

Testimony of Linda Menendez
Director of Operations, Austin Powder Company
Before the
Senate Committee on Homeland Security and Governmental Affairs
June 12, 2018

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on

Examining the Chemical Facility Anti-Terrorism Standards Program
before the

U.S. Senate Committee on Homeland Security and Governmental Affairs

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Chairman Johnson, Ranking Member McCaskill, and members of the Committee, on behalf of Austin Powder Company, thank you for the opportunity to present at today's roundtable discussion regarding the reauthorization of the Department of Homeland Security's (DHS) Chemical Facility Anti-Terrorism Standards (CFATS) program.

Austin Powder Company, headquartered in Cleveland, Ohio, is a privately-owned U.S. company founded in 1833 as an explosives manufacturer. As we celebrate our 185th anniversary, our legacy makes Austin not only the oldest explosives company in the U.S., but also the oldest in the world. Besides being a major U.S. manufacturer, Austin also performs the valuable service of blasting for its customers in mining, quarries, construction, and seismic exploration. Today, Austin Powder operates with more than 50 distribution sites holding ATF Federal licenses, employing a U.S. workforce of 1,225.

Like other IME members, Austin Powder is committed to the safety and security of our employees and the general public. We adhere to and often times exceed the regulations set forth by the Department of Transportation (DOT), the Occupational Safety and Health Administration (OSHA), the Mining Safety and Health Administration (MSHA), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and, since 2007, the Department of Homeland Security (DHS), CFATS. Additionally, Austin Powder's safety and security professionals are responsible to design and implement our own business practices to ensure the reliability and integrity of our infrastructure, increase our security efforts, and address and eliminate security threats.

Every aspect of the life cycle of explosives, from acquisition to disposition, has been regulated by the ATF since the 1970's. A major revision of the Federal Explosives Regulations went into effect in 2003 to further improve the commercial explosive industry's security position. Duplicative regulation by DHS's

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CFATS program of the same products, for the same purpose, has resulted in additional compliance cost – in both time and money. Furthermore, double-regulation detracts the compliance efforts of those seeking to be confident that they understand the laws.

The first Austin Powder example that I wish to illustrate is an ATF licensed facility on leased property, [REDACTED]. It is situated in a rural area with a [REDACTED]. These magazines, [REDACTED], are constructed in accordance with requirements set forth in Subpart K of the Federal Explosives Laws and Regulations in 27 CFR 555.207, Type 1 magazines, and are described in 207(b) as “igloos”, because they have at least 24-inches of an earthmound covering top, sides and rear. The doors of these bunkers are heavy steel doors weighing as much as ½ ton. Hinges to the steel doors are welded to ensure they could not be removed by mechanical means. Air vents in the magazines are protected by reinforced steel bars and are incapable of human access. All explosives magazines are required to meet the standards set forth in Subpart K of 27 CFR 555.207 for locking mechanisms. The magazines are secured by two (2) separate locking mechanisms per door, under steel hoods. All keys used to open padlocks are strictly controlled by adherence to Austin’s Key Control Plan. The Key Control Plan is also part of this facility’s U.S. DOT Security Plan. We lease 69 bunkers in this very remote, limited access, former government facility, 62 of which are used as storage of explosives that DHS has listed on Appendix A, Chemicals of Interest (COI). All COI are shipped in to this facility; we do not manufacture COI here. We employ a third-party uniformed guard force contracted by the industrial park. There is only one authorized access point to the facility, guarded 24/7, requiring employees, visitors, and motor carriers to register and be escorted from the gate by an assigned and authorized Austin employee. The COI explosives are routinely transferred from the facility to either of two other Austin Powder ATF Federally licensed plants that manufacture high explosives. Austin Powder transports the COI from this facility with

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either our own commercial motor vehicles operated by our own professional commercial drivers or by private motor carriers holding the same operating authorities as Austin and with whom Austin has a well-established business relationship. All truck drivers transporting COI explosives are required to have a Hazardous Materials Endorsement, conforming to TSA requirements. COI shipments are point-to-point routes with no intermediate stops for loading or unloading of cargo. Austin vehicles are equipped with electronic tracking systems required by 49 CFR Part 395 and adhere to all requirements of Hazmat shippers under 49 CFR Part 173.

All COI in this facility are considered Theft/Diversion Risks under the CFATS program. Our first Top Screen submitted in 2008 resulted in the facility being “Untiered.” However, upon submitting a DHS Top Screen in 2013 (identifying additional COI) and a subsequent Security Vulnerability Assessment, DHS determined it to be a **Tier 2** high-risk facility, requiring either a Site Security Plan or an Alternative Security Program meeting the levels of performance established by the CFATS (18) “Risk Based Performance Standards (RBPS).”

In order to meet DHS’s Risk Based Performance Standards, Austin Powder made the following changes to the facility:

- Installed a fence around one of the COI magazines
- Changed locking mechanisms on all COI magazines
- Installed an Intrusion Detection System monitored 24/7
- Increased guard force security patrols
- Installed solar powered lighting in the COI magazine areas
- Installed motion detection lighting at one COI magazine
- Additional employee training

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- Additional records of training, audits, equipment maintenance

The man-hours and implementation cost for these additional security measures totaled \$325,000 with a recurrent annual expense of \$70,000 for contracted monitoring services.

In 2016, following an update to the Chemical Security Assessment Tool (CSAT), Austin Powder was again required to submit a Top Screen for this facility. After submitting the Top Screen and an updated Alternative Security Plan Document, with no significant change in COI quantities from the last Top Screen submitted, DHS determined the facility's overall tier should be lowered to a **Tier 3**. It is our understanding the updates to the CSAT program enhanced their tiering methodology, which more accurately and appropriately tiered high-risk chemical facilities. But, quite frankly, the uncertainty of the reason behind DHS's determination to lower the facilities risk does not provide me with a way to determine if our \$325,000+ spend was necessary or if the tier could change in the future.

The second ATF licensed facility is a high-explosives manufacturing plant. It is located on 2,000 acres of mostly forested land. The main gate is manned 24/7 by a guard force that conducts security patrols and escorts all visitors and motor carriers within the plant. All employees of this facility are vetted under the Federal Explosives License as an ATF Employee Possessor or Responsible Person, upon hire and upon the Federal License renewal.

Because of the inherent nature of explosives, our facility is mandated to follow certain security-related regulations under ATF, OSHA's Process Safety Management (PSM) program and Pipeline Hazardous Materials Safety Administration (PHMSA). PHMSA, for example, requires

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this facility to have and maintain a Site Security Plan, the components of which include an assessment of transportation security risks that include storage within the facility, movement of hazardous materials within the facility, movement incidental to transportation and unloading of Division 1.1 explosives. 49 CFR 172.802 directs the facility's Site Security Plan components to include Personnel Security, Unauthorized Access and Enroute Security. This one example of duplicative regulation requiring two separate Regulatory Agency security plans for the same facility demonstrates the unnecessary burden of CFATs.

COI explosives at this facility are stored in 15 separate Type 1, Type 2 and Type 5 magazines constructed in accordance with requirements set forth in Subpart K of the Federal Explosives Laws and Regulations in 27 CFR 555. The immediate areas surrounding the storage magazines are designated as "Restricted Areas" and only those employees who are authorized and assigned work duties may have access to those areas. COI removed from the magazines are immediately transferred to the various manufacturing buildings on the plant and consumed within the shift, never left unattended and properly stored when not being used.

All COI in this facility are considered Theft/Diversion Risks under the CFATS program. Diversion is defined in CFATS as the act of acquiring a product by means of deception. As our facility uses an electronic tracking device on all of its commercial motor vehicles, is required in Subpart K of the Federal Explosives Laws and Regulations to obtain a certified statement of intended use and identification to transfer product to another Federal Explosive Licensee, is required by FMCSA to have a pre-determined route plan as well as a communication plan for departure and arrival of shipments, and ships primarily to Austin's Federally-licensed facilities throughout United States with either our own commercial motor

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vehicles operated by our own professional commercial drivers or by private motor carriers, diversion of COI of this facility is highly unlikely.

Our first Top Screen submitted in 2008 resulted in the facility being “Untiered.” However, Top Screens completed in 2015 and 2017 resulted in a determination of the facility as a **Tier 3** high-risk facility.

In order to meet DHS Risk Based Performance Standards, Austin Powder made several significant changes to the facility, including:

- Perimeter fencing
- Changed locking mechanisms on COI magazines
- Installed an Intrusion Detection System monitored 24/7
- Reinforced gates
- Additional employee training
- Additional signage
- Additional records of training, audits, equipment maintenance

The man-hours and implementation cost for these additional security measures totaled \$837,400 with a recurrent annual expense for contracted monitoring services.

Each business has its own regulatory environment applicable and beneficial to its operations. It is with confidence that Austin Powder relies on the Federal Explosives Laws and Regulations in 27 CFR 555 Commerce in Explosives to remain compliant as we build our business. The Chemical Facility Anti-Terrorism Standards (CFATS) program, however, does not provide us with the knowledge of risk-based tiering to draw accurate conclusions needed to manage our business

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without government involvement. Without the right tools and analysis process there isn't a way to qualify or disqualify potential solutions to our business opportunities.

We respect those that appreciate the CFATS oversight in an otherwise unregulated business. My testimony is meant to provide evidence that in a highly-regulated industry, like the commercial explosives industry, layering additional DHS regulation on top of existing ATF regulation that has proven to keep commercial explosives secure, is unnecessary and confusing.

On behalf of Austin Powder, I urge you to support an exemption of ATF Federally licensed facilities in the CFATS program. Thank you for the opportunity to testify today.