



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Firearms Technology Industry Services Branch

Martinsburg, WV

www.atf.gov

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Dear (b) (6)

This refers to your correspondence to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Industry Services Branch (FTISB), which accompanied your submitted sample of a "Folding Bicep Brace (Version 2)" along with a KAK dimpled buffer tube. Specifically, you requested an evaluation and classification regarding the installation of this attachment on an AR-type pistol under the National Firearms Act (NFA).

As background, the amended Gun Control Act of 1968 (GCA), 18 U.S.C. § 921(a)(3), defines the term "**firearm**" to include, in relevant part, "...any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive...[and]...the frame or receiver of any such weapon..."

The GCA, 18 U.S.C. § 921(a)(7), defines "**rifle**" as "...a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore, for each single pull of the trigger."

Also, with respect to the definition of "**handgun**," you may be aware that the GCA, 18 U.S.C. § 921(a)(29), defines "handgun" to mean, in part: "...a firearm which has a short stock and is designed to be held and fired by the use of a single hand..."

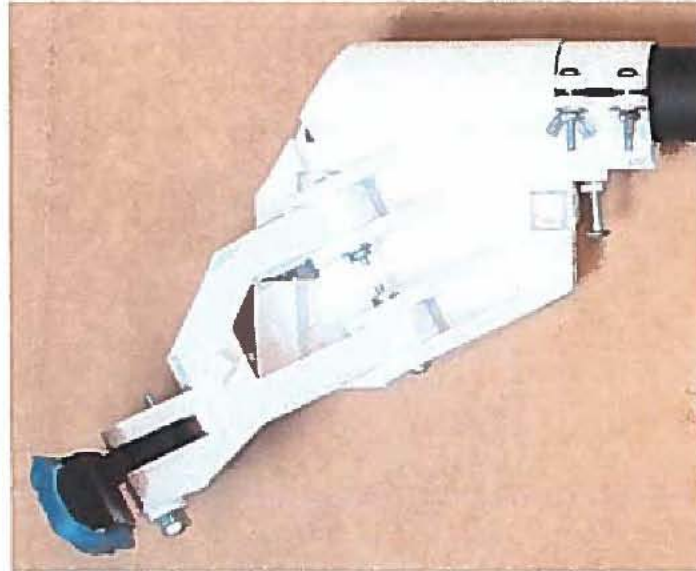
Additionally, 27 CFR § 478.11, a regulation implementing the GCA, defines "**pistol**" as "...a weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when held in one hand, and having (a) a chamber(s) as an integral part(s) of, or permanently aligned with, 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)."

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Further, the NFA, 26 U.S.C. § 5845(a), defines the term “firearm” to include ...*(3) a rifle having a barrel or barrels of less than 16 inches in length...*

The FTISB findings based on our examination of the submitted sample (photo below) is as follows:

Submitted Sample: Folding Bicep Version 2



The submitted sample is designed to attach to a KAK dimpled buffer tube (also provided), which allows the sample to be adjusted based on the size of the shooter. The stated purpose of the sample is to serve as a “bicep brace” providing stability while firing an AR-type pistol with one hand. Specifically, you state that “...the purpose of this brace is to allow a shooter to fire a pistol (in this design, an AR-type pistol) using the shooter’s bicep region of their arm for stabilization and recoil transfer.” Further, this design is intended to keep the pistol classified as a “handgun” under the GCA.

In March 2017, FTISB received your request for a letter of approval for a pistol bicep brace. On April 24, 2017 FTISB responded that the design of the bicep brace “allows it to be folded into a compact configuration which resembles an AR-type shoulder stock. FTISB found that the true purpose of the submitted bicep brace is for use as a shoulder stock for an AR-type pistol and that the resulting combination of a pistol and stock meets the definition of a short-barreled rifle and a “firearm” as defined under the NFA, 26 U.S.C. § 5845(a)(3).

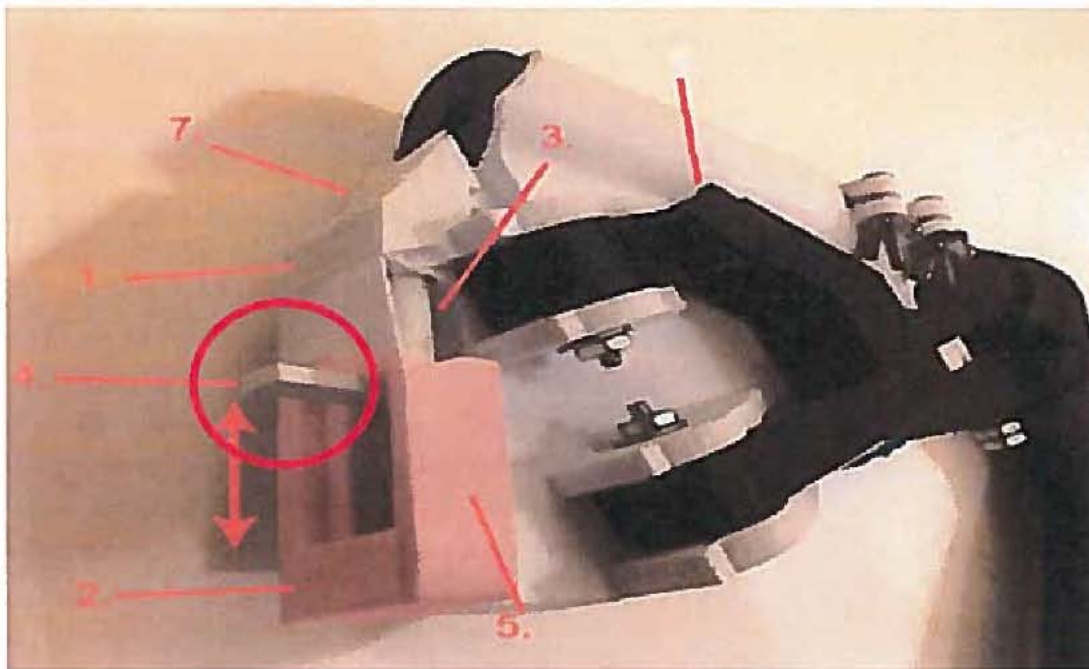
FTISB received an additional request for classification of the “Folding Bicep Brace (Version 2)” on June 05, 2017. In your correspondence, you explain the reason for the folding design of the sample is that potential customers put a high value on the compactness of the design. Additionally, you cite several modifications that have been made to the Bicep Brace (Version 2) in order to address design concerns raised by FTISB, which resulted in the classification of the original version of the bicep brace as a shoulder stock. The modifications include changes to the

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rear of the base intended to improve the brace functionality and which make it “extremely painful to fire from the shoulder;” and “remov[al] of the unnecessary portion of the backside of the brace, leaving only the absolutely necessary portion of the backside, which houses the locking mechanism for the arm.”

When determining a classification for a submitted item under Federal law, ATF considers the manufacturer’s purported use of the item. Note, however, while the manufacturer’s stated intent for the item may be useful in classifying that item, the objective design characteristics must support this use. To rely exclusively on a manufacturer’s assertion would permit manufacturers to market devices under their own classification, whether or not they may have a legitimate alternate use; simply by asserting that they are neither designed nor intended for any illicit use. Classifications based solely on the stated intent of the manufacturer would create an absurd result: Federal regulation of only those items the manufacturer wanted to market as such, leaving other items completely unregulated.

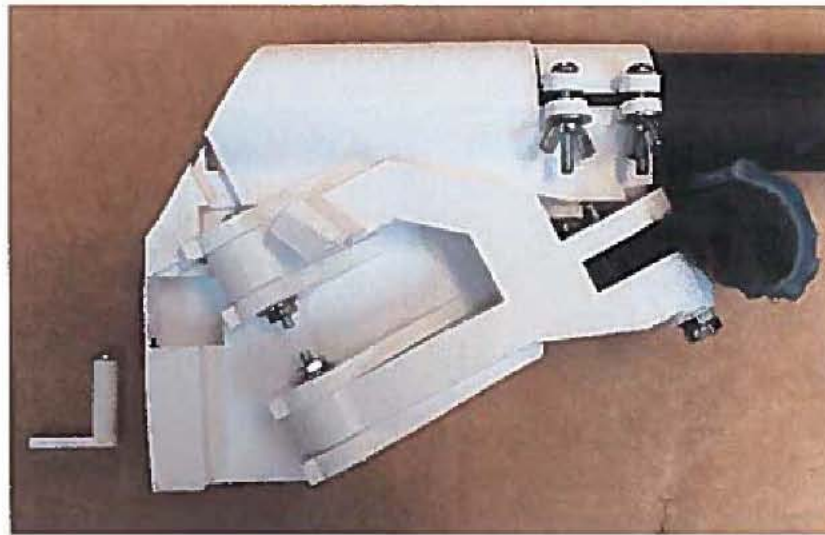
The first modification included the addition of a “large tab” which protrudes from the rear of the sample. The tab is circled in the picture below:



In your correspondence, you discuss that utilizing the sample as a shoulder stock, with this large tab in place, results in “extremely painful” and “excruciating” results. We note however, that compared to many firearms, the recoil from a .223/5.56 is minimal, largely due to the buffer and buffer spring which absorbs recoil and which your design utilizes. Even so, FTISB found that this “large tab” may be easily removed by tilting and pulling it from the sample. Removal of the large tab from the back of the bicep brace creates a flat surface consistent with that of a shoulder stock. Any reasonable person can simply remove the large tab to use the folded Bicep Brace

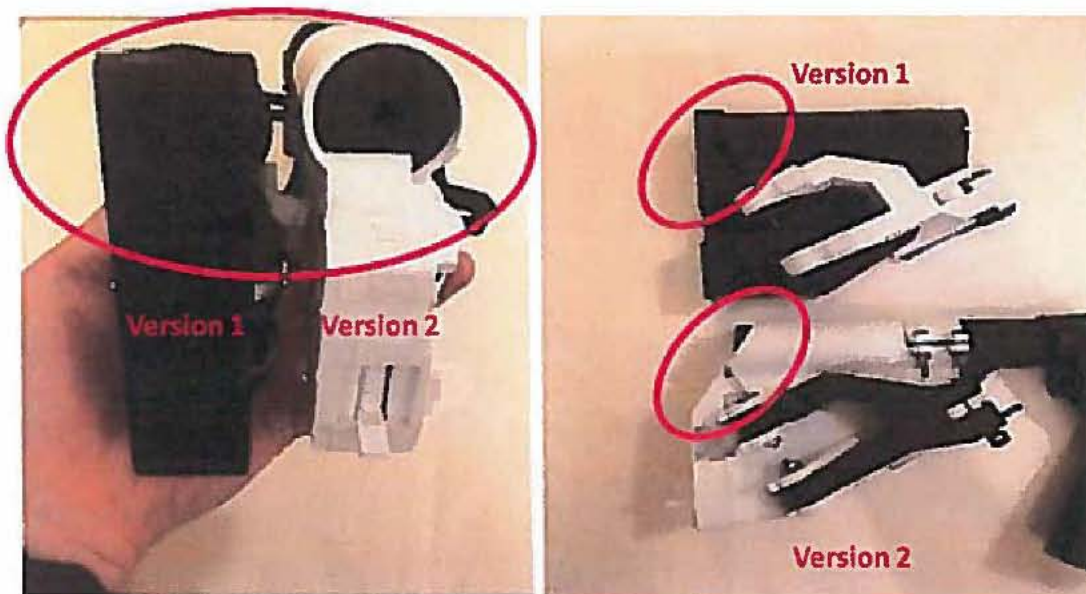
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(Version 2) as a shoulder stock. Therefore, a permanent attachment method for the "large tab" is necessary to prevent misuse of your submitted item as a shoulder stock.



Tab easily removed

Another modification made to the sample was the removal of a portion of material from the rear of the device, specifically a diagonal cut on the top. You stated that this material was unnecessary to the function of the folding bicep brace design and incidentally made it painful to use as a shoulder stock.



Backside View

Side View

While this successfully removed a portion of the rear of the device, which could be used as a shoulder stock, a large area still remains. This remaining surface area, combined with an easily removable tab, constitute a device for shouldering an AR-type pistol.

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Thus, until such time as a permanent method for attaching the "large tab" to the rear of the Folding Bicep Brace (Version 2), FTISB cannot classify the submitted device as a stabilizing brace and not a shouldering device.

Therefore, FTISB finds that the Folding Bicep Brace (Version 2), as submitted, is a device for shouldering an AR-type pistol. Additionally, attaching the submitted sample to a pistol having a barrel less than 16 inches in length would result in that firearm no longer qualifying as a "handgun" or "pistol" as defined above. The resulting combination of pistol and Bicep Brace would meet the definition of a "rifle" in that it would be a "weapon designed to be fired from the shoulder." In use, the resulting firearm would be classified as a "short-barreled rifle" and a "firearm" as defined in the NFA, 26 U.S.C. § 5845(a)(3). Further, mere possession of the item with a compatible firearm would constitute possession of an NFA firearm.

We should remind you that the information found in correspondence from FTISB is intended only for use by the addressed individual or company with regard to a specific scenario(s) or item(s) described within that correspondence.

We caution that these findings are based on the sample as submitted. If the design, dimensions, configuration, method of operation, or materials used were changed, this classification would be subject to review.

To facilitate the return of the submitted sample, please provide FTISB with a prepaid FedEx or similar return shipping label. For your convenience, this can be emailed to fire_tech@atf.gov and should reference #306640. Please provide the return shipping label within 60 days of receipt of this letter or the samples will be considered abandoned and disposed of in accordance with the needs of the Federal Government.

We thank you for your inquiry and trust the foregoing has been responsive to your evaluation request.

Sincerely yours,

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Chief, Firearms Technology Industry Services Branch