environment that reconciles a multiplicity of differing requirements among federal, state and local agencies. US global competitiveness must be able to count on it."
2. Health care costs.	Health care requirements and benefits regulations.			1991 cost per employee is expected to be more than \$3,600, up 21 percent from previous year. If rate of increase continues, cost per employee will be \$19,000 by year 2,000. US companies will not be able to compete globally.
3. Burdensome certifications.	Defense contractors are required to have approx 150 distinct certifications, few of which are required by statute			Recommend elimination the use of all certifications except as required by statute. "Simply by signing a proposal or contract, contractors accept responsibility for conformance to the required clauses or provisions."
4. Rights in Technical Data and Computer Software	DFARS Part 227		Defense Authorization Act of FY92	DFARS Part 227 has been in interim status since 1986. Need expeditious recommendations of board est'b in Def Authorization Act FY92, to help industry retain valuable rights. Now US Gov't retains more rights than it needs.

ISSUE	EXISTING REGULATION	VERSUS	REGULATION	DISCUSSION
1. Drug-Free Work Force	new DFAR 252.223-7004	National Labor Relations Board and Department of Transportation		Does not define "sensitive position" required for random drug testing. National Labor Relations Act requires employer to negotiate in-house testing program with collective bargaining unit. DOT regulations define random testing, but DFAR does not. Industry must absorb costs of compliance with three conflicting US Government regs dealing with same issue. A DFAR-required random test costs \$71 per person per test. DOT required 50% testing. A company with 250,000 employees testing 100% of its employees (DFAR interpretation) would have to absorb costs of \$177,500.
2. Environment	Environmental Protection Agency Form 8700-22	EPA Form 8700-22 as Modified by various states		EPA Form 8700-22, adopted in 1984, was supposed to pre-empt various state forms, simplified procedures. Now states use blank space on form to add their own requirements, putting industry back to where it started...or worse, because state regulations now more specific, detailed, complicated.
3. Asset Valuations	FAR 31.205-52; 31.205-10; 31.205-11; 31.205-16	Cost Accounting Standards 404.50(d/e) and Generally Accepted Accounting Principles (Accounting Principles Board Opinion No. 16)		FAR disallows cost of depreciation, amortization and cost of money from asset write-ups that result from the "purchase method" of accounting from business combinations, or limits allowable costs. Strength of industrial based would be improved if FAR recognized industry standard.

ONGOING REGULATORY ISSUES

The following regulatory issues were under consideration by the Presidential Task Force on Regulatory Relief, chaired by then-Vice President George Bush, at the end of last Administration.

o Barriers to Innovation

The incentive to innovate needs to be nurtured and protected from overregulation in a number of areas, including biotechnology, environmental protection, and other high-technology areas with export potential.

o Market Incentives for Environmental Regulation

Market-based application of environmental protection measures can achieve more efficient pollution control in a number of areas. (e.g. the Task Force addressed the application of such approaches in the regulation of CFCs and truck emissions).

o Tax Simplification

A number of improvements in the system for collecting taxes are still worth investigating, including further use of the 1040EZ form, as well as some other procedural and technological innovations.

o Homeworkers

Current Department of Labor standards prevent individuals from making women's apparel at home, although other forms of homework have been permitted. The Task Force recommended that the Department of Labor extend permitted homework to include women's apparel, but no action has been taken.

o Health Claims

FDA will be issuing final rules that would allow certain claims linking certain foods to the prevention of specific diseases. Additional flexibility could be provided without increasing the risk of allowing more misleading claims.

o Davis-Bacon Reform

Davis-Bacon provisions require minimum standards for the wages federal contractors pay. Greater flexibility could reduce the increased costs to the Federal government caused by these provisions. Congress has not acted on Task Force recommendations.

o ERISA Paperwork Changes

Virtually all employers are required to provide an annual report on pension plans directly to all workers. Making such reports available could cut millions of hours from the burden of paperwork. The Department of Labor has not implemented Task Force recommendations.

o CAFE Requirements

Operating under strict statutory guidelines, the Department of Transportation sets requirements for CAFE (Corporate Average Fuel Economy) each year. Abolition or relaxation of these statutory requirements would improve the competitiveness of the U.S. auto industry and save American jobs. Congress, has not implemented the proposed changes.

never,

yet
The House Force
advocated for

an action
that
would

1. More availability
2. Financial regulation

- Get John's Task Force File

(stack of Reports)

- 1983 final task force report

mission report - get ahead of it

- Alert Ed Rogers to any change

w/ respect to RA-486

- Call Mike A.

* = call MIT guy - what did Jap

casement agreed to last week

in anticipation of summit w/

respect to car number by 200

* =

Find out ~~whether~~ survive pattern

for Graham's gases.

over him - path find

results to our actions