

OHIO STATE FIRE MARSHAL GUIDANCE ON EXPLOSIVE TARGETS

Information is provided for Ohio Homeland Security, Law Enforcement and Fire agencies.

July 2012

In response to some of the questions raised about the regulation of “explosive targets” (ETs), in the State of Ohio (example: products sold under the name “Tannerite”) please note the following information from the Ohio Revised Code and the Ohio Fire Code:

1. Explosive targets are commonly a binary product consisting of granulated ammonium nitrate with a separate activator or sensitizing substance, commonly aluminum powder. When mixed together the sensitized ammonium nitrate is then shock sensitive to small caliber firearms rounds and explodes on impact.

2. The baseline statute in Ohio regulating such products is R.C. 2917.17(A), which states: “No person shall knowingly acquire, have, carry, or use any dangerous ordnance.” [F5]

A dangerous ordnance is defined in R.C. 2923.11(K) as (inapplicable sections are deleted):

“Dangerous ordnance” means any of the following, except as provided in division (L) of this section:

(2) Any explosive device or incendiary device; (OR)

(3) Nitroglycerin, nitrocellulose, nitrostarch, PETN, cyclonite, TNT, picric acid, and other high explosives; amatol, tritonal, tetrytol, pentolite, pecretol, cyclotol, and other high explosive compositions; plastic explosives; dynamite, blasting gelatin, gelatin dynamite, **sensitized ammonium nitrate**, liquid-oxygen blasting explosives, blasting powder, and other blasting agents; and any other explosive substance having sufficient brisance or power to be particularly suitable for use as a military explosive, or for use in mining, quarrying, excavating, or demolitions;

3. An explosive device (part of the definition of dangerous ordnance) is defined in R.C. 2923.11(H) as: “Explosive device” means any device designed or specially adapted to cause physical harm to persons or property by means of an explosion, and consisting of an explosive substance or agency and a means to detonate it. “Explosive device” includes without limitation any bomb, any explosive demolition device, any blasting cap or detonator containing an explosive charge, and any pressure vessel that has been knowingly tampered with or arranged so as to explode.

4. An explosive (part of an explosive device, which is part of dangerous ordnance) is defined in R.C. 2923.11(M) as: “Explosive” means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. “Explosive” includes all materials that have been classified as division 1.1, division 1.2, division 1.3, or division 1.4 explosives by the United States department of transportation in its regulations and includes, but

is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuses, fuse igniters, squibs, Cordeaux detonant fuses, instantaneous fuses, and igniter cords and igniters. "Explosive" does not include "fireworks," as defined in section 3743.01 of the Revised Code, or any substance or material otherwise meeting the definition of explosive set forth in this section that is manufactured, sold, possessed, transported, stored, or used in any activity described in section 3743.80 of the Revised Code, provided the activity is conducted in accordance with all applicable laws, rules, and regulations, including, but not limited to, the provisions of section 3743.80 of the Revised Code and the rules of the fire marshal adopted pursuant to section 3737.82 of the Revised Code.

5. The informal consensus is that the raw materials of an ET (such as a metal like an aluminum powder and ammonium nitrate) do not meet the definition of an explosive. Thus, the sale/possession of or the basic components of most ETs are not illegal to possess and, in many cases, use.

6. However, the key event that can change the application of the criminal code is the combination of the raw materials of an ET into a single mixture. The effect of that combination, including when done in accordance with manufacturer's instructions, is to create **sensitized ammonium nitrate (SAN)**. As noted in R.C. 2923.17(K)(3), SAN = dangerous ordnance.

7. Because SAN = a dangerous ordnance, it is, as noted above, a 5th degree felony to knowingly possess it. R.C. 2923.17(A) & (D). None of the exceptions of R.C. 2923.17(C) appear to apply to typical ETs that are acquired by private citizens in Ohio from sources like the **Tannerite** Company.

8. Because SAN = a dangerous ordnance, it is a 2nd degree felony to manufacture it (the act of combining the raw materials of aluminum powder and ammonium nitrate, which makes SAN) unless the person first has been issued a license, certificate of registration, or permit to do so from a fire official of a political subdivision of this state or from the office of the fire marshal. R.C. 2923.17(B) & (E).

9. The combination of the raw materials to make an ET makes that mixture an explosive as defined in R.C. 2923.17(M). None of the exceptions to (M), including those listed in R.C. 3743.80 appear to apply to typical ETs that are acquired by private citizens in Ohio from sources like the **Tannerite** company.

10. When used in accordance with the manufacturer's instructions, an ET like **Tannerite** likely becomes an explosive device as defined in R.C. 2923.17(H). The analysis is: an explosive [the mixture] plus a means to detonate it [the bullet from a firearm] – if it is determined to be a "device designed or specially adapted to cause physical harm to persons or property by means of an explosion" or a Court would accept it as being, "without limitation," a "bomb" even if it was not specially adapted to harm persons/property [see the structure of the statute noted above]. If found to apply to all explosive devices, the requirement of the first part of the definition for such devices to be specially adapted to cause harm to persons/property, may require the addition of proof that it was used to maliciously cause harm to a person or damage to another's property vs. just having such a capability. If the mixture and the bullet is found to be or used as an explosive

device, it then becomes dangerous ordnance. Thus, as noted above it is, in most common uses, an F5 to possess it (R.C. 2923.17(A)) and an F2 to manufacture it without permit from the SFM or fire code official.

11. R.C. 2923.18 provides a process by which a person may obtain a permit for the possession and use of dangerous ordnance from the “sheriff of the county or safety director or police chief of the municipality where the applicant resides or has his principal place of business.” Similar to the manufacturing permit noted in R.C. 2923.17(B), almost all users of ETs will not seek (and probably would not qualify for) such a permit.

12. As a separate note, the Ohio Fire Code (OFC) as established in OAC 1301:7-7-01 to 47 may regulate the possession, storage and use of explosives in Ohio. It is triggered at the same point the criminal code is – the combination of the substances to make SAN. The manufacturing of such substances and any possession and use of such substances are subject to special fire safety permits and rules of the fire code – particularly if any such uses occur inside a building. Per R.C. 3737.51(A) & .99, violations of the OFC are a Misdemeanor of the 1st degree.

13. Summary:

- a. Obtaining/Possession of ET raw materials (separated) is permissible under criminal and OFC, unless combined with criminal enterprise.
- b. Combination of ET raw materials = sensitized ammonium nitrate/SAN.
- c. Manufacturing SAN is an F2 offense per R.C. 2923.17(B) if done w/o a SFM or fire code official permit.
- d. Possession (and use) of SAN is possession of dangerous ordnance and is an F5 offense per R.C. 2923.17(A).
- e. Detonation of an ET (even if not SAN based) with a bullet (as per manufacturer instructions) would constitute, depending upon circumstances, an explosive device. Possession of an explosive device is possession of dangerous ordnance and an F5 offense per R.C. 2923.17(A).
- f. Most exceptions to manufacturing and possession of dangerous ordnance or to the definition of an explosive do not apply to the typical methods used to acquire, make or use an ET.
- g. The combination of ET raw materials, particularly to make SAN, triggers the Ohio Fire Code. The manufacturing of such substances and any possession and use of such substances are subject to special fire safety permits and rules of the fire code. Violating the OFC is an M1 offense per the R.C. 3737.51(A) & .99.

For more information or questions contact the Ohio Division of State Fire Marshal at 1-800-589-2728.