

Bureau Rulings

Subpart C – FIREARMS

ATF Ruling 2002–5

27 CFR 179.105: TRANSFER AND POSSESSION OF MACHINEGUNS

Applications to transfer two (2) machineguns of a particular model to a Federal firearms licensee as sales samples will be approved if documentation shows necessity for demonstration to government agencies.

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received inquiries from dealers in machineguns concerning the justification necessary to obtain more than one machinegun of a particular model as dealer sales samples. Specifically, the inquiries are from machinegun dealers who demonstrate machineguns to large police departments and Special Weapons and Tactics (SWAT) teams, which requires the firing of thousands of rounds of ammunition during a single demonstration. Section 922(o) of Title 18, United States Code, makes it unlawful for any person to transfer or possess a machinegun, except a transfer to or by or under the authority of the United States or any department or agency thereof or a State or a department, agency, or political subdivision of; or any lawful transfer or lawful possession of a machinegun lawfully possessed before May 19, 1986.

The regulations in 27 CFR 179.105(d) provide that applications to register and transfer a machinegun manufactured or imported on or after May 19, 1986, to dealers registered under the National Firearms Act (NFA), 26 U.S.C. Chapter 53, will be approved if three conditions are met. The conditions required to be established include (1) a showing of the expected government customers who would require a demonstration of the weapon; (2) information as to the availability of the machinegun to fill subsequent orders; and (3) letters from government entities expressing a need for a particular model or interest in seeing a demonstration of a particular weapon. The regulation further provides that applications to transfer more than one machinegun of a particular model must also establish the dealer's need for the quantity of samples sought to be transferred.

The dealer sales sample regulation in section 179.105(d) is a narrow exception to the general prohibition on possession of post-1986 machineguns imposed by section 922(o). It requires that dealers submit letters of interest from law enforcement agencies to ensure that dealers possess post-1986 machineguns only for the purposes permitted by law, i.e., for sale or potential sale to government agencies.

Qualified dealers in machineguns often demonstrate weapons to all officers of the department, requiring the machinegun to fire thousands of rounds of ammunition during a single demonstration. In the case of new model machineguns, a department may wish to have thousands of rounds fired from the weapon before they are fully satisfied of its reliability. ATF is aware that after firing hundreds of rounds a machinegun often gets too hot to safely handle, resulting in the dealer's inability to demonstrate the weapon until it cools. In addition, it is not uncommon for machineguns to jam or misfeed ammunition after a large quantity of ammunition has been fired. Accordingly, dealers who demonstrate machineguns to departments with a large number of officers have asked that ATF approve the transfer of two (2) machineguns of each model as dealer sales samples.

The purpose of the dealer sales sample provision is to permit properly qualified dealers to demonstrate and sell machineguns to law enforcement agencies. Neither the law nor the implementing regulations were intended to impose unnecessary obstacles to police departments and other law enforcement agencies in obtaining the weapons they need to carry out their duties. Accordingly, if a dealer can provide documentation that the dealer needs to demonstrate a particular model of machinegun to an entire police department or SWAT team, ATF will approve the transfer of two (2) machineguns of that model to the dealer as sales samples.

This ruling should not be interpreted to imply that under no circumstances may a Federal firearms licensee (FFL) receive more than two (2) machineguns

as sales samples. Consistent with past practice, an FFL who can show a bona fide reason as to why they need more than two (2) machineguns may be able to receive more than two (2) if the request is accompanied by specific documentation.

Held, applications to transfer two (2) machineguns of a particular model to a Federal firearms licensee as sales samples will be approved if the dealer provides documentation that the dealer needs to demonstrate the machinegun to all the officers of a police department or the department's SWAT team or special operations team. An FFL who offers other bona fide reasons for their need for two (2) or more machineguns may get more than two (2) with specific documentation.

Date signed: September 6, 2002.

Subpart C – EXPLOSIVES

ATF Ruling 2002–3

18 U.S.C. 842(j): STORAGE OF EXPLOSIVES

27 CFR 55.208(b)(1), 55.210(b)(1), and 55.211(b)(1): INDOOR STORAGE OF EXPLOSIVES IN A RESIDENCE OR DWELLING

ATF will approve variances to store explosives in a residence or dwelling only upon certain conditions including, but not limited to, receipt of a certification of compliance with State and local law, and documentation that local fire safety officials have received a copy of the certification.

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received questions concerning indoor storage of explosives in a residence or dwelling and whether such storage must comply with State or local law.

Section 842(j) of 18 U.S.C. states: "It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary."

The regulations in 27 CFR 55.208(b)(1), 55.210(b)(1), and 55.211(b)(1) specify that no indoor magazine is to be located in a residence or dwelling. Section 55.22 specifies that the Director may allow alternate methods or procedures in lieu of a method or procedure specifically prescribed in the regulations. Specifically, section 55.22(a)(3)

provides that such "variances" are permissible only in certain circumstances, including where "[t]he alternate method or procedure will not be contrary to any provision of law and will not * * * hinder the effective administration of this part."

ATF has been advised that certain variances previously approved for storage of explosives in residences or dwellings are in violation of State or local zoning law. ATF believes it is important to ensure that approval of variances is in compliance with all State and local provisions.

To obtain a variance for indoor storage of explosives in a residence or dwelling, ATF has determined that a person must submit to ATF a certification signed under penalty of perjury along with the request for the variance. The certification must:

- (1) State that the proposed alternative storage method will comply with all applicable State and local law;
- (2) Provide the name, title, address, and phone number of the authority having jurisdiction for fire safety of the locality in which the explosive materials are being stored; and,
- (3) Demonstrate that the person has mailed or delivered the certification to the authority identified in (2).

When required by the Director, such persons must furnish other documentation as may be necessary to

determine whether a variance should be approved.

Held, ATF will approve variances to store explosives in a residence or dwelling only upon certain conditions including, but not limited to, receipt of a certification of compliance with State and local law, and documentation that local fire safety officials have received a copy of the certification.

Date signed: August 23, 2002.

ATF Ruling 2002-4

18 U.S.C. 842(j): STORAGE OF EXPLOSIVES

27 CFR 55.208(b)(1), 55.210(b)(1), and 55.211(b)(1): INDOOR STORAGE OF EXPLOSIVES IN BUSINESS PREMISES DIRECTLY ADJACENT TO A RESIDENCE OR DWELLING

ATF requires approval of variances for indoor storage of explosives in business premises directly adjacent to a residence or dwelling.

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received questions concerning indoor storage of explosives in business premises directly adjacent to a residence or dwelling.

Section 842(j) of 18 U.S.C. states: "It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary."

The regulations in 27 CFR 55.208(b)(1), 55.210(b)(1), and 55.211(b)(1) specify that no indoor magazine is to be located in a residence or dwelling. Section 55.22 specifies that the Director may allow alternate methods or procedures in lieu of a method or procedure specifically prescribed in the regulations. Specifically, section 55.22(a)(3) provides that such "variances" are permissible only in certain circumstances, including where "[t]he alternate method or procedure will not be contrary to any provision of law and will not . . . hinder the effective administration of this part."

ATF has been asked whether businesses that are directly adjacent to living quarters may lawfully store explosive materials in the business premises. The issue presented is whether the premises amount to a "residence or dwelling" within the meaning of the regulations cited above.

Even where the business premises are segregable from the living quarters by the existence of a door or a common wall, the business premises retain their character as a residence or dwelling. Accordingly, indoor storage of explosives in such premises is generally prohibited and can be allowed only pursuant to an approved variance.

Held, ATF requires approval of variances for indoor storage of explosives in business premises directly adjacent to a residence or dwelling. ATF may approve such variances upon receipt of all appropriate certification and other documentation as may be requested.

Date signed: August 23, 2002.