

PROPOSED AMENDMENT: NUMBER OF FIREARMS

Synopsis of Proposed Amendment: *This proposed amendment presents two options for implementing the recommendation of the Bureau of Alcohol, Tobacco and Firearms (ATF) to increase the penalties in §2K2.1 (Unlawful Receipt, Possession or Transportation of Firearms or Ammunition) for offenses involving more than 100 firearms. See letter to John Steer from James E. Johnson, Under Secretary (Enforcement), dated November 18, 1998 (docket item 99-016); letter to John Steer from John W. McGaw, Director (docket item 99-018). (Copies of letters follow the proposed amendment.)*

Option 1 implements ATF's specific request to amend the firearms table in §2K2.1 to provide an additional one-level increase for offenses that involve 100-199 firearms, and an additional two-level increase for offenses that involve more than 200 firearms. ATF reasons that these increases are needed to provide adequate punishment in cases that involve large numbers of firearms. Under the current table, a defendant who trafficked in 200 firearms receives the same six-level enhancement as a defendant who trafficked in 50 firearms. According to Under Secretary Johnson's letter, "from 1995 through 1997, nearly a quarter of all defendants sentenced under §2K2.1 for trafficking more than 50 firearms received sentences of less than one year, or no term of imprisonment whatsoever."

Additionally, ATF considers the encouraged upward departure in §2K2.1, Application Note 15, regarding offenses that involve significantly more than 50 firearms, to be inadequate to address the gravity of such offenses because upward departures occur infrequently. See Director McGaw's letter. According to ATF, the recommended increases to the firearms table will more adequately reflect the seriousness and threat to public safety created by offenses that involve large numbers of firearms.

Option 1 makes these specific changes recommended by ATF, including a conforming change to Application Note 16 regarding upward departures.

Option 2 also implements ATF's request but does so by amending the table to provide increases of two level increments. Compressing the table in this manner has the benefit of providing a wider range for the number of firearms, thereby diminishing some of the fact-finding required to determine how many firearms were involved in the offense.

Proposed Amendment:

Option 1: ATF Proposal

§2K2.1. Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition

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(b) Specific Offense Characteristics

(1) If the offense involved three or more firearms, increase as follows:

	<u>Number of Firearms</u>	<u>Increase in Level</u>
(A)	3-4	add 1
(B)	5-7	add 2
(C)	8-12	add 3
(D)	13-24	add 4
(E)	25-49	add 5
(F)	50 or more	add 6
(G)	100-199	add 7
(H)	200 or more	add 8

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Commentary

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Application Notes:

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16. An upward departure may be warranted in any of the following circumstances: (1) the number of firearms significantly exceeded fifty; (2) the offense involved multiple National Firearms Act weapons (e.g., machineguns, destructive devices), military type assault rifles, non-detectable ("plastic") firearms (defined at 18 U.S.C. § 922(p)); (3) the offense involved large quantities of armor-piercing ammunition (defined at 18 U.S.C. § 921(a)(17)(B)); or (4) the offense posed a substantial risk of death or bodily injury to multiple individuals.

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Option 2: Two-level increments

§2K2.1. Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition

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(b) Specific Offense Characteristics

(1) If the offense involved three or more firearms, increase as follows:

	<u>Number of Firearms</u>	<u>Increase in Level</u>
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(A)	3-4	add 1
(B)	5-7	add 2
(C)	8-12	add 3
(D)	13-24	add 4
(E)	25-49	add 5
(F)	50 or more	add 6.
(A)	3-7	add 2
(B)	8-24	add 4
(C)	25-99	add 6
(D)	100 or more	add 8.

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Commentary

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Application Notes:

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16. *An upward departure may be warranted in any of the following circumstances: (1) the number of firearms significantly exceeded ~~fifty~~100; (2) the offense involved multiple National Firearms Act weapons (e.g., machineguns, destructive devices), military type assault rifles, non-detectable ("plastic") firearms (defined at 18 U.S.C. § 922(p)); (3) the offense involved large quantities of armor-piercing ammunition (defined at 18 U.S.C. § 921(a)(17)(B)); or (4) the offense posed a substantial risk of death or bodily injury to multiple individuals.*