



General Services Administration
Office of Acquisition Policy
Washington, DC 20405

FEB 15 1996

MEMORANDUM FOR CAPTAIN D.S. PARRY, SC, USN
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM:

BEVERLY FAYSON
FAR SECRETARIAT

SUBJECT: FAR Case 95-003, Impairment of Long-Lived Assets

Attached are comments received on the subject FAR case published at 60 FR 64254; December 14, 1995. The comment closing date was February 12, 1996.

<u>RESPONSE NUMBER</u>	<u>DATE RECEIVED</u>	<u>COMMENT DATE</u>	<u>COMMENTS</u>	<u>REMARKS</u>
95-003-01	12/22/95	12/22/95	TREASURY/BEP	
95-003-02	02/28/96	01/30/96	SUNDSTRAND	
95-003-03	02/13/96	02/09/96	NSIA	
95-003-04	02/13/96	02/12/96	AIA	

We recommend:

X That the DARC analyze public comments, draft final rule language, and provide it to the CAAC for review and consideration; or that DARC ask one of its committees to analyze public comments and to submit a committee report, including final rule language, for review and consideration by both Councils.

 That the CAAC or the FAR Staff analyze public comments, draft final rule language, and provide it to DoD for review and consideration; or that the CAAC task one of its committees to analyze public comments and to submit a committee report, including final rule language, for review and consideration by both Councils.

 That the Councils agree on final rule language without further deliberation.

Attachments

cc: Ralph DeStefano, Acting CAAC Chairman
Jeremy Olson, FAR Staff Analyst



95-003-1



DEPARTMENT OF THE TREASURY
BUREAU OF ENGRAVING AND PRINTING

WASHINGTON, D. C. 20228

MEMORANDUM FOR KEVIN N. WHITFIELD
PROCUREMENT ANALYST

FROM:

Carol Seegars, Chief
Office of Procurement*Carol F. Seegars*

SUBJECT:

Request for Comments on FAR Interim Rule

DATE:

December 22, 1995

Per your request dated December 4, 1995, the BEP offers the following comments with respect to the FAR Interim Rule under FAR case 95-3:

The introduction of a requirement to include new environmental certification and clause requirements in all competed contracts in excess of \$100,000 (including options), is in direct contradiction to the stated intent of FASA to streamline contract functions and eliminate paperwork burdens (where able) in accordance with the Paperwork Reduction Act. Companies who fall under the reporting requirements, are already required to report on toxic chemicals released to the environment under EPA's "The Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA)". In March 1995, the House passed bill HR 1022 that required regulatory agencies to weigh the benefits of a new regulation against the costs it would impose on businesses. In February 1995, the House passed a bill that temporarily froze the implementation of new regulations. Given the current climate regarding streamlining procurement and eliminating paperwork burdens, the Government should find new methods of enforcing EPA regulations.

The proposed change to FAR Part 23 adds the following troubling guidance for any member of a professional procurement team:

1) Prior to making a determination to omit the certification and clause in a solicitation in excess of \$500,000 (including options), the agency **SHALL** consult with EPA.

NOTE: What is the requirement prior to making a determination to omit the certification and clause in any solicitation between \$100,000 and \$500,000?

2) The Contracting Officer **SHALL** cooperate with EPA representatives and provide advice and assistance to aid EPA in the performance of responsibilities; and

95-003-1

3) EPA MAY recommend Termination for Convenience of any existing agency contract if it is determined that the Contractor is not filing the necessary forms or incomplete information. This guidance provides great potential for EPA's interference and/or stoppage of the BEP's ability to procure equipment and supplies required. The requirement for inclusion of the proposed clause and certification includes all SIC codes between 20 and 39; this covers most, if not all, of the items procured in the Stamp Contracts Division. Since foreign companies are exempt from these requirements, it seems that this action would further widen the gap between our ability to award to American companies and drive us further into the arms of foreign contractors not liable for many of our regulatory practices. Any EPA involvement in agency contracting could conceivably lead to serious conflict between satisfying agency needs and helping EPA perform their job. Possibly a better solution to assist EPA in enforcing this requirement would be to put some teeth in the regulation by increasing the fines involved for those companies who disregard EPCRA.

Note: The Background information conflicts with the statement of the proposed clause; the former states that this rule does not apply to subcontractors beyond the first tier, while the latter talks about subcontractors and does not identify the requirements as applying to only first tier subcontractors.

If you need any additional information, please contact Linda B. Washington of my staff at 874-3151.

cc: T. K. Brown
Office of Environmental Protection



4747 HARRISON AVENUE • P.O. BOX 7002 • ROCKFORD, IL 61125-7002
(815) 226-6000 • FAX 226-7488 • TWX 910-631-4255 • TELEX 25-7440

January 30, 1996
L957-196-0071

General Services Administration
FAR Secretariat (VRS)
18th and F Streets
NW
Room 4037
Washington, D.C. 20405

SUBJECT: WRITTEN COMMENTS REGARDING THE FAR INTERIM
PROPOSED RULE: IMPAIRMENT OF LONG-LIVED ASSETS AS
CITED IN THE *FEDERAL REGISTER*, VOL. 60, NO. 240,
DECEMBER 14, 1995

REFERENCE: FAR CASE 95-003

Gentlemen:

Thank you for the opportunity to review the above interim rule and comment on it. We have reviewed the interim rule and believe that it is not necessary. It places an undue administrative burden upon contractors who experience write-downs due to the impairment of long-lived assets since it would require contractors to maintain a separate set of records to depreciate the written-down assets as if they had not been written down. Since the current government movement is toward the adoption of commercial practices, enacting a rule that is contrary to current commercial practice seems to diverge from this endeavor.

If you have any questions, please feel free to contact me at (815) 226-5226.

Sincerely,

Arthur R. Charles, Vice President
Aerospace Contracts, Compliance and Management Services

ARC/gp

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National Security Industrial Association

95-003-3
1025 Connecticut Ave., NW, #300
Washington, DC 20036
(202) 775-1440
Fax (202) 775-1309

Office of the President

February 9, 1996

Mr. Jeremy F. Olson
General Services Administration
FAR Secretariat
18th & F Streets, NW, Room 4037
Washington, DC 20405

Subject: FAC 90-35, FAR Case 95-003

Dear Mr. Olson:

The National Security Industrial Association (NSIA) appreciates the opportunity to comment on the interim rules in FAR 31.205-11 and FAR 31.205-16 addressing impairment of Long-Lived Assets for government contract costing purposes. The following are our comments:

We firmly believe that government contract accounting should not depart from generally accepted accounting principles (GAAP) unless public policy or other special circumstances warrant deviation. The interim rules deviate from GAAP and require treatment diametrically opposed to SFAS 121. The interim rule did not address why SFAS 121 should not be used for government accounting other than the fact that CAS 409-40(a)(4) and 405-50(j) contain language which deals with the unrelated subject of asset disposals. The result of this departure from GAAP is increased administrative costs associated with performing government contracts by requiring an additional set of asset records and depreciation/amortization schedules.

NSIA also believes that the charters of the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council do not include addressing allocation issues in the FAR Cost Principles when such issues are currently addressed in the Cost Accounting Standards. The interim rule amendments to FAR 31.205-11 and 31.205-16 are addressing when costs are assigned to cost accounting periods. The assignment of cost to cost accounting periods is properly an issue for consideration by the Cost Accounting Standards Board (CASB) and should not be addressed through changes in the cost principles. The issue of changes in circumstances, which would include impairment of assets, is covered in CAS 409-50(i). If changes in this section are needed, the CASB is the appropriate government entity to revise its coverage. Therefore, it is inappropriate to issue these interim rules in the FAR.

FEB 13 1996

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Board of Trustees

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Chairman, Executive Committee

Marilyn W. Andrulis, Ph.D.
Vice Chairman
Executive Committee

Thomas C. Richards
President

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Mr. Olson
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The **Federal Register** notice stated that the interim rules are clarifications to cost allowability rules. While we agree that clarifications to existing rules can properly be issued as interim rules, we do not agree that new concepts or issues that have not been previously addressed in the cost principles should be issued as interim rules. New FAR cost principles and changes to existing FAR cost principles, unless mandated by law, should be processed through the normal procedure for new rules.

In summary, NSIA recommends that the government withdraw these rules because they are inappropriate and contrary to generally accepted accounting principles (GAAP).

If you would like further information on this subject, please contact Ed Schiff, NSIA Director for Procurement, at (202) 496-3297.

Sincerely,


Thomas C. Richards
General, USAF (Ret)
President

TCR:as

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**Aerospace
Industries
Association**



95-003-4

February 12, 1996

General Services Administration
FAR Secretariat (VRS)
Attn: Mr. Jeremy F. Olson
18th and F Streets, N.W.
Room 4037
Washington, D.C. 20405

Reference: FAR Case 95-003

Dear Mr. Olson:

The Aerospace Industries Association (AIA) is pleased to provide its comments on interim amendments to FAR 31.205-11 and FAR 31.205-16, prohibiting a change in the methodology for depreciating impaired long-lived assets for government contract costing purposes. In accordance with the interim amendments, any changes in depreciation resulting in the write-down of an impaired long-lived asset will be recognized only upon disposition of the asset.

AIA strongly believes that the interim rules are unwarranted and contrary to sound accounting theory and existing Cost Accounting Standards (CAS) governing the allocation of costs to final cost objectives. Accordingly, AIA recommends that the interim rule be withdrawn. Detailed support for the AIA position is shown below.

The Statement of Financial Accounting Standards (hereinafter called the "Statement") No. 121, Accounting for the Impairment of Long-lived Assets, issued by the Financial Accounting Standards Board (FASB) in March 1995 established principles for the accounting treatment of impaired long-lived assets to be held and used, and impaired long-lived assets identified for disposal. The Statement requires that long-lived assets used by an entity be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. It also requires an immediate write-down of assets being disposed of to their fair market value (less cost to sell), if lower than the current carrying value. This Statement is effective for financial statements for fiscal years beginning after December 15, 1995.

Pursuant to FAR 31.201-2, Determining Allowability, generally accepted accounting principles (GAAP) are to be employed in accounting for costs of government contracts unless superseded

Aerospace Industries Association of America, Inc.
1250 Eye Street, N.W., Washington, D.C. 20005-3922 (202) 371-8400

FEB 13 1996

by specific Cost Accounting Standards or limitations found in FAR cost principles. The sound accounting principle/theory implicit in the SFAS 121 pronouncement is that long-lived assets, such as plant and equipment, are generally recorded at cost, i.e., fair value of the asset on the date of acquisition. The original cost is then reduced, or depreciated, over the periods in which the asset is used or consumed. However, when an asset has been determined to be impaired, under the accounting principle of "conservatism," it should be written down to its realizable value, if less than the current carrying value, and a one-time period loss recognized. The SFAS 121 pronouncement does not eliminate the possibility of a gain or loss upon the actual disposition of the asset; it only minimizes the cost write-off that is subsequently expected to occur.

The DoD position that impairment losses are not to be recognized for government contract costing purposes is contrary to this sound accounting theory as well as the basic concepts found in FAR 31.201-3, Determining Reasonableness. Moreover, the DoD position is inconsistent with basic accounting theory found in CAS 409, Depreciation of Tangible Capital Assets, FAR 31.205-11, Depreciation, and FAR 31.205-16, Gains and Losses on Disposition of Depreciable Property or Capital Assets.

The basic thrust of CAS 409 is to recognize in the accounting period the costs related to the consumption of physical assets. The Standard is based on the concept that depreciation costs identified with cost accounting periods should be a reasonable measure of the expiration of service potential of the tangible assets subject to depreciation. Consistent with the requirements in SFAS 121, CAS 409.50(h)(1) recognizes the ability to revise "estimates of service life, consumption of services, and residual value ... whenever circumstances change significantly." Similarly, CAS 409.50(e)(5) provides the flexibility to use advance agreements for shorter service lives when the asset has a unique purpose or other special circumstances that warrant a shorter estimated service life. Lastly, CAS 409.50(j)(3) provides that "the contracting parties may account for gains and losses arising from mass or extraordinary dispositions in a manner which will result in treatment equitable to all parties."

Likewise, FAR 31.205-11(a), Depreciation, states that depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a

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Mr. Jeremy F. Olson
February 12, 1996
Page Three

framework in SFAS 121, FAR 31.205-16(e), Gains and Losses on Disposition of Depreciable Property or Capital Assets, provides an accounting framework acknowledging that "losses arising from mass or extraordinary sales, retirements, or other disposition... shall be considered on a case-by-case basis."

Further, contrary to the position articulated in the background discussion accompanying the interim rule, CAS 409.40 (a)4) and (b)4), CAS 409.50 (j) (and the related Promulgation Comment 10, Gain or Loss), and FAR 31.205-16 do not preclude recognition of asset gains or losses such as those required by SFAS 121. The provisions of those standards/regulations address only those situations where the disposition of an asset has actually occurred and do not in any way establish or restrict the accounting practices to be followed for recognizing other asset gains or losses.

A major result of the interim rule is that the inconsistencies between GAAP and the regulations governing the costing of government contracts will, once again, increase the administrative costs associated with performing government's contracts. Industry continues to be concerned with government's gradual movement away from the tenants of sound accounting theory (GAAP) and fundamental concepts in recently proposed changes in procurement regulations and in this interim rule. Further, we fail to see the need for the government's action. It appears that the government's objective in proposing this rule is to preclude potential financial harm caused by required adjustments to contract costs resulting from losses sustained by contractors from the write-down of impaired assets. The government's concern is unfounded and not supported in today's environment. Due to competitive and fixed-price contracting and affordability issues, adjustments in an asset's value that potentially represent increased costs to the government will not always be passed on to the government.

We believe that the interim regulation does not represent a clarification to existing regulations, nor is it equitable to industry. A formal promulgation process has been established, and is legally mandated for all proposed changes in FAR. This promulgation process provides an opportunity for both the government and contractor community to identify concerns and comment on proposed rules before they become final. The process also ensures that the final rules issued by the government are equitable to all parties. Bypassing this process by coloring the proposed changes as clarifications does not comport with the intent of federal procurement regulations or recent acquisition reform initiatives.

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Mr. Jeremy F. Olson
February 12, 1996
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In summary, for the reasons outlined in this comment draft, AIA encourages the government to reconsider the position contained in the interim regulation and to withdraw this rule.

If you have any question regarding AIA's position on this subject, please contact Dick Powers of my staff at (202) 371-8526.

Sincerely,


for LeRoy J. Haugh

(9)

**FROM THE DESK
OF:
LARHONDA M. ERBY**

FROM: LARHONDA M. ERBYTO: DARCFAX NO: 202/501-1986FAX: (703) 602 0350PHONE: 202/501-0692

PHONE: _____

LOCATION: GSA (VR)

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COMMENTS:

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Page (2).

Thanks

* Sent yesterday

95-003-4

Mr. Jeremy F. Olson
February 12, 1996
Page Two

by specific Cost Accounting Standards or limitations found in FAR cost principles. The sound accounting principle/theory implicit in the SFAS 121 pronouncement is that long-lived assets, such as plant and equipment, are generally recorded at cost, i.e., fair value of the asset on the date of acquisition. The original cost is then reduced, or depreciated, over the periods in which the asset is used or consumed. However, when an asset has been determined to be impaired, under the accounting principle of "conservatism," it should be written down to its realizable value, if less than the current carrying value, and a one-time period loss recognized. The SFAS 121 pronouncement does not eliminate the possibility of a gain or loss upon the actual disposition of the asset; it only minimizes the cost write-off that is subsequently expected to occur.

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The basic tenant of CAS 409 is to recognize in the accounting period the costs related to the consumption of physical assets. The Standard is based on the concept that depreciation costs identified with cost accounting periods should be a reasonable measure of the expiration of service potential of the tangible assets subject to depreciation. Consistent with the requirements in SFAS 121, CAS 409.50(h)(1) recognizes the ability to revise "estimates of service life, consumption of services, and residual value ... whenever circumstances change significantly." Similarly, CAS 409.50(e)(5) provides the flexibility to use advance agreements for shorter service lives when the asset has a unique purpose or other special circumstances that warrant a shorter estimated service life. Lastly, CAS 409.50(j)(3) provides that "the contracting parties may account for gains and losses arising from mass or extraordinary dispositions in a manner which will result in treatment equitable to all parties."

Likewise, FAR 31.205-11(a), Depreciation, states that depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. Similar to the accounting

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General Services Administration
Office of Acquisition Policy
Washington, DC 20405

FEB 27 1996

MEMORANDUM FOR CAPTAIN D.S. PARRY, SC, USN
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: BEVERLY FAYSON
FAR SECRETARIAT *B Fayson*

SUBJECT: FAR Case 95-003, Impairment of Long-Lived Assets

Attached is a late comment and a request to remove comment No. 1 (Treasury, Bureau of Engraving and Printing) from your previous listing because it actually belongs with FAR Case 95-305. Comments on this case were transmitted on February 15, 1996.

<u>RESPONSE NUMBER</u>	<u>DATE RECEIVED</u>	<u>COMMENT DATE</u>	<u>COMMENTS</u>	<u>REMARKS</u>
95-003-05	02/28/96	01/30/96	ABA	

We recommend:

X That the DARC analyze public comments, draft final rule language, and provide it to the CAAC for review and consideration; or that DARC ask one of its committees to analyze public comments and to submit a committee report, including final rule language, for review and consideration by both Councils.

 That the CAAC or the FAR Staff analyze public comments, draft final rule language, and provide it to DoD for review and consideration; or that the CAAC task one of its committees to analyze public comments and to submit a committee report, including final rule language, for review and consideration by both Councils.

 That the Councils agree on final rule language without further deliberation.

Attachment

cc: Ralph DeStefano, Acting CAAC Chairman
Jeremy Olson, FAR Staff Analyst

1995-1996

AMERICAN BAR ASSOCIATION

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February 16, 1996

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W.
Room 4037
Washington, D.C. 20405

Attention: Mr. Jeremy F. Olson

Re: **FAR Case 95-003; Interim Rule Regarding
Impairment of Long-Lived Assets**

Dear Mr. Olson:

On behalf of the Section of Public Contract Law ("the Section") of the American Bar Association ("the Association"), I am submitting comments on the above-referenced Interim Rule. The Section consists of attorneys and associated professionals in private practice, industry and Government service. The Section's governing Council and substantive committees contain a balance of members representing these three segments to ensure that all points of view are considered. In this manner, the Section seeks to improve the process of public contracting for needed supplies, services and public works.

The Section is authorized to submit comments on acquisition regulations under special authority granted by the Association's Board of Governors. The views expressed herein have not been approved by the House of Delegates or by the Board of Governors of the American Bar Association, and, therefore, should not be construed as representing the policy of the American Bar Association.

Introduction

The "Background" discussion accompanying publication of the Interim Rule makes it clear that the rule is intended to address the treatment of costs resulting from a contractor's compliance with the rules of accounting for long-lived assets whose value has been impaired and is not recoverable as described in the March 1995 Financial Accounting Standards Board's Statement of Financial Accounting Standards ("SFAS") No. 121 ("Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of"). Promulgations of the Financial

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Mr. Jeremy Olson
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Accounting Standards Board define preferred accounting practices for financial (public reporting) purposes.

SFAS No. 121, specifically, describes the method of accounting for assets whose value is impaired due to events or changes in circumstances which indicate the carrying value of an asset may not be recoverable. Where assets are retained, but their value is not recoverable, SFAS No. 121 requires that the value of the asset be written down to fair value. Impaired assets that are to be sold are to be reported at the lower of cost or fair value, less the cost to sell. SFAS No. 121 clearly distinguishes impairment and recoverability from depreciation policies and estimates.

In the Background discussion, the drafters of the Interim Rule contrasted the treatment of impaired assets in SFAS No. 121 to the current treatment of gains and losses in CAS 409, in Promulgation Comment No. 10 to the Standard, and in FAR § 31.205-16, which is described as permitting the recognition of a loss only on disposition of an asset.

**The Subject Matter Of The Interim Rule Is Within The Exclusive
Statutory Authority Of The Cost Accounting Standards Board.**

41 U.S.C. § 422(j)(4) states that "[c]osts which are the subject of cost accounting standards promulgated under this section *shall not be subject to regulations that are established by another executive agency* that differ from such standards with respect to the measurement, assignment, or allocation of such costs." (emphasis added). The rules for the measurement of the cost of depreciation of tangible capital assets for CAS-covered contracts is the subject of CAS 409, FAR § 9904.409.

CAS 409 specifically addresses the establishment of an asset's service life and the effect of "[c]hanges in expected physical usefulness" and "[c]hanges in expected economic usefulness." See FAR §§ 9904.409-50(e)(1)(i) and (ii). It is clear that the subject matter of the Interim Rule and SFAS No. 121 relate to impairment and recoverability of an asset and not the establishment or adjustment of service lives and, therefore, is an issue of recognition of gains and losses. CAS 409-40(b)(4) and Promulgation Comment No. 10 discuss the subject of asset gains and losses. It is apparent, therefore, that CAS 409 addresses the very subject covered by the Interim Rule. Even if it is argued that the existing CAS does not already address the subsidiary issue of asset impairment covered by the Interim Rule, the Interim Rule, at a minimum, effectively serves to interpret CAS 409 and the referenced Promulgation Comment.

The Section believes that whether and to what extent CAS 409 addresses impairment loss as part of its treatment of gains and losses is a matter entirely within

Mr. Jeremy Olson
February 16, 1996
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the jurisdiction of the CAS Board. As such, if an interpretation or revision is considered appropriate, this should be accomplished by the CAS Board in accordance with its exclusive statutory rulemaking and/or interpretative authority. In light of the foregoing, the Section recommends the immediate withdrawal of the Interim Rule. If necessary, we also recommend that the CAS Board Chairman use his statutory authority to rescind the Interim Rule.

The Section remains concerned that government contract cost accounting issues be resolved in accordance with the statutory authority granted to the respective rulemaking agencies. Although the Section acknowledges the role of the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council with respect to cost *allowability* matters, matters of public policy, it is clear from both the nature of the Interim Rule, as well as the Background discussion, that the Councils have chosen to address a matter involving a government contract *cost accounting practice* -- a matter beyond their authority. Rulemaking and regulatory guidance in this area should appropriately be issued by the CAS Board.

Conclusion

The Section appreciates the opportunity to provide these comments and is available to answer any questions they may raise.

Sincerely,



Frank H. Menaker, Jr.
Chair,
Section of Public Contract Law

cc: James F. Hinchman
John T. Kuelbs
Marcia C. Madsen
Lynda Troutman O'Sullivan
Marschall J. Doke, Jr.
John B. Miller
Donald J. Kinlin
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Chair and Vice Chairs of the
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Laura K. Kennedy