



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Firearms Technology Industry Services Branch

244 Needy Road, Suite 1600
Martinsburg, WV
www.atf.gov

907010: DAS
3311/317284

November 23, 2021

Mr. Mark Barnes
1775 I Street NW
Suite 1150
Washington, DC 20006

Dear Mr. Barnes:

This refers to your correspondence, on behalf of your client Axon Enterprise, Inc., to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Industry Services Branch (FTISB), which accompanied your submitted “conducted electrical weapon” identified as the “TASER 8.” Specifically, you requested an evaluation and classification under the Gun Control Act of 1968 (GCA), the National Firearms Act of 1934 (NFA), and the permanent import provisions of the Arms Export Control Act (AECA).

In classification letter #314668, dated February 1, 2021, FTISB classified an earlier sample of the TASER 8 as a “**firearm**” and a “**pistol**” under the GCA, and as an “**any other weapon**” under the NFA. We note that in your correspondence dated July 19, 2021, accompanying the current sample, you concur with the GCA classification in that correspondence, stating that “[i]t is our belief that the TASER 8 is a firearm and a handgun as defined at 18 U.S.C. §§ 921(a)(3)(A) and 921(a)(29) but is not a firearm as defined and controlled by the NFA at 26 U.S.C. § 5845(a).” Although our analysis on these points is contained in the earlier classification, you requested “a definitive classification” of the current TASER 8 prototype, and we again provide this analysis below. Indeed, except for the specific design change to the current TASER 8 prototype, this classification letter should be interpreted as consistent with letter #314668.

Background:

The Gun Control Act of 1968 (GCA), 18 U.S.C. § 921(a)(3), defines the term “**firearm**” to include: “... (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; ... ”

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Although not defined in the statute, Federal Courts have opined on the meaning of “**weapon**.” *Bond v. United States*, 572 U.S. 844 (2014) (“More to the point, the use of something as a ‘weapon’ typically connotes ‘[a]n instrument of offensive or defensive combat,’ Webster’s Third New International Dictionary 2589 (2002), or ‘[a]n instrument of attack or defense in combat, as a gun, missile, or sword,’ American Heritage Dictionary 2022 (3d ed. 1992).” Indeed, Tasers are considered “weapons.” *Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016) (per curiam) (“stun guns” are weapons and possession is protected by the Second Amendment). Additionally, as stated in our earlier TASER 8 classification letter, ATF has previously classified Tasers and has published Rulings related to these weapons. See ATF Rulings 76-6 and 80-20.

The GCA, 18 U.S.C. § 921(a)(17)(A), defines “**ammunition**” to mean: “...*ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm...*” In addition, although not defined in the statute, “[a] **primer** contains a pressure sensitive compound that explodes when the primer is struck by the firing pin or striker.” *Modern Muzzleloading v. Magaw*, 18 F. Supp. 2d 29 (D.D.C. 1998) (in which ATF distinguished primers and “percussion caps” in that primers provide hotter and better ignition and contain more explosive material than percussion caps (citing United States Patent No. 5, 644, 861, at 1)).

The GCA, 18 U.S.C. § 921(a)(29)(A), defines “**handgun**” to mean: “... *a firearm which has a short stock and is designed to be held and fired by the use of a single hand...*”

27 CFR § 478.11 defines the term “**firearm frame or receiver**” to mean: “*that part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.*”

27 CFR § 478.11 and § 479.11 both define the term “**pistol**” as: “*a weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when held in one hand, and having (a) a chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s); and (b) a short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore(s).*”

The National Firearms Act of 1934 (NFA), 26 U.S.C. § 5845(a), defines the term “**firearm**” to include: “...*(5) any other weapon, as defined in subsection (e)...*”

The NFA, 26 U.S.C. § 5845(e), defines the term “**any other weapon**” (AOW) in part to mean: “...*any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive....Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition...*”

With respect to markings, the GCA, 18 U.S.C. § 923(i) states: “...*Licensed importers and licensed manufacturers shall identify by means of a serial number engraved or cast on the receiver or frame of the weapon, in such a manner as the Attorney General shall by regulations prescribe, each firearm imported or manufactured by such importer or manufacturer....*”

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Further, please note that 27 CFR § 478.92 states:

- (1) *You as a licensed manufacturer or licensed importer of firearms, must legibly identify each firearm manufactured or imported as follows:*
 - (i) *By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof an individual serial number....*
 - (ii) *By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame, receiver, or barrel thereof certain additional information....*
- (2) *Firearm frames or receivers. A firearm frame or receiver that is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by you must be identified as required by this section.*

Also, the Arms Export Control Act (AECA), 27 CFR § 447.11, defines “**defense articles**” as: “...Any item designated in § 447.21 or § 447.22. This includes models, mockups, and other such items which reveal technical data directly relating to § 447.21 or § 447.22.” Regarding importation, 18 U.S.C. § 922(l) prohibits the importation or bringing into the United States, or any possession thereof, any firearm. Section 925(d) provides limited exceptions to the general prohibition, and subsection (d)(3) requires, among other things, that firearms be “...*particularly suitable for or readily adaptable to sporting purposes...*” 27 CFR § 478.116, allows the conditional importation of a firearm for purposes of examination and testing for purposes of determining whether the criteria of 18 U.S.C. § 925(d) are met.

Further, § 447.21(a) of the **U.S. Munitions Import List (USMIL)**, § 447.21, **CATEGORY I—FIREARMS**, references the following:

... (a) Nonautomatic and semiautomatic firearms, to caliber .50 inclusive, combat shotguns, and shotguns with barrels less than 18 inches in length, and all components and parts for such firearms.

In classifying weapons, ATF has a long history of looking at the objective design features of a particular item when determining whether a submitted sample is a “**firearm**” under Federal law, including whether the device has design features indicating use as a “**weapon**” and, more specifically, as a “**pistol**.” Federal courts have recognized that analysis of the objective design features is a valid method of determining whether an item is “designed” for a purported purpose. A principal meaning of “design” is “[to] fashion according to a plan.” Webster's New International Dictionary of the English Language 707 (2d ed. 1957). Cf. *Lanzetta v. New Jersey*, 306 U.S. 451, 454, n. 3 (1939). An item’s “design” thus focuses on its objective “pattern or configuration of elements.” See *Design*, Black’s Law Dictionary (11th ed. 2019). *United States v. Kuzma*, 967 F.3d 959 (9th Cir. 2020). Indeed, Federal courts have found that the design of an item depends on apparent use as reflected in the objective design. *Id.*

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“Intent” also appears in the regulatory definition of “**pistol**” and relates to “design.” The “design” belongs to the designer “whose intent for an item or ‘design’ is absorbed into the physical attributes, or structural ‘design’ of the finished product.” *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 501 n.19, (1982). Intent is a function of principal use as demonstrated by objective features, *i.e.*, features designed by the manufacturer. *Id.* at 500-01 (1982); *see also Posters ‘N’ Things v. United States*, 511 U.S. 513 (1994). Indeed, Federal courts have advised that the objective “design” features are useful in showing the intended use of items. *Sig Sauer v. Brandon*, 826 F.3d 598 (1st Cir. 2016) (“...an objective approach to ferreting out a party’s intent is a very familiar one in the law...”).

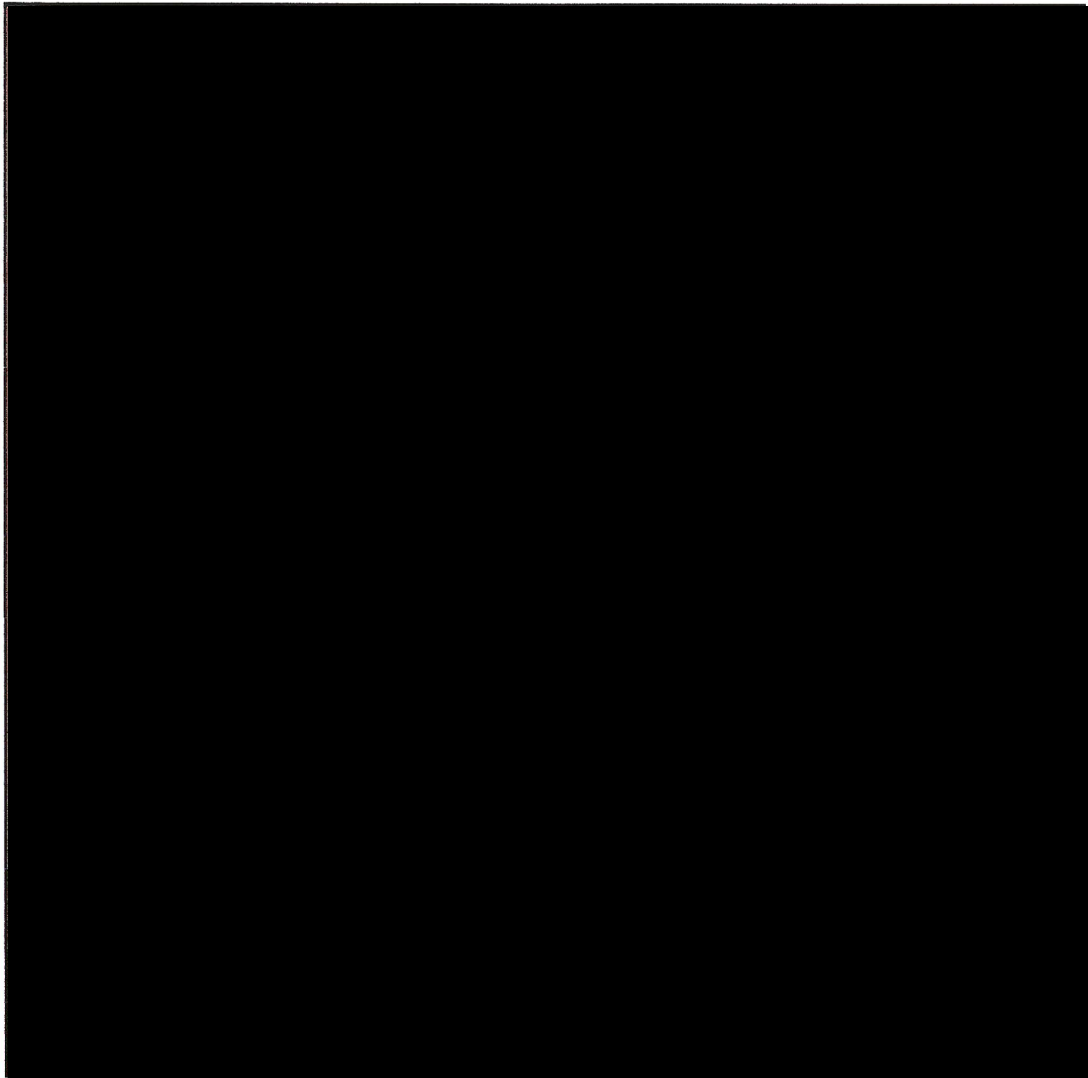
When determining whether an item is a “**firearm**” under Federal law, ATF also considers the manufacturer’s purported use of the item. The legislative history clearly indicates that some items that use explosives to expel a projectile should not be regulated as a “**firearm**” under Federal law. However, to rely *exclusively* on a manufacturer’s assertion would permit manufacturers to market “**firearms**” simply by claiming that, although they may be highly effective weapons, they are neither designed nor intended as such. Classifications based simply on the stated intent of the manufacturer would create an absurd result: Federal regulation of only those firearms that the manufacturer wanted to market as such, while leaving other firearms completely unregulated.

Evaluation:

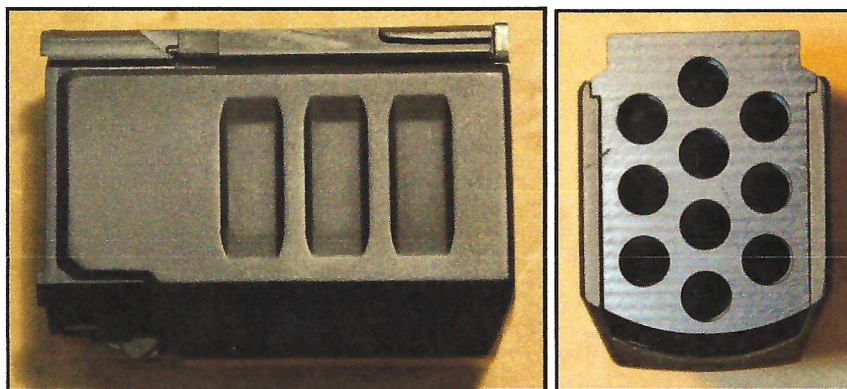
AXON, model TASER 8



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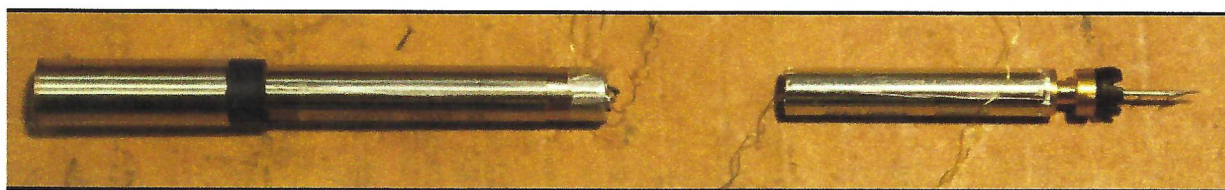


TASER 8 Schematic

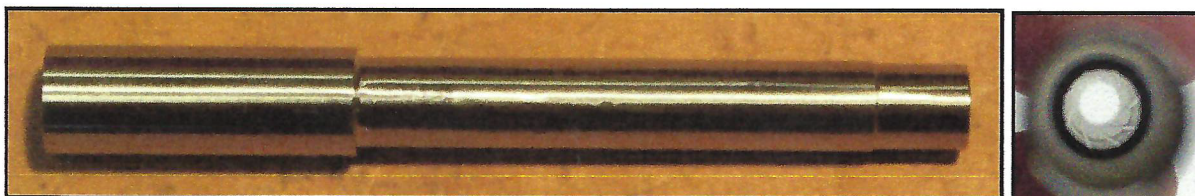


Submitted TASER 8 Magazine without Cartridges

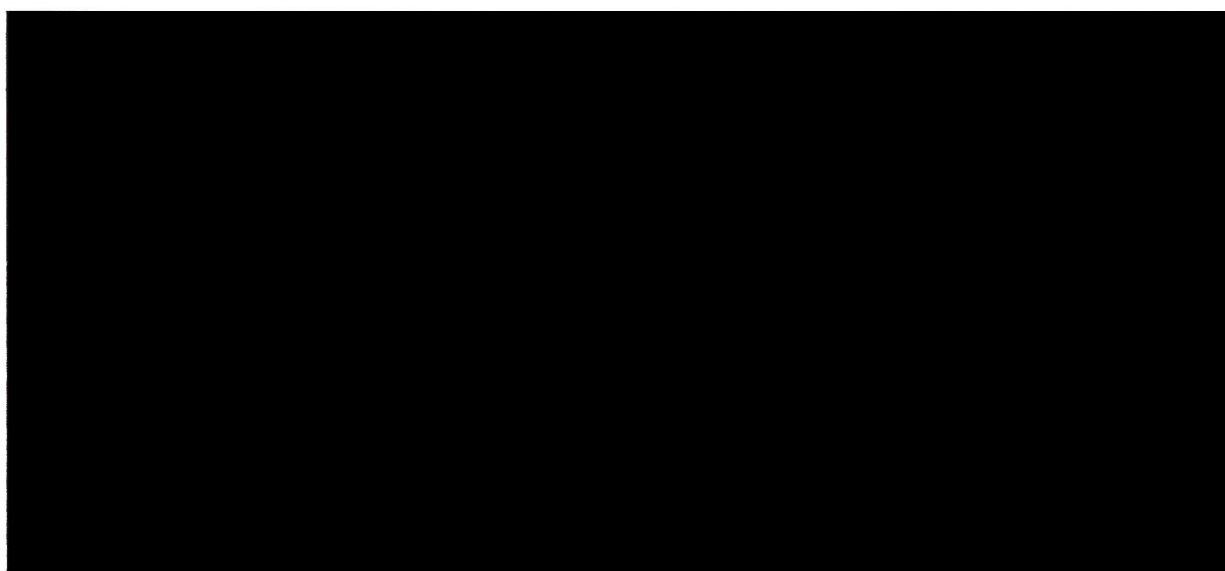
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Fired Cartridge with Probe



Cartridge Tube with Rifled Bore



TASER 8 Cartridge Schematic

The evaluation determined that the TASER 8 is a weapon which will expel a projectile by the action of an explosive, and is classified as a “**firearm**” under 18 U.S.C. § 921(a)(3). Further, the TASER 8 is a weapon originally *designed, made, and intended* to fire a projectile from more than one *rifled* barrel when held in one hand, and having chambers as an integral part of, or permanently aligned with, the bores; and a short stock designed to be gripped by one hand and at an angle to and extending below the line of the bores. Therefore, the TASER 8 is classified as a “**handgun**” under 18 U.S.C. § 921(a)(29)(A), and “**pistol**” under 27 CFR § 478.11, and not an “any other weapon” as defined in 26 U.S.C. § 5845(e). The current prototype differs from the previous TASER 8 because it incorporates a rifled bore.

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As stated above, to be lawfully imported, the firearm must satisfy an exemption, including section 925(d)(3). The submitted sample met the two qualifying prerequisites: (1) a positive manually operated safety device and (2) a combined length and height not less than 10 inches, with the height (right angle measurement to barrel without magazine or extension) being at least 4 inches and the length, at least 6 inches. As indicated, during testing and evaluation by FTISB, this submitted **AXON, model TASER 8 firearm**, accrued a total of only **51** points based on ATF Form 4590 criteria, and therefore does not meet the sporting purposes exemption of 18 U.S.C. § 925(d)(3). Therefore, the AXON, model TASER 8 firearm **is not importable into the United States.**

- The overall length is approximately 7-1/2 inches
- The height is approximately 4-3/8 inches
- The frame construction is 6061 Aluminum HTS Alloy
- The sample has a weight of approximately 15 ounces (with provided empty magazine and battery)
- The cartridge has a rifled barrel length of approximately 2 inches
- The cartridge casing is constructed from 321 stainless steel
- The sample has an electrically ignited cartridge
- The sample has a manual safety
- The sample has fixed sights

ATF Form 4590 score: 51

FTISB found the following markings on the submitted TASER 8:

Frame (trigger guard): **LASP30056** [*Serial Number*]
Handle shell (right): **AXON** [*Manufacturer Name*]
 SCOTTSDALE [*City of Manufacture*]
Handle shell (left): **TASER 8** [*Model*]
 AZ USA [*State of Manufacture*]
Battery: **LI-ION RECHARGEABLE BATTERY**
 7.4V 900mAh 6.66 Wh
 2 ICR18350p 1901
 AXON ENTERPRISE INC
 S/N: X44308874 REV X23
 MODEL NO. TS1005
 Contains FCC ID: WAP4110
 Contains IC: 7922A-4110
Fired cartridge: **X00000028 – EXAMP – X1**
Probe: **SP2.5 00083**

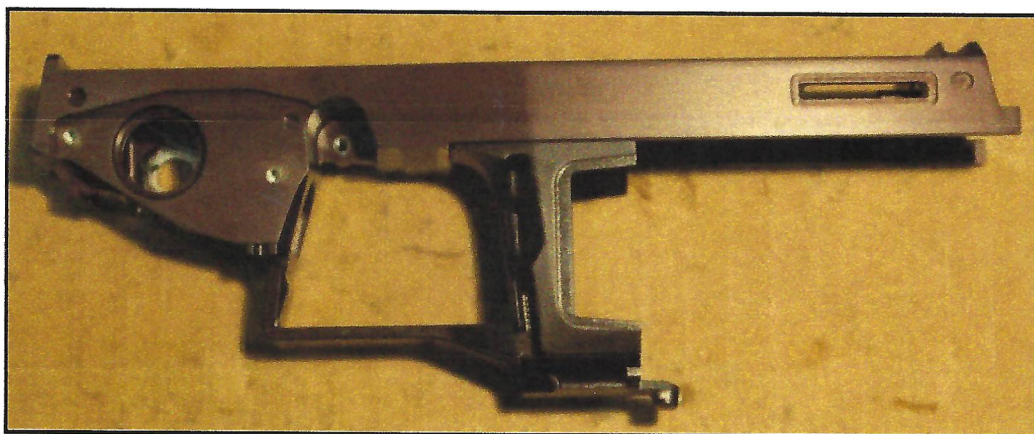
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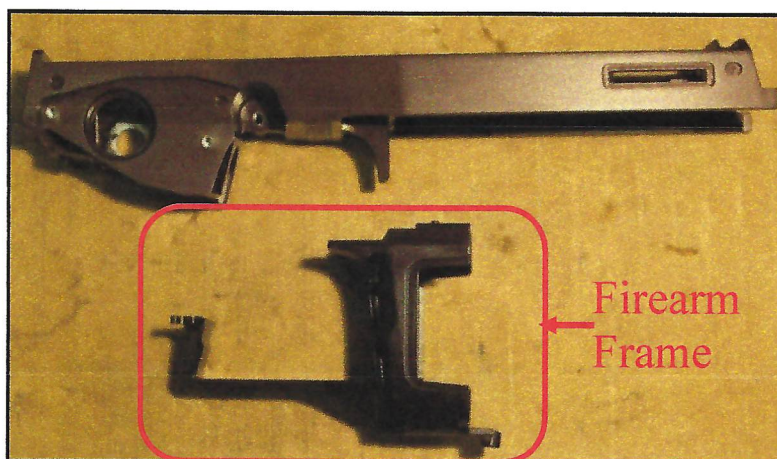
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The submitted TASER 8 sample was found to have no caliber markings, as required by 27 CFR § 478.92. To not mark the caliber on the TASER 8 you must apply for a marking variance from the provisions of 27 CFR § 478.92.

The TASER 8 is built around a metal chassis split into two parts. Your correspondence states this chassis is composed of two separate parts which are screwed together, and later laser welded into a single piece during the manufacturing process.



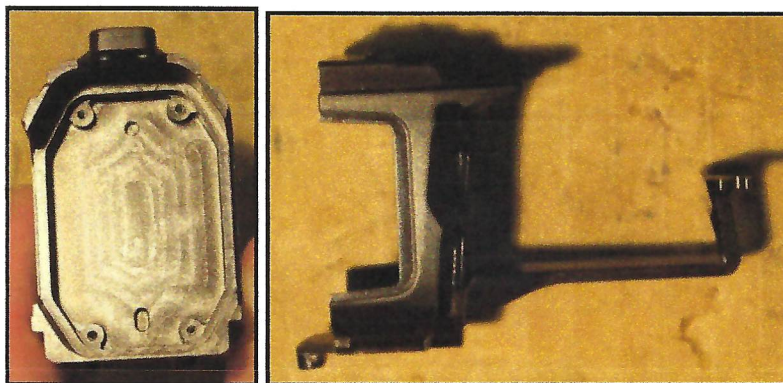
Axon, model TASER 8 internal metal chassis



TASER 8 internal metal chassis separated into two components

The upper portion of the chassis incorporates the firing mechanism of the firearm, while the lower portion provides housing for the breechblock, and is designed to receive the magazine with the barrels. As such, FTISB has identified the lower part of the chassis as the “**frame**” of the TASER 8 firearm and must be marked in accordance with 18 U.S.C. § 923(i).

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TASER 8 firearm "frame"

Conclusion:

The TASER 8 is a "firearm" as defined in 18 U.S.C. § 921(a)(3). The Taser 8 **is neither** an "any other weapon" as defined in 26 U.S.C. § 5845(e) because it is "*a pistol...having...rifled bores,*" nor a "firearm" as defined in 26 U.S.C. § 5845(a).

As indicated, during testing and evaluation by FTISB, this submitted pistol accrued a total of **51** points based on Form 4590 criteria. Consequently, this pistol is recognized as not particularly suitable for or readily adaptable to sporting purposes and **may not be imported** into the United States.

The TASER 8 is a semiautomatic firearm as described in 27 CFR §447.21 (Category I) of **The U.S. Munitions Import List**, and therefore, "all components and parts" for the TASER 8 are "**defense articles**" as defined in 27 CFR §447.11 and will require an approved ATF Form 6 for importation.

As the TASER 8 is a non-importable firearm, any forgings, castings, extrusions, machined bodies, etc. which are **any part of the frame, receiver, or barrel(s)** of the TASER 8 are **not importable per 18 U.S.C. § 925(d)(3).**

Please be advised that under the current Notice of Proposed Rulemaking (NPRM), ATF 2021R-5, the definition of "frame or receiver" under 27 CFR § 478.11 is being amended, and associated marking requirements are being revised. Therefore, because of the objective design features associated with the subject weapon, the provisions of a final rule may impact the submitted sample as currently designed. Please reference 2021R-5 for additional information.

FTISB cautions that these findings are based on the information submitted. If the design, dimensions, configuration, method of operation, or materials used were changed, our determination would be subject to review.

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To facilitate the return of your sample, please provide FTISB with an appropriate FedEx account number or prepaid shipping label within 60 days of the receipt of this letter referencing #317284. This information can be emailed to fire_tech@atf.gov. If no correspondence is received within 60 days of receipt of this letter, this sample will be considered abandoned and disposed of in accordance with the needs of the Federal Government

We trust that the foregoing has been responsive to your request. If we can be of any further assistance, please contact us.

Sincerely yours,



Digitally signed by
Daniel Hoffman
Date: 2021.11.23
15:48:43 -05'00'

Daniel Hoffman
Chief, Firearms Technology Industry Services Branch

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