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### Vern Edwards' Blog

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#### What is the United States Code and what is in it?

Contracting officers are charged with ensuring that contracts are awarded in compliance with the law. See FAR 1.602-1(b). Consider, for example, FAR 6.101(a):

#### QUOTE

10 U.S.C. 2304 and 41 U.S.C. 253 require, with certain limited exceptions (see Subparts 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.

Almost everyone in contracting knows that U.S.C. is the abbreviation for United States Code. Almost everyone, but I recently taught a contracting class in which 12 out of 26 students did not know what U.S.C. stood for. (One person, a contracting officer, thought it meant United States Court. Another person thought it meant United States Circular.) Most of the students did not know that the “10” and “41” refer to titles of the code, what a “title” is, or how many there are. Most did not know that “2304” and “253” refer to sections. Very few people knew why the U.S.C. is a “code” or what that means. And even fewer people could accurately describe the content of the U.S.C.

What is the United States Code and what does it contain? In order to understand the answers to those questions, we have to know something about how our laws are enacted at the Federal level.

When both houses of Congress pass a bill, they send the “enrolled bill” to the President printed on “parchment or paper of suitable quality.” See 1 U.S.C. 107. The Constitution gives the President 10 days to sign it into law or veto it, not counting Sundays. If the President does nothing, the bill becomes law by default. (I won’t go into vetoes and “pocket vetoes, but you can look it up.)

Assuming that the President signs the bill into law, it is sent to the Office of the Federal Register within the National Archives and Records Administration, where it is given a public law number. (There are also private laws, but they have no bearing on this topic, so I won’t go into that.) A public law number contains the number of the Congress which enacted the law and the number of the law itself, e.g., Public Law (Pub.L. or P.L.) 111-23, the 23rd law enacted during the 111th Congress. That law is called the “Weapons Systems Reform Act of 2009,” which is its “popular name.”

From the Office of the Federal Register the law goes to the Government Printing Office, where it is published as a pamphlet called a “slip law.” That is the first publication of the new law.

At the end of each session of a Congress, the laws enacted during that session are published in book-form as a volume of the *United States Statutes at Large*, in which the laws appear in the order of their enactment. Title 1 U.S.C. 112 provides as follows concerning the *Statutes at Large*:

**QUOTE**

The United States Statutes at Large shall be legal evidence of laws, concurrent resolutions, treaties, international agreements other than treaties, proclamations by the President, and proposed or ratified amendments to the Constitution of the United States therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.

In short, the *Statutes at Large* are “positive law,” meaning that they are the law as enacted by Congress.

Now, here’s the problem with the *Statutes at Large*. Think about the Truth in Negotiations Act (TINA), which was enacted during the second session of the 87th Congress, signed into law on September 10, 1962, as Public Law 87-653, and published in Volume 76 of the *Statutes at Large* at page 528, cited 76 Stat. 528. (TINA is now implemented by FAR 15.403, 15.406-2, and 15.407-1, and by several FAR clauses.) The original law has been amended several times, and the law making each amendment appears in its own place in some volume of the *Statutes at Large*. If you want to find out what that law says today by searching through the *Statutes at Large* and then collating the original law and all of the amendments, you are going to have quite a job on your hands. You will have to work your way through several volumes, cutting and pasting in order to take the amendments into account. Who wants to do that? Hence, the *United States Code*, the U.S.C.

The purpose of the U.S.C. is to make legal life a little easier. The Office of the Law Revision Counsel of the U.S. House of Representatives “codifies” the general and permanent public laws enacted by Congress by cutting and pasting the laws together to form topical sets called “titles.” There are 50 titles in the U.S.C. The topical re-arrangement of existing laws eliminates the work of finding the laws in the *Statutes at Large* and collating the ones that apply in a given subject area. For example, the laws pertaining to the military are, for the most part, but not entirely, collected in Title 10 of the U.S.C., Armed Forces, and arranged into subject matter chapters and sections. Many, but not all, of the laws about Government contracts are collected in Title 41, Public Contracts. Many, but not all, of the laws about labor are collected in Title 29, Labor. And so on.

Not every law gets codified, only general and permanent laws. “General” means applicable to the public, not just to specific persons. “Permanent” means that the law continues in effect for an indefinite time. (However, some “permanent” laws have “sunset” provisions, which provide for their expiration at a specified point in time unless extended.) Appropriations are examples of laws that are not permanent. (However, appropriations laws often contain provisions that enact, amend, or repeal permanent laws.)

There is a problem, however, with codification. In order to cut and paste intelligibly, the Office of the Law Revision Counsel sometimes has to make minor changes in the text of the laws, which means that they no longer read as enacted by Congress and signed by the President, and they sometimes make mistakes. They do not intend to

change the meaning of any law, but even minor changes or errors could affect meaning. What if there is a conflict between the wording of the law in the *Statutes at Large* and the U.S.C.? See 1 U.S.C. 204(a), which provides in part as follows:

**QUOTE**

The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included... .

The U.S.C. is "prima facie" evidence of the law. According to *Black's Law Dictionary*, prima facie evidence is "Evidence that will establish a fact or sustain a judgment unless contradictory evidence is produced." Thus, language in the U.S.C. is subject to challenge by comparison with the language in the *Statutes at Large*, with the *Statutes at Large* taking precedence. But if Congress enacts a title into positive law, it repeals earlier versions of the laws and the language in the title becomes the law in fact and is no longer subject to challenge by comparison with the *Statutes at Large*. See the rest of 1 U.S.C. 204(a):

**QUOTE**

[W]henver titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.

See Office of the Law Revision Counsel, *Positive Law Codification in the United States Code*, which may be found at <http://uscode.house.gov/codification/Positive%20Law%20Codification.pdf>.

According to the Office of the Law Revision Counsel, the following titles have been enacted into positive law: 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 36, 37, 38, 39, 40, 44, 46, and 49. A bill pending before Congress, H.R. 1101, would enact Title 41, Public Contracts, into positive law. Projects are underway codify other laws and enact five new titles, which would raise the total to 55. The new titles would be:

51, National and Commercial Space Programs

52, Voting and Elections

53, Small Business

54, National Park System

55, Environment

The Government Printing Office publishes the U.S.C. every six years, which makes determination of its current content somewhat difficult. See Kelly, "Legal Research on the Internet: A Primer and an Update to the United States Code on the Web,"

*Arkansas Law Notes*, 1999, 1999 ALRN 27. However, two private publishers print their own editions—the United States Code Annotated (USCA.), published by West, and the United States Code Service (USCS), published by LexisNexis. The annotations in those additions are very helpful to legal researchers.

So that's the United States Code, a collection of 50 topical sets of the general and permanent laws of the United States. It is prima facie evidence of the law, unless enacted into positive law, in which case it is the law.

There is a very good and much more comprehensive discussion of this topic in an article by Mary Whisner in the Fall 2009 issue of *Law Library Journal*, 101 Law Libr. J. 545, entitled, "The United States Code, Prima Facie Evidence, and Positive Law." Another good article is Tress, "Lost Laws: What We Can't Find in the United States Code," in the Winter 2010 edition of *Golden Gate University Law Review*, 40 Golden Gate U. L. Rev. 129. Those are very much worth reading, and I recommend that all contracting officers do so.

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