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Remarks by Marc Freedman U.S. Chamber of Commerce OSHA Listens March 4, 2010

Assistant Secretary Michaels, OSHA staff: At the outset, let me join in commending you for holding this session. In my years working on OSHA issues, I do not recall a similar event with as open an invitation as this one.

The pursuit of improved workplace safety is a cause that the employer community takes seriously. You will hear today from various representatives of employers who will make this point in various ways. I submit to you that each one is being sincere and their commitment is genuine.

The question on which I think OSHA should focus is: what are the best ways to improve workplace safety? Notice that I said “improve workplace safety” and not just improving compliance with OSHA regulations. We need to understand that to many employers, especially small ones, OSHA is not the main driver in improving workplace safety—they know they will not be inspected unless there is an accident.

Fundamentally, we think OSHA must play two roles: Yes it should be an enforcement agency—we do not question that and we expect OSHA to fill this role; employers who put their employees at risk or who are responsible for fatalities should be the subject of enforcement. But enforcement, regardless of how much OSHA focuses on it, will never be a proactive strategy—it will never help the small business owner answer the question about how to comply with a regulation that they know they must satisfy. OSHA needs to do more than enforce. It should encourage, it should guide, it should explain, in short it must also be a resource.

I spent some time on the website last night while preparing these remarks, and to OSHA's credit, found an array of useful information, some of it industry specific like the material directed to the construction industry, and some of it standard specific. In most cases, the information was presented in simple terms and clearly designed for an audience other than lawyers accustomed to reading OSHA regulations. I even found some Small Entity Compliance Guides that are required by the Small Business Regulatory Enforcement Fairness Act (SBREFA) for regulations that will have a certain level of impact on small businesses. I wish I had found more of these.

Finding these items is encouraging, and only heightens my concern when I hear speeches from Secretary Solis, Assistant Secretary Michaels, and DAS Jordan Barab emphasizing the administration's focus on enforcement as the panacea to improving workplace safety. As much as OSHA may be listening today, employers have been listening carefully since the beginning of this administration.

What we have heard is a consistent message about there being "a new sheriff in town," and "a no excuse work zone." We also see what has been proposed in the FY 2011 budget and how you want to allocate resources.

The message that emerges is that compliance assistance—please do not call it "voluntary compliance" that is not accurate—is not going to be a focal point of this OSHA. This comes through especially clearly in the budget submission which requests a funding increase of more than \$14 million in FY2011, but also indicates an increase in internal enforcement capabilities by transferring 35 employees from compliance assistance to enforcement, as well as hiring 25 new compliance safety and health officers (CSHOs).

I think this begs a question: if Congress gave OSHA all the money anyone wants for enforcement, how much would be enough? Short of posting a compliance officer in every workplace, looking over every worker's shoulder—making sure that they actually followed all the safety training and properly used their PPE—when will there be adequate

enforcement resources? You can't put an OSHA officer in every workplace, just as you can't put a traffic cop on every corner making sure people drive safely.

Is it your view that small businesses who may not understand fully OSHA's regulations, nor have the resources to hire safety specialists, will do a better job protecting their employees from workplace hazards merely because there will be more enforcement officers who will likely never visit them?

OSHA has made great strides developing materials and assistance for employers to help them learn what they are supposed to be doing. The goal should be to find ways to expand this level of support and get it in more employers' hands, not to redirect resources to emphasize enforcement first. OSHA should be out front promoting the cause of workplace safety in public messages, rather than just trying to scare employers by touting its enforcement agenda.

And not only employers need to get this message, but employees do too. Indeed, the OSH Act says this explicitly. No matter how much effort, training, and resources an employer devotes to their workplace safety program, the actual decisions and actions are going to come down to employees. OSHA should be working to create a culture of safety that extends beyond just telling employers they will be caught if they don't comply.

Finally, let me close with one more question: what are the measurables for determining whether workplace safety has improved? Is it how many new standards are issued, how many inspections have been conducted, how many new citations have been written? I suggest, and I hope you would agree, that it should be lower numbers of workplace injuries, illnesses, and deaths.

The budget says that the Department will be "investing in what works." We know from the data stretching back over several administrations showing sustained decreases in workplace injuries, illness, and fatality rates to now

their lowest levels since records were kept, that providing well crafted, useful compliance assistance is a key component to producing these results. Now is not the time to radically shift approaches. I hope that OSHA and the Department will begin to appreciate the reality that there is more to improving workplace safety than merely being a “new sheriff in town.”

Thank you for the opportunity to appear today and I will be happy to respond to any questions.