FEDERAL LAWS, EXECUTIVE ORDERS, AND REGULATIONS

Article 1, Section 8 of the U.S. Constitution gives Congress the authority to support armies and maintain a navy. Thus, at the highest level, Congress authorizes and appropriates funds for, and passes laws governing, the U.S. military. These laws can be enacted as stand-alone pieces of legislation or as amendments to other related or unrelated bills. However, because it would quickly have become extremely difficult for citizens, attorneys, judges, and legislators to understand the laws and their interrelationships in a given area if these laws had been left to stand individually or as originally grouped, Congress established the United States Code,¹ a classification structure for U.S. law.

The USC helps prevent the U.S. legal system from developing intractable redundancies, inconsistencies, and obsolescence. Fifty titles constitute the first level of indenture in the USC structure, which is further subdivided into parts, chapters, and sections. Frequently, laws are passed that do not fit neatly into a single title. In these cases, unrelated elements of the act are separated and then codified in the appropriate titles, parts, chapters, and sections. Several titles in the U.S. Code include laws that are relevant to globalization, military weapon system acquisition, and the defense industrial base.

Many are captured in Title 10, “Armed Forces.”\(^2\) Other titles that also contain relevant laws include Title 15, “Commerce and Trade,” which contains the original Sherman Antitrust Act, and Title 22 “Foreign Relations and Intercourse,” which contains the Arms Export Control Act.

Executive orders are not laws but are directives signed by the President of the United States in order to manage the operations of the federal government. As the Chief Executive, the President uses these decrees to manage the operations of the executive branch and to fulfill responsibilities conferred by the Constitution or by federal law.

Executive departments and agencies of the federal government publish regulations that comply with federal laws and executive orders and that regulate the functions and processes they perform and oversee. These regulations also document procedures developed to comply with all of the relevant laws, thereby saving the individual federal employee or citizen from personally having to understand all these laws. The National Archives and Records Administration’s Office of the Federal Register publishes executive orders and federal regulations and codifies these documents in the Code of Federal Regulations (CFR).\(^3\) The CFR, like the U.S. Code, is divided into several titles and is further divided into chapters, parts, and sections. For example, Title 3 of the CFR, “The President,” contains copies of recent executive orders.

An example of a body of federal regulations with keen relevance to the globalization of the defense industrial base is the Federal Acquisition Regulations System, which is codified at Title 48 of the CFR. This system of regulations prescribes uniform procedures for all executive agencies’ acquisition of goods and services. The Federal Acquisition Regulations System includes the Federal Acquisition Regulations (FAR) as well as the agency acquisition regulations that

\(^2\) Chapters 137 through 148 of Title 10—which deals with acquisition, international cooperation, research, procurement of commercial items, standardization of weapon systems with our allies, and the defense technology and industry base—bear direct relevance to this study.

\(^3\) The CFR can be viewed at http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.
implement or supplement the FAR. The Defense Federal Acquisition Regulation Supplement (DFARS), the Air Force Federal Acquisition Regulation Supplement (AFFARS), and command supplements such as the Air Force Materiel Command FAR Supplement (AFMCFARS) are elements of the system that directly guide the Air Force. For example, FAR Part 25, DFARS Part 225, and AFFARS Part 5325 are all entitled “Foreign Acquisition” and provide guidance for purchasing goods and services from foreign-owned companies within the bounds of the Buy American Act and related laws and regulations.4

DOD AND AIR FORCE GUIDANCE

While the Constitution, federal laws, and the FAR are certainly relevant to the services’ acquisition corps and other professionals who work with the globalizing defense industrial base, they are not the first reference documents to which DoD’s military and civil servants normally turn for guidance in navigating the intricacies of international programs. Rather, DoD has drawn the applicable elements from federal statutes and regulations and combined them with additional guidance tailored to military missions. DoD Directives (DoDDs) establish DoD policies and assign responsibilities in conformance with U.S. law and other federal regulations (DoDD 5025.1). The DoD-unique policies that feed these directives often take the form of Directive Memoranda, which are issued at the Secretary, Deputy Secretary, or Assistant Secretary level. DoD Instructions (DoDIs) are the primary means of implementing these policies. When further instructions are necessary to ensure uniform implementation processes or to disseminate administrative information, DoD issues DoD Publications in the form of regulations, manuals, handbooks, and the like. DoD manuals and handbooks are often a compendium of numerous directives and instructions that apply to a given activity and that save the interested parties the effort and time required to collect and digest all the relevant DoD Directives and Instructions.

4 Other relevant FAR parts include (with parallel parts in some of the various supplements): Part 6—Competition; Part 7—Acquisition Planning; Part 12—Acquisition of Commercial Items; Part 34—Major System Acquisition; and Part 44—Subcontracting Policies and Procedures.
The “5000 series” is a trio of DoD publications that forms the DoD acquisition manager’s front-line authoritative guidance for planning and conducting a weapon system acquisition program. The first two documents in the series are DoDD 5000.1, “The Defense Acquisition System,” and its implementing instruction, DoDI 5000.2, “Operation of the Defense Acquisition System.” Each received a major revision in October 2000 and was reissued with slight changes in January 2001. The third publication in the 5000 series is DoD Regulation 5000.2-R, “Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs,” issued in June 2001. All three of these publications incorporate DoD’s latest acquisition reform policies, which emphasize competition and thus have direct relevance to globalization of the defense industrial base.

Finally, the Air Force uses Air Force Policy Directives (AFPDs) and Air Force Instructions (AFIs) to implement laws or higher-level directives or to establish uniform procedures and processes. Nondirective Air Force publications, including handbooks and pamphlets, provide consolidated information and recommended guidance (AFI 33-360). Because DoD’s and the services’ interests in national security and the defense industrial base are inseparably linked, Air Force documents tend to focus on Air Force-unique implementation issues rather than on higher-level policies.

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See USD(AT&L), June 2001.