

**OHIO DEPARTMENT OF COMMERCE
DIVISION OF STATE FIRE MARSHAL**

GUIDANCE ON EXPLOSIVE TARGETS

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

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 like Tannerite 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. Other types of explosive targets are a binary product consisting of an explosive substance (like flash powder or other perchlorate based substances) and a separate activator or sensitizing substance.
2. The baseline statute in Ohio regulating such products is R.C. §2923.17(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 general 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.
7. For ammonium nitrate based products:
 - a. The effect of combining ammonium nitrate and a sensitizing agent, including when done in accordance with manufacturer’s instructions, is to create ***sensitized ammonium nitrate (SAN)***. As noted in R.C. §2923.11(K)(3), SAN, by definition, is always a dangerous ordnance. In other words, SAN = dangerous ordnance.
 - b. Because SAN = a dangerous ordnance, it is, as noted above, a 5th degree felony to knowingly possess it per R.C. 2923.17(A) & (D). None of the exceptions of R.C. 2923.17(C) appear to apply to SAN based ETs that are acquired by private citizens in Ohio from sources like the Tannerite Company.
 - c. 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. See R.C. §2923.17(B) & (E).

8. For both SAN based devices and other types of exploding targets (including perchlorate based devices), there is a second path for such ETs to meet the dangerous ordnance provisions of R.C. 2923.17:
 - a. 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 R.C. 2923.17(M), including those listed in R.C. §3743.80, apply to typical ETs that are acquired by private citizens in Ohio from sources like the Tannerite or similar companies.
 - b. When used in accordance with the manufacturer's instructions, any type of ET can qualify as an explosive device as defined in R.C. 2923.17(H). The analysis is: an explosive (the mixture as discussed in the preceding paragraph) plus a means to detonate it (the bullet from a firearm) - *if* the ET 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 or property (see the structure of the R.C. §2923.11(H) noted above).

The application of this part of the law is unclear because some Courts have held that an ET must be a device designed or specially adapted to cause harm to persons or property (*i.e.* – as evidenced by a harmful use vs. just being capable of such a use) to qualify as a dangerous ordnance. Other Courts have not followed that path. So, if an ET is not automatically a dangerous ordnance like a SAN based device, the potential paths to make an ET a dangerous ordnance are:

- i. If either the mixture of components and/or mixture of components and availability of a firearm with ammunition create a functioning ET (without actual use) and that device is found by a Court to meet the definition of an explosive device because it is a bomb, then that device is a dangerous ordnance. Thus, it is a 5th degree felony to possess it (R.C. §2923.17(A)).
- ii. If the mixture and use of a bullet to detonate an ET is found by a Court to make the ET a bomb and therefore an explosive device, that device is a dangerous ordnance. Thus, it is a 5th degree felony to possess or use it (R.C. §2923.17(A)).
- iii. If the ET, without any use or without "malicious" use, is found by a Court to be a device designed or specially adapted to cause physical harm to persons or property by means of an explosion, the ET is an explosive

device and therefore a dangerous ordnance. Thus, as noted above it is a 5th degree felony to possess or use it (R.C. §2923.17(A)).

- iv. If the ET is used as a device designed or specially adapted to cause physical harm to persons or property by means of an explosion, the ET is an explosive device and therefore a dangerous ordnance. Thus, as noted above it is a 5th degree felony to possess or use it (R.C. §2923.17(A)).

Again, for items (i) through (iii), please consult with your Prosecutor to determine if such circumstances constitute a violation of R.C. §2923.17(A) in your jurisdiction. It is clear that use of an ET as described in item #iv is always the use of a dangerous ordnance.

- c. If the act of mixing the components of an ET is found to be the manufacturing of an explosive, it is 2nd degree felony to create the ET by combining the components without permit from the SFM or fire code official. This may be the easiest violation to prove, as even per the instructions for ATX “Kick Ass” Exploding Targets (a perchlorate based device), the device instructions clearly state: “Legally the purchaser and/or individual who mixes the target is considered the “final manufacturer” of the exploding target.”
- 9. 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.
- 10. As a separate note, the Ohio Fire Code (OFC), as established in OAC 1301:7-7-01 to OAC 1301:7-7-47 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 or an explosive. 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) & R.C. §3737 .99, violations of the OFC are a Misdemeanor of the 1st degree.

11. Summary:

- a. Obtaining/Possession of ET raw materials (separated) is permissible under criminal laws and OFC, unless done as a part of a criminal enterprise.
- b. Ammonium nitrate based devices like tannerite:
 - i. Combination of ET raw materials based upon ammonium nitrate = creation of sensitized ammonium nitrate (SAN). Manufacturing SAN is a 2nd Degree Felony offense per R.C. 2923.17(B) if done w/o a SFM or local fire code official permit.
 - ii. Possession & use of SAN qualifies as possession/us of dangerous ordnance. It is a 5th Degree Felony offense per R.C. 2923.17(A) to have a dangerous ordnance without a permit from local law enforcement.
- c. ETs in general, including perchlorate and SAN based ETs:
 - i. Combination of ET raw materials, if used to make an explosive, is the manufacturing of an explosive, which is 2nd Degree Felony offense per R.C. 2923.17(B) if done w/o a SFM or local fire code official permit.
 - ii. Possession of an ET that is ready for use (even if not SAN based) likely constitutes, depending upon circumstances and Court of Appeals district, the possession of an explosive device.
 - iii. Detonation of an ET with a bullet (as per manufacturer instructions) likely constitutes, depending upon circumstances and Court of Appeals district, the use of an explosive device.
 - iv. Regardless of Appeals district, the detonation of an ET that is designed or specially adapted to cause physical harm to persons or property is the possession and of an explosive device.
 - v. Possession and use of an ET that qualifies as an explosive device is the possession and use of a dangerous ordnance, a 5th Degree Felony offense per R.C. 2923.17(A) to have a dangerous ordnance without a permit from local law enforcement.
- d. 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.
- e. The combination of ET raw materials, particularly to make SAN, triggers the Ohio Fire Code (OFC). Per the OFC, the manufacturing of explosives and any possession and use of such substances are subject to specialized fire safety rules and permits. Violating the OFC is a 1st Degree Misdemeanor offense per the R.C. 3737.51(A) & R.C. §3737.99.

For more information or questions contact the Ohio Department of Commerce, Division of State Fire Marshal's Fire and Explosion Investigation Bureau at 1-800-589-2728 ... ask for Mr. Tim Thompson, Esq. (SFM Legal Counsel) or Chief Tim Spradlin (SFM Fire – Explosion Investigation Bureau).