

# **300,000 Ways to Become a Federal Criminal**

**How everything became a  
federal crime and how to fix it**

Mike Chase | @CrimeADay

# 300,000 Ways to Become a Federal Criminal

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- Can you spot the crime?
- What if I told you it was a violation of 16 C.F.R. § 1202.4(h)? (helpful, right?)
- Violations are punishable by up to 5 years in federal prison.

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## 16 C.F.R. § 1202.4

**A matchbook shall meet the following general requirements:**

“(h) A staple used as an assembly device for securing the cover and combs **shall be fully clinched** so that the ends are flattened or turned into the cover.”

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## 15 U.S.C. § 2068

“It shall be unlawful for any person to ... **sell** ... any consumer product ... that is not in conformity with an applicable consumer product safety rule under this chapter.”

## 15 U.S.C. § 2070

“Violation ... is punishable by imprisonment for not more than 5 years for a knowing and willful violation of that section.”

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PROHIBITS REGULATORY  
NONCOMPLIANCE

{ 15 U.S.C. § 2068



CRIMINALIZES REGULATORY  
NONCOMPLIANCE

{ 15 U.S.C. § 2070



REGULATES THE PRODUCT

{ 16 C.F.R. § 1202.4

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## **§ 2068. Prohibited acts**

### **(a) Designation**

It shall be unlawful for any person to—

(1) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which is not in conformity with an applicable consumer product safety standard under this chapter;

Consumer Protection Statute

# 300,000 Ways to Become a Federal Criminal

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## Chapter II—Consumer Product Safety Commission

§ 1202.2

### PART 1202—SAFETY STANDARD FOR MATCHBOOKS

Sec.  
1202.1 Scope and effective date.  
1202.2 Findings.  
1202.3 Definitions.  
1202.4 Matchbook general requirements.  
1202.5 Certification.  
1202.6 Marking.  
1202.7 Prohibited stockpiling.

Authority: Secs. 2, 3, 7, 9, 14, 16, and 19, Pub. L. 92-573, 90 Stat. 1212-17 (15 U.S.C. 2061, 2062, 2054, 2058, 2063, 2065, and 2068).

Source: 43 FR 53706, Nov. 17, 1978, unless otherwise noted.

#### § 1202.1 Scope and effective date.

(a) Scope. This part 1202, a consumer product safety standard, prescribes the safety requirements, including labeling requirements, for the matchbook. This part 1202 applies to all matchbooks manufactured in or imported into the United States after its effective date.

(b) Effective date. The effective date shall be May 4, 1978.

#### § 1202.2 Findings.\*

(a) Risk of injury. The Commission finds that unreasonable risks of injury from accidents are associated with matchbooks. These unreasonable risks, which this part 1202 is intended to reduce or eliminate, are:

(1) Burn injuries, sustained by children and others, including mentally or physically impaired persons, who play with or otherwise improperly use bookmatches.

\*The Commission's findings apply to the matchbook standard that it published on May 4, 1977 (42 FR 22654-70). On Mar. 31, 1978, the U.S. Court of Appeals for the First Circuit set aside portions of that standard. *In re D. Bean & Sons, Co. v. CPSC*, 574 F.2d 843. On Nov. 17, 1978, the Commission published a revised version of the standard which reflects the court's decision. However, the findings have not been revised and they are therefore not fully applicable to the revised matchbook requirements. For example, the revised standard does not address the unreasonable risk of injury of "burn injuries that have been sustained by persons from fires that have been set by the afterglow of extinguished bookmatches" (§ 1202.2(a)(6)) because the court set aside the afterglow performance requirement.

(2) Burn injuries sustained by persons who use bookmatches that fragment or have delayed ignition.

(3) Eye injuries sustained by persons who use bookmatches that fragment and cause particles from such matches to lodge in a person's eye.

(4) Burn injuries sustained by persons who use bookmatches that, when struck, ignite the remaining matches in the matchbook.

(5) Burn injuries sustained by persons from fires that have resulted from unexpected ignition of bookmatches with no deliberate action by the user.

(6) Burn injuries that have been sustained by persons from fires that have been set by the afterglow of extinguished bookmatches.

(b) Products subject to this standard. The products subject to this standard are those kinds of manufactured ignition devices known as matchbooks. The matchbook consists of a group of bookmatches joined together and fastened within a cover. Although matchbooks are commonly referred to as paper matches or paper-stem matches to distinguish them from individual stick matches such as wooden stem matches packaged in boxes, all matchbooks, regardless of the materials of manufacture of the covers or of the bookmatches fastened within, are subject to this standard.

(2) Matchbooks subject to this standard can be divided into two basic categories: Resale matchbooks and special reproduction matchbooks. Resale matchbooks can be subdivided into advertising and nonadvertising matchbooks. Nonadvertising matchbooks are generally sold by large chain stores, and constitute a small portion of the total resale matchbook volume. Resale matchbooks with advertising are generally given away by tobacco shops, drug stores, vending firms, and other mass distribution outlets. Special reproduction matchbooks, characterized by their distinctive and unique cover designs, are purchased and distributed for promotional purposes by hotels, restaurants, financial institutions, and other business enterprises, and are given free to users.

(3) The Commission finds that the standard will have no adverse effects on the utility that consumers derive from matchbooks. To the extent that injuries and property damage associated with the use of matchbooks is reduced or eliminated as a result of this standard, the utility of matchbooks as a source of fire will be increased.

(4) The Commission estimates that manufacturing costs will increase as a result of direct or indirect effect of this standard will be modest for the industry as a whole. Such increases will tend to be concentrated in one-time costs to complete changeover to reverse friction, and in costs to establish and implement testing programs and certification procedures.

(5) Because some 80-90 percent of the matchbooks produced annually are given free to consumers, there is not likely to be any direct cost impact on the consumer as a result of the standard. Some proportion of increased manufacturing costs will be passed on to the institutions and business enterprises that purchase matchbooks for promotional purposes. To the extent that increases in advertising and promotional costs may be reflected in higher prices for goods and services sold by these businesses, there may be indirect cost effects on consumers. If so, such impacts would likely be small, if not imperceptible.

(6) For the 12-30 percent of matchbooks that are purchased at retail by consumers, some proportion of any manufacturing cost increases may be passed on to the consumer. A resulting increase in retail prices for such matchbooks will be small, no more than a few cents per box of 50 matchbooks.

(7) The Commission finds that the standard will not have impacts of significant magnitude on the availability of matchbooks. Although some institutions and business enterprises may reduce their matchbook purchases or

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## Chapter II—Consumer Product Safety Commission

§ 1202.4

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### Title 16—Commercial Practices

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crease in the total number of matches to U.S. consumers.

(1) The Commission er means of achievement of the standard use of its developer more elaborate and considered and the potential for sets on competition result in disruptions manufacturing and more splints.

(2) "Broken bridge" means a bridge that has become separated.

(3) "Caddy" means a package of two or more matchbooks wrapped or boxed together at a production plant.

(4) "Comb" means a piece of wood, paper, or other suitable material that has been formed into splints, and that remain joined at their base, and that are designed to have matchheads attached to their tips.

(5) "Cover" means the paperboard or other suitable material that is wrapped around and fastened to the comb(s).

(6) "Friction" means the dried chemical mixture on the matchbook cover used to ignite the bookmatch.

(7) "Match" means a single splint with matchhead attached.

(8) "Matchbook" means one or more combs with matchheads attached and a cover that is wrapped around and fastened to those combs.

(9) "Matchhead" means the dried chemical mixture on the end of a splint.

(10) "Splint" means the support for the matchhead or that portion normally held when using the bookmatch.

#### § 1202.4 Matchbook general requirements.

A matchbook shall meet the following general requirements:

(a) The friction shall be located on the outside back cover near the bottom of the matchbook.

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### Title 16—Commercial Practices

the cover shall remain closed external force. friction material shall be located inside of the cover where contact with the matchheads is during ordinary use.

(b) "Bridge" means the matchhead material held in common by two or more splints.

(c) "Broken bridge" means a bridge that has become separated.

(d) "Caddy" means a package of two or more matchbooks wrapped or boxed together at a production plant.

(e) "Comb" means a piece of wood, paper, or other suitable material that has been formed into splints, and that remain joined at their base, and that are designed to have matchheads attached to their tips.

(f) "Cover" means the paperboard or other suitable material that is wrapped around and fastened to the comb(s).

(g) "Friction" means the dried chemical mixture on the matchbook cover used to ignite the bookmatch.

(h) "Match" means a single splint with matchhead attached.

(i) "Matchbook" means one or more combs with matchheads attached and a cover that is wrapped around and fastened to those combs.

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#### § 1202.4 Matchbook general requirements.

A matchbook shall meet the following general requirements:

(a) The friction shall be located on the outside back cover near the bottom of the matchbook.

fective date. A manufacturer or importer is in violation of Section 9(d)(2) and of this § 1202.7 if it fails to comply with the following:

(a) Definitions. (1) "Base period" means, at the option of the manufacturer or importer concerned, any period of 365 consecutive days beginning on or after January 1, 1973, and ending on or before December 31, 1975.

(2) "Rate of production (or importation)" means the total number of matchbooks manufactured (or imported) during a stated time period. In determining whether a matchbook was manufactured during a stated time period, the date on which the cover and comb were assembled to form a matchbook shall be used. In the event that a manufacturer currently operates a matchbook manufacturing plant that it did not operate during the base period, or that it did not operate for an entire base period, that manufacturer shall use, as the rate of production during the base period for that plant, either (i) the average daily rate of production (including nonproduction days such as Sundays, holidays, and vacations) for the part of the base period he did operate that plant, multiplied by 365 or (ii) the rate of production during the base period of his most nearly similar matchbook manufacturing plant.

(b) Prohibited act. Manufacturers and importers of matchbooks, as these products are defined in § 1202.3(i), shall not manufacture or import matchbooks that do not comply with the requirements of this part 1202 between the date that this part 1202 is issued and the date that it becomes effective at a rate that is greater than the rate of production or importation during the base period plus 15 percent of that rate.

(c) Documentation. Manufacturers and importers shall maintain, for a period of six (6) months after the effective date specified in § 1202.1(b), appropriate documentation to be able to substantiate to the Commission that they are in compliance with the provisions of this section.

(d) Certification. Certification shall be in accordance with 14(a) of the Consumer Safety Act (15 U.S.C. 2063(a)), his provision, manufacturers (or importers) of products subject to safety standards must certify that their products conform to the standard, based on either a test of product or on a reasonable test.

(e) Marking. Marking. A manufacturer's or private labeler's name and city or a symbol shall identify the name and city appear on the matchbook. In every private labeler must label the matchbook with a code which enables the manufacturer or importer to identify, if requested, the manufacturer of the product.

(f) Shipping. Boxes or cartons in which two or more matchbooks are shipped shall be marked "For safety, store in a cool, dry place."

(g) Prohibited stockpiling. Prohibited stockpiling. Section 9(d)(2) of the Consumer Safety Act (15 U.S.C. 2063(a)) authorizes the Commission to prohibit manufacturers and importers from stockpiling a product subject to a consumer product safety standard after its date of issuance and its effective date.

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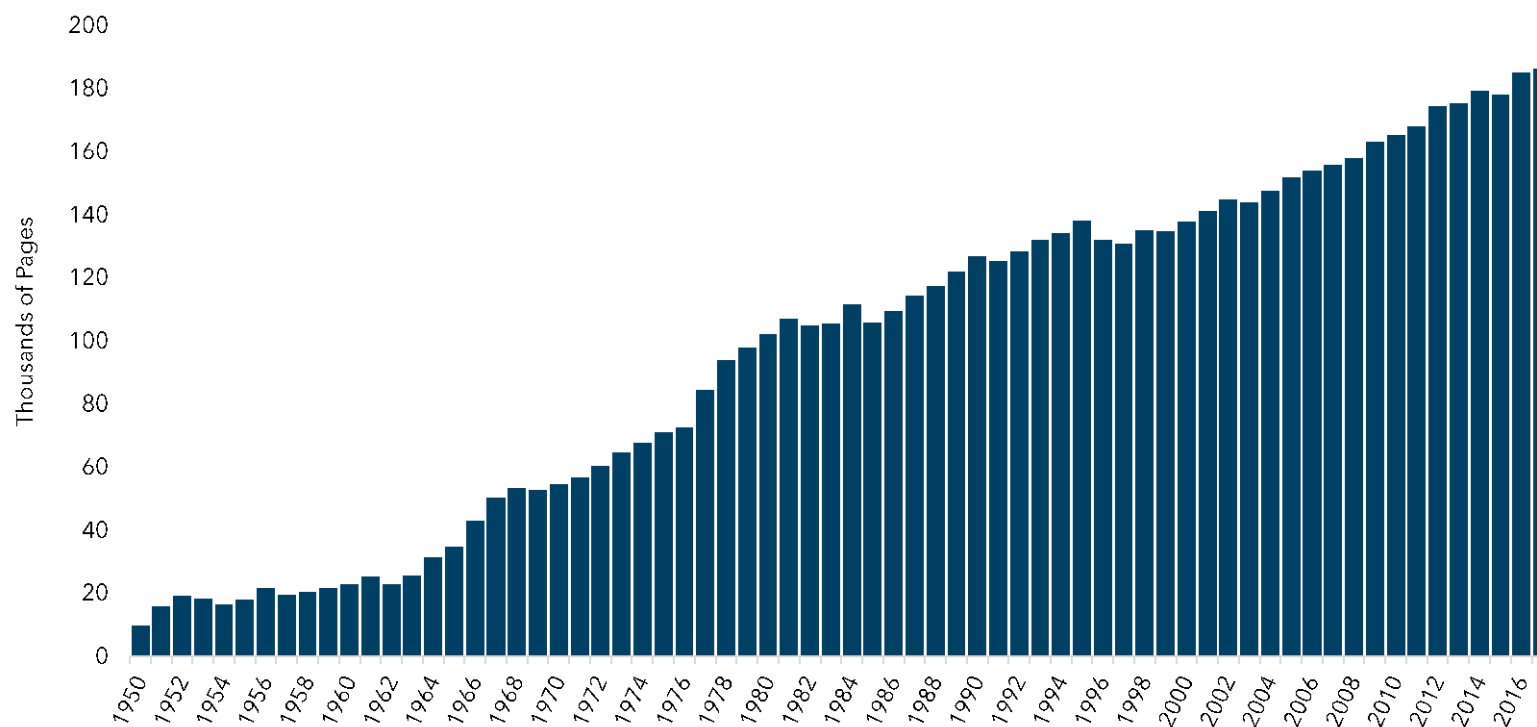
(bq) Certification. Certification shall be in accordance with 14(a) of the Consumer Safety Act (15 U.S.C. 2063(a)), his provision, manufacturers (or importers) of products subject to safety standards must certify that their products conform to the standard, based on either a test of product or on a reasonable test.

(br) Marking. Marking. A manufacturer's or private labeler's name and city or a symbol shall identify the name and city appear on the matchbook. In every private labeler must label the matchbook with a code which enables the manufacturer or importer to identify, if requested, the manufacturer of the product.

# 300,000 Ways to Become a Federal Criminal

Mike Chase | @CrimeADay

Total Pages Published in the Code of Federal Regulations  
(1950-2017)



Regulatory  
Studies Center  
THE GEORGE WASHINGTON UNIVERSITY

Source: [Federal Register Statistics](#)

Updated: January 30, 2019

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@CrimeADay  
Four Year Update

1,461 federal crimes tweeted since 2014

JULY 2014  
JULY 2018

HALFWAY  
(APRIL 2431)

COMPLETE\*  
(FEBRUARY 2848)



Progress Toward Tweeting Every Federal Crime



PROGRESS INDICATED IN GREEN

\*based on estimates of more than 4,450 federal criminal statutes and 300,000 regulations punishable by criminal penalties.

# 300,000 Ways to Become a Federal Criminal

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**A Crime a Day**

@CrimeADay



21 U.S.C. §§331(a), 333, 343(g) & 21 C.F.R. §145.135(a) make it a federal crime to sell canned fruit cocktail with less than 2% cherries.



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21 USC §352, 333 & 21 CFR §333.250(d)(1) make it a federal crime to sell athlete's foot cream without telling users to "Pay special attention to spaces between the toes."



**A Crime a Day**

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42 USC §§4909(a)(1), 4910 & 40 CFR §211.106(c) make it a federal crime to sell ear plugs if their noise reduction rating isn't written in Helvetica Medium.



**A Crime a Day**

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33 USC §1232(b), 33 CFR §401.101 & §401.94(a) make it a federal crime to violate the St. Lawrence Seaway regulations by not having a copy of the St. Lawrence Seaway regulations while you pass through the St. Lawrence Seaway.

# 300,000 Ways to Become a Federal Criminal

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## How did we get here?

### **Art. I, Sec. I of the Constitution:**

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

## How did we get here?

### U.S. Constitution Identifies 3 Crimes:

- Piracy
- Counterfeiting
- Treason

## How did we get here?

### Crimes Act of 1790:

- Enumerates about 20 crimes
- Still mostly pirate stuff, counterfeiting, and treason

## How did we get here?

**Congress starts regulating weirder stuff:**

- An Act Defining Butter
- Out-of-state dentures
- Bathing in hot springs without a doctor's note

# 300,000 Ways to Become a Federal Criminal

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## PROHIBIT INTERSTATE COMMERCE OF DENTURES IN VIOLATION OF STATE DENTAL LAWS

### HEARING

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON  
INTERSTATE AND FOREIGN COMMERCE  
HOUSE OF REPRESENTATIVES

SEVENTY-SEVENTH CONGRESS  
SECOND SESSION

## NATIONAL ORGAN TRANSPLANT ACT

S. HRG. 99-672

## MAILING OF DANGEROUS MARTIAL ARTS WEAPONS

## HANDLING OF PRODUCE BY COMMISSION MERCHANTS

85TH CONGRESS }  
*2d Session*

SENATE

{ REPORT  
No. 1980

SWITCHBLADE KNIVES

\_\_\_\_\_  
JULY 28, 1958.—Ordered to be printed  
\_\_\_\_\_

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## FALSE TEETH

from  
WORLD'S LARGEST DENTAL PLATE MAKERS

SEND  
NO  
MONEY!



TRANSPARENT  
ROOF



Formed By a Professional Model

### Made-to-Measure DENTAL PLATES

..... Direct from our Laboratory to you!

We make to measure for you INDIVIDUALLY — BY MAIL  
Dental Plates for men and women — from an impression  
of your mouth taken by you at your home. Thousands all  
over the country wear teeth we made for them by mail.

—BEFORE— —AFTER—



**ELsie BOLAND OF NORTON, KANSAS,**  
writes: "Enclosed find two pictures. One shows  
how I looked before I got my teeth; the other  
one afterwards. Your teeth are beautiful."

This is one of thousands of unsolicited testi-  
monials in our files. We don't imply that you  
will obtain the same results. What is IMPOR-  
TANT to you is WE GUARANTEE YOUR  
MONEY BACK if you are not 100% SATISFIED!

**FREE** IMPRESSION MATERIAL, Cata-  
log with our NEW LOW PRICES  
and information. DON'T PUT  
THIS OFF. Do it today! Clip Coupon or write.  
A one-cent POSTCARD is all that's necessary.  
We Repair OLD PLATES — 48-Hour Service.

**UNITED STATES DENTAL CO.**  
Dept. 5-52, 1555 Milwaukee Ave., Chicago, Ill.



Formed By a Professional Model

### Made-to-Measure DENTAL PLATES

..... Direct from our Laboratory to you!

We make to measure for you INDIVIDUALLY — BY MAIL  
Dental Plates for men and women — from an impression  
of your mouth taken by you at your home. Thousands all  
over the country wear teeth we made for them by mail.

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**UNITED STATES DENTAL CO.**  
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### At Rock-Bottom Prices!

If you find out what others have paid  
for theirs, you will be astounded when  
you SEE HOW LITTLE OURS WILL  
COST YOU. By reading our catalog you  
can learn how to SAVE HALF or MORE  
on DENTAL PLATES FOR YOURSELF.

Monthly Payments Possible!

### ON 60 DAYS' TRIAL

Make us prove every word we say—Wear  
our teeth on trial for as long as 60 days.  
Then, if you are not perfectly satisfied  
with them, they will not cost you a  
cent. We take your word. Isn't that fair?

### MONEY-BACK GUARANTEE OF SATISFACTION

We take this risk. If you are not completely satisfied with the  
teeth we make for you, then, any time within 60 days we will  
gladly refund every cent you paid us for them. You're the judge.

**A DENTIST Supervises The Making OF EACH Dental Plate!**  
**CLIP AND MAIL COUPON NOW!**

### FREE UNITED STATES DENTAL CO., Dept. 5-52, 1555 Milwaukee Ave., Chicago, Ill.

Send without obligation FREE impression material, catalog  
and information.

NAME .....  
ADDRESS .....  
CITY ..... STATE .....



TRANSPARENT  
ROOF



TRANSPARENT  
ROOF

NEWEST  
STYLES

NOOTLESS

PARTIAL

**TRY** Our Dentures set  
with really white  
porcelain teeth. High  
grade materials and expert  
workmanship to give long ser-  
vice. We make ALL STYLES

# 300,000 Ways to Become a Federal Criminal

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Dr. MEAD. The American Dental Association has been trying for a number of years, to stop this pernicious practice. It has been going on for about 10 years, and there are now 10 companies doing business in the State of Illinois. Without question there are on the

## An early lobbying effort to use federal criminal law

- Concern about competition
- No criminal law being broken
- Use of federal Postal jurisdiction to stamp out competitor

Today, there is still a federal criminal statute:

## CHAPTER 89—PROFESSIONS AND OCCUPATIONS

Sec.

1821.       Transportation of dentures.

### **§ 1821. Transportation of dentures**

Whoever transports by mail or otherwise to or within the District of Columbia or any Posses-

# 300,000 Ways to Become a Federal Criminal

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**Then Congress started writing statutes like this:**

“...if any manufacturer of oleomargarine, any dealer therein or any importer or exporter thereof shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, **any of the things required by law** in the carrying on or conducting of his business, ... he shall pay a penalty of one thousand dollars.”

**And in 1896 a margarine dealer was sentenced to prison for failing to write his name and address on margarine he sold.**

## Migratory Bird Treaty Act (16 U.S.C. § 707):

“(a) Except as otherwise provided in this section, any person, association, partnership, or corporation who shall violate any provisions of said conventions or of this subchapter, **or who shall violate or fail to comply with any regulation made pursuant to this subchapter** shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$15,000 or be imprisoned not more than six months, or both.”

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**Department of Justice**

Office of Public Affairs

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FOR IMMEDIATE RELEASE

Friday, November 22, 2013

**Utility Company Sentenced in Wyoming for Killing Protected Birds at Wind Projects**

# 300,000 Ways to Become a Federal Criminal

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52

HOW TO BECOME A FEDERAL CRIMINAL

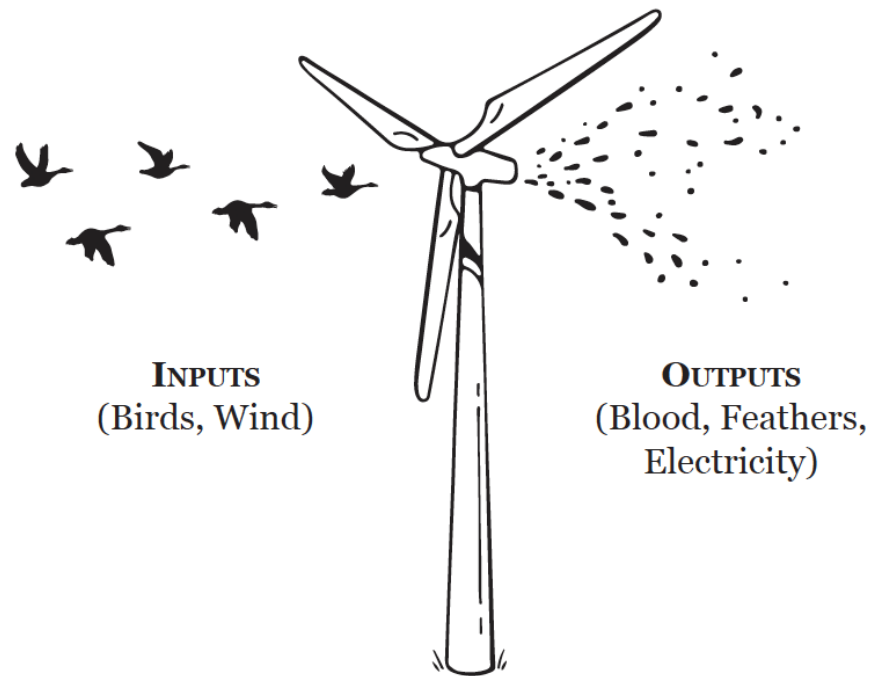
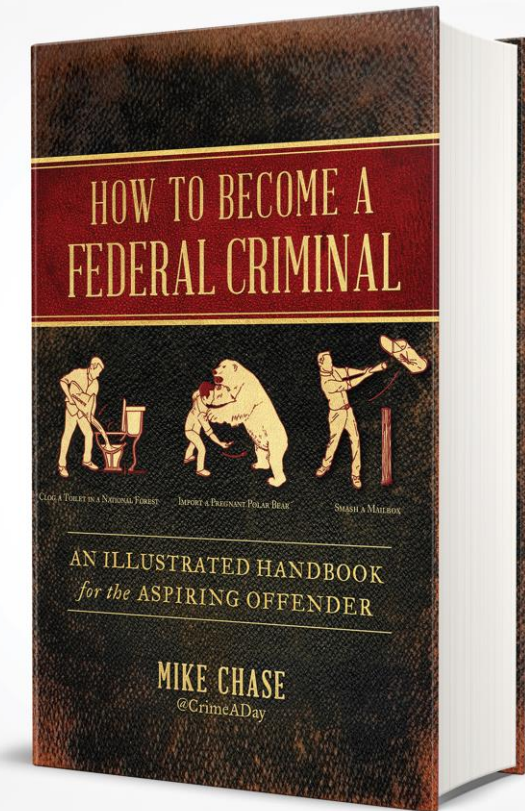


Fig. 2-2. A Bird Blender.



*How to Become a Federal Criminal* (Atria/Simon & Schuster 2019)

## Broader problem

- No intent requirement
- Accidents are technically chargeable
- Conflicting executive branch positions on enforcement
- Language of the law defies common meaning (e.g., “migratory” birds need not migrate)

## Proposed solutions:

- Repeal antiquated, vague, and unconstitutional statutes
- Default *mens rea*
- Less agency deference in regulatory crime cases

# 300,000 Ways to Become a Federal Criminal

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116TH CONGRESS  
1ST SESSION

## H. R. 498

IN THE SENATE OF THE UNITED STATES  
JANUARY 23 (legislative day, JANUARY 22), 2019

Received; read twice and referred to the Committee on the Judiciary

## AN ACT

To eliminate unused sections of the United States Code, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the

### SEC. 2. REPEALS.

The following provisions of t

- (1) Section 46 relating to
- (2) Section 511A relating to unauthorized application of theft prevention decal or device.
- (3) Section 707 relating to 4-H club emblem fraudulently used.
- (4) Section 708 relating to Swiss Confederation coat of arms.
- (5) Section 711 relating to “Smokey Bear” character or name.
- (6) Section 711a relating to “Woodsy Owl” character, name, or slogan.
- (7) Section 715 relating to “The Golden Eagle Insignia”.
- (8) Chapter 89—Professions and Occupations.
- (9) Section 1921 relating to receiving Federal employees’ compensation after marriage.

## (8) Chapter 89—Professions and Occupations.

Periodic efforts to “clean up the code” and repeal antiquated laws.

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115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

## H. R. 6720

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 2018

Received; read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

## AN ACT

To prohibit the slaughter of dogs and cats for human consumption, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Dog and Cat Meat Trade Prohibition Act of 2018”.

### SEC. 2. PROHIBITION ON SLAUGHTER OF DOGS AND CATS FOR HUMAN CONSUMPTION.

(a) IN GENERAL.—Except as provided in subsection (c), no person may—

(1) knowingly slaughter a dog or cat for human consumption; or

(2) knowingly ship, transport, move, deliver, receive, possess, purchase, sell, or donate—

But the code continues to grow at the same time.

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Law enforcement has even told Congress “we don’t want all these laws.”

On April 20, 1978, during the appearance of William H. Webster, Director of the FBI, before the United States Senate Committee on the Judiciary, Senator Edward Kennedy discussed the issue of the numerous statutes which set forth violations that are investigated by the FBI. Senator Kennedy requested a list of statutes that could perhaps be dropped from the investigative jurisdiction of the FBI.

Unauthorized Use of the Smokey Bear Symbol, Unlawful Reproduction or Use of the Character “Woodsy Owl” or Unauthorized Manufacture, Reproduction or Use of the Character “Johnny Horizon” (18 U.S.C. 711–714).

Illegal Manufacture, Use, Possession, or Sale of Emblems and Insignias, to Include Badges or Medals of (1) Veterans Organizations (18 U.S.C. 705), (2) 4-H Emblems (18 U.S.C. 707), (3) Merchant Marine and Seaman Decorations (46 U.S.C. 249), (4) Gold Star Lapel Buttons (36 U.S.C. 180).

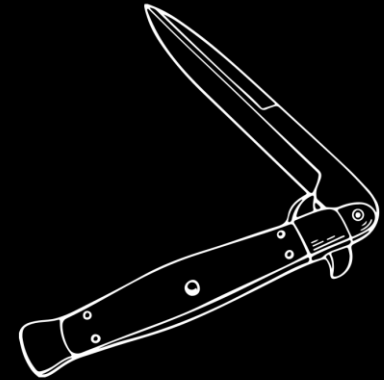
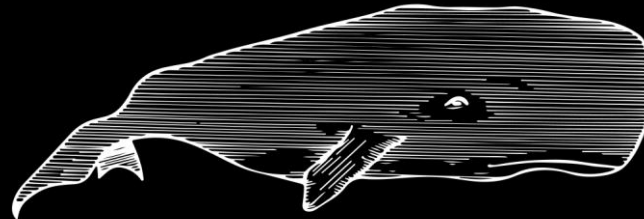
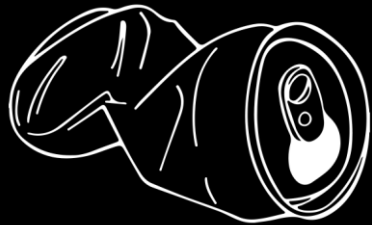
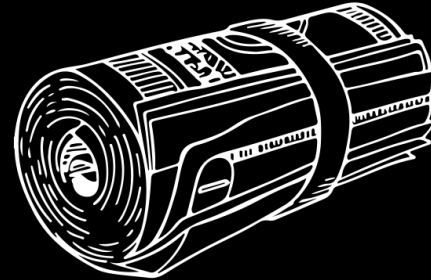
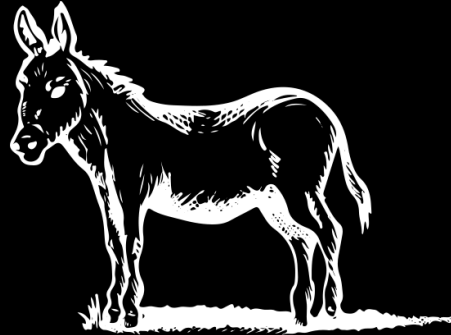
Misuse of the name Peace Corps (22 U.S.C. 2518).

Hearings on the FBI Statutory Charter (1978)

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- Birds of prey.
- Bootleg liquor.
- Ninja weapons.
- Loose margarine.
- Explosive kites.
- Drunk bicyclists.
- Lonely llamas.
- Wild donkeys.
- A cartoon owl.
- Fake mailmen.
- Runny ketchup.
- Naked sailors.
- Scorpions.
- Clogged toilets.
- Pregnant polar bears.
- Subliminal messages.
- Contraband cheese.
- Pirates.

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