

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.

ATF Rul. 2002-5

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

