

**In The Matter Of:**  
*DEPARTMENT OF INDUSTRIAL RELATIONS  
ELECTRONIC ILLNESS AND INJURY REPORTING*

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*PUBLIC HEARING  
May 9, 2019*

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DEPARTMENT OF INDUSTRIAL RELATIONS

PUBLIC ADVISORY COMMITTEE HEARING

ELECTRONIC INJURY AND ILLNESS REPORTING

MAY 9, 2019

COMMITTEE MEMBERS:

WILLIAM NGUYEN

ANNA AVOYAN

GLENN SHORE

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BY JILL ANNE STEPHENSON, CSR 8563

## PUBLIC HEARING

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1           MR. NGUYEN: Good morning, everybody. First  
2 of all, I want to thank everybody for coming today and  
3 your interest in our Advisory Committee meeting this  
4 morning on the electronic reporting of workplace injury  
5 and illness data. We really appreciate your taking your  
6 time out of your schedule to come and provide us  
7 comments and your thoughts and insights on this topic  
8 and how this topic should be addressed given the  
9 mandates of Labor Code 6410.2B. And that is the scope  
10 of this meeting today.

11           We are convening this Advisory Committee  
12 meeting under the mandates of Labor Code Section  
13 6410.2B, which requires Cal/OSHA to, once it has  
14 determined that Federal OSHA had either eliminated or  
15 substantially diminished the electronic injury and  
16 illness reporting forms that had originally been in the  
17 past in May of 2016.

18           And we did make that determination; required  
19 by the Labor Code to have this meeting to evaluate what  
20 changes need to be implemented to protect the original  
21 goals of that May 2016 final rule. So thank you very  
22 much for helping us participate in this advisory meeting  
23 process.

24           I'd like to do just a real quick introduction  
25 of everybody here and ourselves included. Before we do

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1 that, just a couple of housekeeping items I want to go  
2 over. First of all, if you haven't signed in on the  
3 sign-in sheet in the back, we appreciate if you could do  
4 that. It helps us keep records of everyone in  
5 attendance and helps us maintain a mailing list in case  
6 you are interested in future advisory meetings. Please  
7 do that if you haven't done so.

8 Back there in the back also there are restroom  
9 keys you'll need to access the restroom. They're on  
10 this floor out this door, go all the way past the  
11 elevators, hang a right, and then the restrooms will  
12 then be on the right of that.

13 Also, as you might know, we have a court  
14 reporter here transcribing our meeting today, so -- I  
15 haven't been doing a good job, but if you could make  
16 sure the mic is picking you up loudly, and speak slowly  
17 enough so she can be sure to take down all of your  
18 comments. If you could keep cross-talk to the minimum,  
19 it would also be helpful so we can get an accurate  
20 record of the meeting.

21 We are going to try to take a break about  
22 every hour or so to give ourselves a break, but more  
23 important, to give the court reporter a break as well.  
24 So we'll build that into our meeting this morning as  
25 well.

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1           With that, I'd like to go ahead and start the  
2           introductions, and if we can go around and provide your  
3           name and any affiliation you might have that you're  
4           representing today, we'd appreciate it. I don't think  
5           we need to have everybody come to the podium to state  
6           their name, so if you could speak loudly, I'd appreciate  
7           it.

8           We do have a comment period on our agenda,  
9           obviously, for that. We would request folks come up to  
10          the podium so you have a mic and everybody can hear you.  
11          It's important to us and everybody here as well.

12          So I'll start. My name is William Nguyen.  
13          I'm an attorney with the Cal/OSHA legal unit. I'm here  
14          today to be part of this Advisory Committee process.  
15          I'm one of the point persons for this Advisory Committee  
16          process along with Glenn Shore here.

17          MR. SHORE: I'm Glenn Shore from Cal/OSHA. I  
18          manage the census of fatal occupational injuries program  
19          here. I am another contact person for this hearing.

20          MS. GHERGA: Good morning. I am Cora Gherga.  
21          I'm assistant chief for enforcement administration, and  
22          I am the liaison with Federal OSHA, and I'm here to  
23          listen to your comments and then ponder, along with  
24          everyone else, what would be our next steps. Thank you.

25          MS. ALLEN: I'm Pam Allen, special counsel to

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1 the director of the department of industrial relations.

2 (Audience introduces from seats; not at podium)

3 MR. NGUYEN: Thank you very much, everybody.  
4 Did we miss anybody? All right. What I'd like to do  
5 first, before we jump in on it, is take a look at your  
6 agenda. It says "tentative." That's what we're going  
7 with today. So I just want to do a quick preview of  
8 what we'd like to discuss today, and then we'll jump  
9 right on in.

10 So under Item No. 2, Background, we'd like to  
11 go over the background of how and why we're here today.  
12 That includes the 6410.2B mandate which I already spoke  
13 a little bit about today, and also an overview of the  
14 federal rule, the Federal OSHA rule on electronic  
15 reporting, and the two major rules written would be the  
16 May 12th, 2016 rule and the January 25th, 2019 amended  
17 rule amended a few months back. We'll discuss briefly  
18 the current status of the federal rule and then the  
19 current status of California regulations on electronic  
20 reporting.

21 There has been some rule-making regarding  
22 California's requirements on electronic reporting that  
23 mirrors some of the federal rule. We'd also like to  
24 discuss Item 3, the types of injury and illness data  
25 that are currently available in California.

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1           Then Item 4 is really what we think would be  
2 the meat of today's Advisory Committee meeting, and it's  
3 the discussion on how to protect the original goals or  
4 goals of the original May 2016 federal final rule.

5           Under that we have some bullet points that we  
6 would like to guide our discussion with. We'll open  
7 Section 4 by allowing folks to provide any prepared  
8 comments they have generally on this topic matter; then  
9 we'd like to go down to those bullet points to solicit  
10 feedback and comments on the specific topics on the  
11 list, on the agenda. We'll then discuss what occurred  
12 today, a recap, and possible next steps. We'll talk  
13 next regarding this Advisory Committee meeting and this  
14 topic, and then we'll close out.

15           Does anyone have questions about the agenda  
16 before we jump on in? Great. Before we get into the  
17 background, I do want to direct your attention to some  
18 information we've provided up here on the dry erase  
19 board in the front. That's our e-mail address where you  
20 can submit written comments. So, obviously, we'll be  
21 able to provide comments at the meeting today, but if  
22 you have written comments you'd like to provide, we will  
23 be accepting those until May 24th, and you can e-mail  
24 those comments to that e-mail address on the board.

25           The website there also is a website for this

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1 Advisory Committee meeting and it has documents related  
2 to this Advisory Committee meeting. And we'll post  
3 other documents as they become available. You can also  
4 check that website for any future activities or actions  
5 that will be taken related to this Advisory Committee  
6 meeting.

7 So to start, I just want to discuss real  
8 quickly the background of what brings us here today.  
9 Most of you probably know quite a bit about this, so I  
10 apologize for kind of the primer. But to the extent  
11 folks don't know the background, it's good to orient us  
12 today for our discussion.

13 So in 2016, May 12th, 2016, Federal OSHA  
14 published a final rule on the improved tracking of  
15 workplace injury and illness data, and that final had  
16 several key components. But the components that are at  
17 issue here today really is the component on electronic  
18 reporting of injury and illness data.

19 Even prior to the federal final rule,  
20 California and Federal OSHA had a requirement that  
21 employers record -- certain injury and illness data  
22 occurs at their work sites, so they have to record it on  
23 three different types of forms; the Log 300 form was a  
24 log of all the reporting injuries and illnesses  
25 employees suffered at the work site.



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1           The Log 301 form -- I'm sorry, the form 301  
2 was an incident report for each of those reportable  
3 injuries that provides for detailed information than  
4 what the form 300 required.

5           And the form 300-A was an annual summary. It  
6 was a more general summary of the total number of  
7 injuries and days missed and things like that for the  
8 year at each establishment.

9           And so the May 12th, 2016 final rule imposed  
10 certain requirements that not only employers would have  
11 to keep these forms or record these injuries, but now  
12 they would have to submit the data from those forms  
13 electronically to Federal OSHA.

14           Prior to 2016, the requirement was that  
15 employers only had to provide those forms in certain  
16 circumstances when either Federal OSHA, or in our  
17 context, Cal/OSHA explicitly requests those forms from  
18 the employer, or if Federal-OSHA sends what's called  
19 sure pay to request forms from the employers.

20           It was no -- there was no explicit requirement  
21 for employers to just, without prompting, send that data  
22 or send that information from those forms to give  
23 Cal/OSHA or Federal OSHA.

24           That change, the final rule from May 2016  
25 changed that and created two classes of establishments,

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1 basically. And for purposes of just this conversation,  
2 I'll categorize those establishments as larger  
3 establishments and smaller establishments. That may not  
4 be the general term used throughout, but I'll use it for  
5 today's purposes.

6 The larger establishments were establishments  
7 with 250 or more workers at any point or in the prior  
8 reportable reporting year. Those establishments, if  
9 they were not otherwise exempt from keeping that type of  
10 OSHA injury and illness data, were required to submit  
11 data from all three of the forms I've described, the 300  
12 log, the 301 incident reports, and the 300-A summary.

13 Now, in the final rule, the 2016 final rule,  
14 Federal OSHA did say that it would not collect  
15 personally identifiable information, or PII, as part of  
16 the submission requirements. Now, after -- I'm sorry.  
17 So that's for the larger 250-plus employees  
18 establishments.

19 Now, the smaller establishments were  
20 establishments we're going to find as having 20 to 249  
21 employees within the previous calendar year and they  
22 fell within a certain designated list of industries.  
23 Now, for those smaller establishments, they were only  
24 required to electronically submit injury and illness  
25 data from their form 300-A summary; so they didn't have

1 to submit the 300 Log information or the 301 incident  
2 report information.

3 Now, after the final rule, that 2016 final  
4 rule had been passed, Federal OSHA actually did go  
5 through the implementation of the 300 and 301 submission  
6 requirements. They built what's called the federal  
7 online portal, the injury tracking application, ITA, for  
8 short. And that portal that Federal OSHA developed only  
9 would accept 300A data from both the large  
10 establishments and small establishments. That ITA  
11 portal was never set up to accept 300 or 301 data. So  
12 Federal OSHA -- even though the final rule in 2016  
13 required those larger establishments to submit 300 and  
14 301 data, Federal OSHA never actually accepted it. But  
15 they did accept 300-A summary data from both larger  
16 establishments and the smaller establishments.

17 One of the rationales for not accepting 300  
18 and 301 data was that after the passing of the final  
19 rule in 2016 a new Federal OSHA initiative came in and  
20 they said, "Wait a second, we're not going to accept 300  
21 and 301 data; we need to reevaluate whether or not that  
22 is necessary." And in 2019, January 2019, they did  
23 amend the final ruling and passed a rule that changed  
24 what the requirements in 2016 were.

25 Sorry. I'll go back to the 2016 rule for a

1 second. One of the key components of the 2016 final  
2 rule, or at least what Federal OSHA had intended to do  
3 in the final rule in 2016, was to make the injury and  
4 illness data that it was collecting publicly accessible,  
5 and it gave rationales for that. You can review  
6 rationales for that in the final rule, the preamble rule  
7 for the 2016 rule. So to our knowledge, Federal OSHA  
8 hasn't made any of that data publicly available yet,  
9 even 300-A's collective.

10 So moving forward to January 2019, Federal  
11 OSHA did pass an amendment to the new final rule where  
12 it eliminated the requirement the larger employers  
13 submit their 300 log data or 301 incident report data.  
14 So even though they had not accepted that in the past,  
15 that requirement was on the books; federal requirement's  
16 now been rescinded.

17 The new January, 2019 final rule still  
18 requires the larger and smaller establishments within  
19 certain industries to submit 300-A summary data. One  
20 thing that the 2019 final rule also discussed was that  
21 -- it said Federal OSHA did not intend to make public  
22 data that it was accepting as part of this electronic  
23 submission requirement. They did not intend to make  
24 that data publicly accessible or available for at least  
25 a period of 40 years after accepting that year.

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1 PUBLIC: How many years?

2 MR. NGUYEN: Forty years. So that is --  
3 that's what the two final rules look like now, right,  
4 the 2016 final rule and now the 2019 final rule that has  
5 been made. And the reason we're still interested in the  
6 2016 final rule is because of the mandate that was put  
7 upon Cal/OSHA by California Labor Code 6410.2B.

8 So California Labor Code 6410.2B states that  
9 should Cal/OSHA, the division, determine that Federal  
10 OSHA has either eliminated or substantially diminished  
11 the electronic submission requirements of injury and  
12 illness data that the original 2016 final rule imposed,  
13 Cal/OSHA needs to convene an Advisory Committee meeting  
14 to evaluate what changes need to be implemented to  
15 achieve the goals of that original 2016 final rule. So  
16 even though the Federal 2016 final rule is no longer on  
17 the books as a requirement, it still is necessary to  
18 inform this Advisory Committee today because of the  
19 Cal/OSHA mandate imposed by 6410.2-B.

20 So that kind of sets the -- hopefully the  
21 background for you all about legally where we're at, the  
22 relevant legal rules where we are now.

23 I'll pass it off to Glenn to talk about what  
24 the current status of the federal final rule is right  
25 now, because there have been some developments both in

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1 court and in congress regarding the federal rule on  
2 electronic submission.

3 And folks just arriving, there are a number of  
4 seats back there. There are two seats up here, I think.  
5 Thank you.

6 MR. SHORE: Thanks, Willy.

7 The current rule, that 2019 rule is currently  
8 in effect, but it has been challenged by at least two  
9 groups, and there's a third lawsuit that's currently  
10 pending. The first lawsuit is by a public citizen, the  
11 American Public Health Association and the Council on  
12 State and Territorial Epidemiology are three groups that  
13 are researchers that say that they can use the data that  
14 OSHA originally intended to make public in order to do  
15 injury and illness prevention programs. And these are  
16 three groups that are involved in public health work and  
17 support the public submission of this data and making  
18 that data public.

19 One of the lawsuits really asserts that the  
20 action that OSHA took to rescind the law was not allowed  
21 under the Administrative Procedures Act because they did  
22 not go through the formal processes of the  
23 Administrative Procedures Act before rescinding that  
24 law.

25 The other lawsuit tries to rescind the rule by

1 putting it back into effect with the idea that it should  
2 go forward as the original 2016 rule.

3 There's also a lawsuit by six state attorneys  
4 general to also try to stop the current administration  
5 from implementing the new rule that they say would  
6 weaken the public reporting obligations for this  
7 workplace injury and illness information. These  
8 lawsuits are all pending.

9 There's also two actions taking place in  
10 Congress now. One is a House joint Resolution No. 44  
11 which attempts to disapprove the rule passed by OSHA,  
12 and that's one of Congress' prerogatives, is to pass  
13 laws that would disapprove administrative rules. That  
14 is also pending. And there's House Legislation 1074  
15 which would require the rule to be put back into effect,  
16 one section of that law.

17 So we don't know the outcome of any of the  
18 lawsuits yet and currently there's no action in Congress  
19 that's showing us where that is going.

20 MR. NGUYEN: Okay. I want to talk a little  
21 bit about the current status of the California  
22 regulations on the electronic submission of injury and  
23 illness data. So back in November of 2018, the  
24 division, Cal/OSHA, promulgated an emergency regulation  
25 regarding electronic submission of injury and illness

1 data.

2 And that emergency regulation required covered  
3 establishments, similar to what I discussed earlier  
4 about the larger establishments and the smaller  
5 establishments, to submit 300-A data electronically to  
6 the Federal OSHA ITA online portal. And at that time,  
7 the emergency regulations only focused on 300A because,  
8 obviously, the Federal OSHA portal zoning was only  
9 accepting 300-A, so it didn't make sense to require  
10 employers to submit 300 or 301 data because there was no  
11 possible way for employers to actually do that.

12 So that emergency regulation was set to expire  
13 earlier this month, but it was re-adopted for a 90-day  
14 basis just, I think, about two weeks ago. So it's been  
15 extended 90 days from, I believe, May 1st. So that  
16 emergency regulation stays in effect until that time.

17 Since the re-adoption of the emergency  
18 regulation, Cal/OSHA has requested publication of a  
19 notice of proposed rule-making to make the emergency  
20 regulation on electronic reporting permanent. So  
21 Cal/OSHA has started the regular rule-making process. I  
22 believe that notice should be published -- I want to say  
23 May 30th, but I need to check my dates on that, but it  
24 should be published within the next few weeks.

25 The proposed regulation will be essentially



1 the same as the emergency regulation that was originally  
2 passed in November 2018 with some very, very minor  
3 non-substantive differences. One of the differences  
4 would require that employers submit the 300A data,  
5 provide their employer identification number because  
6 Cal/OSHA actually made that change -- I'm sorry, Federal  
7 OSHA actually made that change in their January 2019  
8 final rule because the inclusion of EIN information  
9 would allow that data to be used more efficiently.

10 The other minor change was to change some  
11 references to the standard industry classification code  
12 or SIC codes to the North American industry  
13 classification code system numbers. Aside from those  
14 minor changes, the rule, the proposed rule-making for  
15 the regular rule-making is essentially the same as the  
16 emergency rule which required only the submission of  
17 300A data.

18 So we'd like to go ahead and move on to Item 3  
19 on the agenda which we'll discuss the injury and illness  
20 data that are currently available in California.

21 MR. SHORE: There are several sources of  
22 injury and illness information currently available in  
23 California. These include the survey of occupational  
24 injury and illness, the census of fatal occupational  
25 injuries, the workers' compensation information system,

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1 severe injury reporting that's required to Federal OSHA  
2 and the current data that's coming out of the ITA, the  
3 information tracking application.

4 MR. BLAND: Just a quick point of  
5 clarification. When you say "available," available to  
6 who, the state or public or both, or are there  
7 differentiations? I think it's important context that  
8 you're describing.

9 MR. SHORE: Well, the data is collected and  
10 summary reports are made of the survey of occupational  
11 injury and illness on an annual basis. The census of  
12 fatal occupational injuries is collected and a report is  
13 put out annually by California. The workers' comp  
14 information system puts out some information on their  
15 website about numbers of claims, workers' comp claims in  
16 the state. Severe injury reporting is done, but under a  
17 Federal OSHA website; there's public information on that  
18 website. And the information tracking application has  
19 information of the Form 300A information for California  
20 employers that, as far as we know, is not publicly  
21 available.

22 Let me go through a little bit --

23 UNIDENTIFIED SPEAKER: Can I clarify, I  
24 thought the severe injury reporting is through the  
25 state.

1 MR. SHORE: The severe injury reporting is  
2 done --

3 MS. GHERGA: We already have both established  
4 in the requirement in California that in 2016 adoption  
5 of the federal rule did not change anything in  
6 California. So that's a different issue. We do not  
7 post the data. Of course, any of the data is publicly  
8 available for PRA requests.

9 MR. BLAND: I guess that's the distinction.  
10 I'm making sure we're on the same page, what's available  
11 through PRA, what is easily and what's only available  
12 stays private when you use the term "available."

13 MR. SHORE: Well, let me go through the five  
14 sources there we're talking about. The survey of  
15 occupational injury and illness is defined as a survey.  
16 A number of employers in the state -- a statistical  
17 sample of employers in California is required every year  
18 by the Bureau of Labor Statistics to submit their  
19 information on numbers of injuries and illnesses they  
20 have in their workplace. These are not individually  
21 available, but they do have annual reports that are put  
22 out on the survey. And that information that goes into  
23 the survey comes from the 300A, the 301 and incident  
24 reports, as Willy spoke about, and the 300 log.

25 The census of fatal occupational injuries

1 program is a broader scope, data collection process to  
2 try to understand every occupational injury fatality  
3 that goes on in the state of California. And the  
4 information comes not only from employers but from death  
5 certificates and employer reports, police reports, many  
6 different other sources. And those data are put  
7 together by a unit in Cal/OSHA under another contract  
8 with the Bureau of Labor Statistics.

9 The workers' comp information system is run  
10 under the division of workers' compensation for  
11 California, and its intention is to collect every  
12 workers' compensation claim that's filed in the state of  
13 California, which there are over 500,000 a year.

14 That data is put together -- but it is  
15 confidential information to try to protect both employer  
16 and employer privacy -- employer and employee privacy.  
17 Researchers do -- modified researchers can get access to  
18 that information for research purposes. And there are  
19 several -- currently there are several researchers who  
20 are using that information for particular projects.

21 That would be it.

22 MR. NGUYEN: So now we'd like to move into  
23 really the meat of our Advisory Committee Meeting today,  
24 and that is a discussion on how to go about protecting  
25 the goals of that original 2016 final rule. And what

1 we'd like to do is first open the floor up and invite  
2 folks to come up to provide general comments on the  
3 topic, either prepared comments or general comments on  
4 the topic broadly.

5 We ask that everyone keep their comments to  
6 five minutes because there will be other opportunities  
7 to speak to the specific issues we've listed in these  
8 bullet points later; also, keep those comments to five  
9 minutes as well.

10 So a couple things, again, just as a reminder,  
11 please speak slowly so we can have an accurate  
12 transcript of everyone's comments. When you do come up  
13 to provide your comments, please provide your name and  
14 whom you are representing today.

15 MS. TREANOR: Good morning. My name is  
16 Elizabeth Treanor. I'm the director of the Fillmore  
17 Regulatory Roundtable, a group of companies that is  
18 committed to improving the workplace, safety and health.

19 So all of the ER members do keep the 300, 301s  
20 and the 300As, and they have extensive experience  
21 uploading the 300As to the injury tracking system at  
22 Federal OSHA. And I think one of the concerns that they  
23 have is that they do believe -- and it is not a  
24 speculative concern about the privacy of information  
25 that is provided -- while Federal OSHA was very clear

1 that they would not accept information like name,  
2 address, Social Security number, things like that,  
3 there's a lot of the other information that can be  
4 linked and can easily identify someone.

5 For instance, 301 doesn't require certain  
6 sections, but it does require date of birth, date hired  
7 and gender. It also requires the 300 form, collects job  
8 title, location, description of injury, category of  
9 illness or injury. These are all pieces of data that,  
10 when they can be linked, identify the employee.

11 And Federal OSHA had identified a couple of  
12 cases where -- one was public citizen filed a Freedom of  
13 Information Act request requesting all the 300 and 301  
14 data that had been submitted. Our concern is that the  
15 information that we provide doesn't belong to the  
16 company; it doesn't belong to the government. It  
17 belongs to the employee.

18 And we want to be very careful about releasing  
19 information. And one of -- there was a FOI request that  
20 was made to -- release of medical test results were  
21 previously deemed by OSHA to be exempt by FOI  
22 disclosure, but they were still granted in Finkle vs.  
23 Department of Labor. So private medical records were  
24 released. So OSHA said their concern was they would not  
25 be able to keep information private.

1           The current administration is wanting to keep  
2 it private; another administration may not be willing to  
3 go to court to argue these issues. So we do not believe  
4 it's speculative. We believe that the goals of the 2016  
5 regulation which were to require employers to submit the  
6 data -- what can I say?

7           If California wanted to do this, what we would  
8 strongly recommend is that you identify what uses you're  
9 going to make. Employers have been submitting safety  
10 data sheets -- sorry, manufacturers and distributors  
11 have been distributing safety data sheets to Cal/OSHA  
12 since the hazard communication rule began. They have  
13 also been required to submit under the Occupational  
14 Carcinogen and Control Act.

15           And we understand that nothing has ever been  
16 done with these data. They are not confidential. Our  
17 concern is that we need to have a good reason for the  
18 data to be collected if you're going to require  
19 employers to do that.

20           Also need to have criteria for those to whom  
21 access will be provided. Mr. Shore, I believe,  
22 mentioned that bona fide research, researchers, that  
23 would be -- there was a process for determining who's a  
24 bona fide researcher; we would support that. And DOSH  
25 would also need to make sure that any database is

1 protected from hacking because the information is quite  
2 personal.

3 The Department of Homeland Security, in  
4 addition to personally identifiable information has  
5 something called sensitive personally identifiable  
6 information which is information which if lost,  
7 compromised or disclosed without authorization, could  
8 result in substantial harm, embarrassment, inconvenience  
9 or unfairness to an individual.

10 And many of PRO members have had employees  
11 come to them and say, "Please, you told me that you want  
12 to report workplace bullying situations. I've reported  
13 it, but I do not want my name associated with the  
14 investigation at all for my protection." If there is a  
15 subsequent incident, it would likely cause a person  
16 embarrassment or inconvenience, and we would just like  
17 to be very careful about that.

18 One suggestion that members had was require  
19 that the employees have a written consent: "Okay, I  
20 consent that you release this information to the  
21 government," and then the companies will be released  
22 from any liability for its misuse.

23 And then I have more specific comments on some  
24 of the issues as we go through. Thank you.

25 MR. NGUYEN: Thank you very much.



1 MS. ABELLA: Hi. My name is Sherry Abella.  
2 I'm a research analyst with SEIU Local 2015. We spoke  
3 at length on April 16th with Ms. Gherga. You advised me  
4 because I was having trouble getting OSHA records from  
5 the employer as they are required to do under the law.

6 I have learned from Ms. Gherga that the  
7 maximum that can happen to an employer is they might get  
8 a \$500 fine, maybe; it will probably be negotiated down.

9 So far I have received responses unredacted,  
10 as they are supposed to be provided to me as a union  
11 representative, under the law; only seven of the ten  
12 surveys have complied.

13 Now I want to get to why we need this  
14 information. Clearly, going to the employer and getting  
15 it is insufficient for performing our duties of our  
16 representation that are required of us. This is from  
17 one of the facilities. You can see on the top, this is  
18 the summary log.

19 And if you look on the log, it tells you that  
20 there were only -- this is a facility with 352 people,  
21 workers, and it says that there were no injury -- there  
22 were only a certain number. It looks like a pretty safe  
23 facility, and it says that there were no deaths.

24 But if you look into the reporting logs, you  
25 can see there were several incidents of blood-borne

1 injuries where a trach was being removed and it spat out  
2 blood and other biohazards onto this worker. So they  
3 didn't show up as a fatality in this piece of  
4 documentation, but we don't know at this time if they  
5 were not given an illness that would shorten their life.  
6 So this is insufficient information.

7 So why do we need to know about this worker  
8 that was exposed to this biohazard? Why do we need this  
9 at an institutional level? Well, because this could be  
10 happening at every facility. And what they might need  
11 is they might need requirements to have some kind of  
12 space protection, or maybe they need training. But we  
13 don't know.

14 What we do know is it's incredibly difficult  
15 to get the information, and it really impacts workers'  
16 lives, their health. We are their union. We need to  
17 know what's going on.

18 And just to remind you, health care workers  
19 are the most likely to be injured of any industry.  
20 Thank you.

21 MR. NGUYEN: Thank you.

22 MR. FRUMIN: We need to stick strictly to  
23 points on this point because (unintelligible) to address  
24 the whole thing.

25 MR. NGUYEN: Well, before we jump into the

1 points, I realize that -- or we realize that folks may  
2 want to just make general comments to orient us to your  
3 general concerns, and after that folks will have an  
4 opportunity to speak more in depth on the specific  
5 items.

6 MR. FRUMIN: Okay, I'll try to do that. So  
7 I'll have a chance to come back and address some of  
8 these other issues. So for five minutes.

9 So I'm Eric Frumin, Change To Win. We're a  
10 labor union federation including about 4.5 million  
11 workers, including SEIU and the Teamsters, both of whom  
12 are represented here today. OSHA's recent repeal of the  
13 key portions of the 2016 injury tracking rule was a  
14 major step backward in our nation's efforts to find the  
15 most common serious safety health workers and to get  
16 employers to fix them.

17 When Federal OSHA issued the rule, changed the  
18 way that the Teamsters were, we strongly supported it,  
19 and we are here today to strongly support Cal/OSHA's  
20 adoption of parts that Federal OSHA repealed. The  
21 legislature spoke very loudly about the need for full  
22 adoption of at least what Federal OSHA repealed, and in  
23 the legislative findings in AP2334 it said the OSHA rule  
24 is an important step to improve workplace safety through  
25 extended access to timely establish injury and illness

1 information.

2 While posting of injury information at each  
3 work site is important, specific workplace injury and  
4 illness and information is not accessible to the public  
5 and prospective employees in an easily accessible  
6 database. There's no requirement that such records or  
7 their related annual summaries be provided separately by  
8 the reporting employers where the public may view it in  
9 a central clearing house.

10 And, finally, workplace injury and illness  
11 reporting should be robust and easily accessible to  
12 public access.

13 So in addition to the legislature giving you  
14 the mandate to convene this committee here today, it has  
15 spoken very loudly about why they want you to do that  
16 and the urgency of achieving a robust, publicly  
17 available injury and illness information system.

18 Most employers have kept these reports on site  
19 for decades, but unless a Cal/OSHA inspector requested  
20 them during an inspection, Cal/OSHA never saw them.  
21 Otherwise, during this time only individual workers or  
22 their unions, if they had one, could even request copies  
23 of the records at the workplace.

24 And as the Teamster and SEIU reps here today  
25 are describing, even such legally supported requests

1 have been met with indifference or hostility by some  
2 employers, employers who certainly should know better.  
3 Cal/OSHA can now collect these same data electronically  
4 from these same employers, large employers, and it's  
5 high time Cal/OSHA did so.

6 But some employers are not content to merely  
7 ignore their legal responsibilities, their obligation to  
8 provide these records to their own employees. They have  
9 gone farther and retaliated against workers who have  
10 made such requests. For instance, there's a company  
11 called the Eulen Group, E-u-l-e-n. It's a large,  
12 multi-national supplier of support services to airlines  
13 for many of the biggest airports in the nation,  
14 including LAX and Long Beach.

15 Headquartered in Spain, it says it has more  
16 than 7,000 clients in 14 countries, more than 90,000  
17 employees, including 3,000 in the U.S., and reports 2017  
18 sales of over 1.5 billion euros. Recently Eulen workers  
19 at three different U.S. airports requested the OSHA's  
20 300 logs, and the company failed to provide the logs to  
21 any of these workers.

22 However, in Miami, after a ramp agent named  
23 Estevan Barrios requested the logs and the company  
24 promised to mail him the logs, he discovered that he had  
25 suffered a pay cut and the company imposed an

1 undesirable schedule change which prevented him from  
2 going to school.

3           Such interference of workers' rights by large  
4 employers in a highly regulated safety sensitive  
5 industry like air transport is inexcusable, but it's  
6 also a good indicator of the urgency of Cal/OSHA's  
7 efforts to deter such lawbreaking by other less visible  
8 employers in dangerous industries.

9           I have other comments I'll make about the  
10 false nature of the federal pretext regarding the  
11 privacy issue and the important uses we have and others  
12 have made of these data, but suffice it to say it's  
13 vital that you proceed quickly once you've convened the  
14 committee to understand what the committee members have  
15 said, and proceed quickly to the proposal to give to the  
16 standards so we can fix this gap as urgently as  
17 possible. Thank you very much.

18           MR. NGUYEN: Thank you.

19           MS. GHERGA: Just as a small clarification,  
20 this rule-making does not go to the standards forum.

21           MR. FRUMIN: Oh, it's regulatory, yeah. Even  
22 better.

23           MS. GHERGA: For the record.

24           MS. ROBBINS: Hi. My name is Maggie Robbins  
25 and I'm with Work Safe.

1           And in terms of general comments here, I think  
2           that the main point I'd like to make is that having more  
3           detailed information about what's going on in work sites  
4           about the injury and illness issues that workers  
5           experience in a way that's readily accessible will make  
6           it more usable, and make it not just usable for workers  
7           and unions and representations and organizations that  
8           represent them, but to researchers, to public health  
9           agencies and the Cal/OSHA itself.

10           I think that the way Cal/OSHA thinks about and  
11           uses information does not take advantage of 21st century  
12           technology to be able to gather information into a  
13           useful -- to be able to use it and determine what's  
14           going on, what are trends in the workplaces that are  
15           going on, and emerging issues, areas that might need  
16           more research, areas that might need more intervention,  
17           areas that might need more consultation service to the  
18           employers, to workers, to the public. There's just a  
19           lot of things that can be done with having more detailed  
20           information.

21           The proposal that is being debated right now  
22           is aimed at the largest employers who have the most.  
23           They are keeping the data; it's just a matter of getting  
24           them to press the button to submit it. And I think it's  
25           a waste of opportunity to have that data being collected

1 and employers going through the effort to do so and then  
2 to not be able to use it in the ways that would allow us  
3 to make workplaces safer and to avoid the dilemmas that  
4 have already been reported by the previous speakers and  
5 I've experienced myself in my work life, which is it can  
6 be very difficult to get the 300 logs, even in places  
7 where you represent those employees.

8           You often get redacted logs, illegally  
9 redacted logs. It's hard to follow up. If you want to  
10 do year after year monitoring, you have to again make  
11 another request and go through the obstacles in the way  
12 of getting the information.

13           I don't see what is so secret about this  
14 information. I really don't. I think a little sunshine  
15 would be good in terms of what's going on in work sites.  
16 For employers that are doing well, they should get the  
17 adulation for doing that well. And for those that  
18 don't, they need a little sunlight in order to change  
19 their ways, or at least that's what I think would be the  
20 intention, and that is part of the intention, as stated  
21 earlier.

22           Thank you.

23           MR. NGUYEN: Thank you.

24           MR. STEIGER: Good morning. Mitch Steiger  
25 with the California Labor Federation.



1           And I just wanted to speak very briefly a  
2 little bit to the genesis of AB2334. We were one of the  
3 co-sponsors of that legislation. And it started as just  
4 kind of a broad effort to improve both the reporting and  
5 recording of injuries and illnesses.

6           It stands, the way it is right now, that we've  
7 got a serious problem in this state with both under-  
8 reporting and -- under-reporting of injuries. And  
9 they're different, but they are connected.

10           For years I've been helping a friend of mine  
11 who suffered a very serious injury. He was on top of a  
12 ladder replacing a light bulb and fell 12 feet, landed  
13 on his head, crippled for life. He has all sorts of  
14 injuries that he'll never recover from.

15           His employer was classifying him as an  
16 independent contractor. Nothing was reported to anyone.  
17 His employer didn't report it to Cal/OSHA. The place  
18 where he was working didn't report it. The first  
19 responder didn't report it. Nothing was reported on any  
20 Log 300. Our efforts to go after that employer were  
21 unsuccessful.

22           Not to get into gory details, but I did have a  
23 call with a Cal/OSHA inspector who angrily demanded to  
24 know why I was going after this employer, what I, quote,  
25 had against him. And I hear stories like this over and

1 over again. The phone rings a lot, usually in the  
2 workers' comp context where a worker has been hurt on  
3 the job, but usually when you go back and you get into  
4 their injury, it's a similar story. It's "Something  
5 terrible happened; the employer fired me; the employer  
6 sent me home." Nothing ever wound up on a Log 300.

7           These stories really abound in our system  
8 despite on paper something that looks like it should  
9 work. The reality is that it doesn't. So we were very  
10 excited to work on it, for a few different reasons. We  
11 were excited to get rid of that six-month statute of  
12 limitations that the Cal/OSHA Appeals Board adopted that  
13 essentially made it easier for inaccurate 300 logs to  
14 exist, and the effects that would have not just on the  
15 accuracy of those documents but also the employer's  
16 sense that those documents needed to be accurate; they  
17 needed to make sure they had all the information on  
18 there.

19           And the less likely that it is that an  
20 inspector or worker is going to have the right to see  
21 those or the less likely it is that they're going to be  
22 cited for that being inaccurate, the more likely that it  
23 is to be inaccurate. We have all sorts of discussion in  
24 the legislative context about that, and it seemed to be  
25 a point the legislature agreed with us on.

1           And with respect to what brings us here today,  
2 we started out with just wanting to reenact the 2016  
3 federal rule once it became clear that the federal  
4 administration had a different thought on that issue  
5 than the previous one and that they were going to leave  
6 it up to states to do anything about that.

7           So we started with that and had to scale it  
8 back simply because of costs, and also because we do  
9 have a lot of faith in this process. The legislative  
10 process is pretty limited when it comes to the ability  
11 to really get in and do things like this. You'll  
12 typically appear before two policy committees; you get  
13 two minute to testify; it's very rushed; everyone else  
14 just speeds through, and you really can't have a  
15 thorough discussion like this in the legislative  
16 context.

17           So we really do believe this is the  
18 appropriate forum for it, as much as we would have liked  
19 to have just done a bill and taken care of it that way,  
20 we think this is a better way to do better policy.

21           So we appreciate the meeting being held today,  
22 and I look forward to contributing. And we'll get a  
23 little more into the details of the meat and concerns  
24 later. But just overall, this is something that's a  
25 very serious problem here. The bill wasn't scaled out

1 because the problem didn't exist; it got scaled out  
2 because of cost and complexity. And we have faith in  
3 this process. So, thanks for having me.

4 MR. NGUYEN: Thank you.

5 MS. GHERGA: I would like to remind the  
6 speakers, if they can speak up more, it's a fairly big  
7 room and apparently our microphone is good, but not as  
8 good as we wanted it to be. Also, speak a little slower  
9 -- everyone has a different speech pattern -- so we can  
10 get an accurate record that we can use, all of us, for  
11 future. So thank you.

12 MR. HALL: Michael Hall with the Pacific  
13 Maritime Association.

14 It's more of a point of clarity. I have  
15 specific comments later, but the division's staff have  
16 twice mentioned so far that the 2016 final rule required  
17 Fed-OSHA to create a publicly accessible database.

18 Technically that's incorrect. 1904 was not  
19 amended to create a database. OSHA only intended -- let  
20 me rephrase that. OSHA stated that they only intended  
21 to create a database in the non-legally binding preamble  
22 section of the final rule. I intend to do all kinds of  
23 things; that doesn't mean I'll eventually do it. So  
24 it's more a point of clarity.

25 MR. NGUYEN: Thank you very much. With that,

1 let's take a five-minute break.

2 (Recess)

3 MR. NGUYEN: We'd like to invite any other  
4 speakers to provide general comments before we get into  
5 the specific bullet points. And if there are any  
6 general comments, we can go ahead straight into that.

7 MS. HELASKI: So I'm Kathy Helaski with Nimi  
8 Brothers, and I just had a few general comments. So  
9 there seems to be some concern about what's so secret  
10 about this information. I understand the intent is to  
11 use the information for data, and I respect that.  
12 However, and, quite frankly, we don't have a problem  
13 providing the data as long as it can be done in a manner  
14 that protects the workers' identification.

15 HIPAA laws require that. I legally can not  
16 release certain information to anyone because it's the  
17 workers' information; it's not mine to share. And so  
18 we're very protective of making sure that the workers'  
19 rights are protected in that regard.

20 Also, the 301 log specifically asks for things  
21 that identity thieves really like to know, like date of  
22 birth, name, address. So I think the 301 in particular  
23 is a very dangerous document to be submitting to  
24 government agencies for a database that can be  
25 distributed to the entire public.

1 I mean, I know even for myself I am very, very  
2 protective of my date of birth and my address, you know.  
3 I'm one of those -- I shred all my mail and stuff before  
4 putting it in the recycle bin because there's --  
5 identity theft is a real thing. So we need to make sure  
6 we protect our workers.

7 The third thing is that you may be surprised,  
8 but all my -- not all of them, but a lot of my workers  
9 are actually embarrassed when they get hurt and they  
10 really don't want their name out in the public as one of  
11 the people who got hurt. So I'm not opposed to sharing  
12 this information in terms of injuries that happen or  
13 illnesses that happen and how they happen in terms of  
14 being able to help some research or data analysis, but  
15 we need to make sure we do it in a way that protects the  
16 workers' identity. That's it.

17 MR. NGUYEN: Thank you.

18 MR. ORTIZ: My name is Ralph Ortiz. I'm  
19 Teamster 856986. I represent aircraft mechanics and  
20 related locally.

21 On the question about concern of privacy, the  
22 employer that we represent already has actually an  
23 internal database that removes all names and genders  
24 from their internal report and those reports are shared  
25 with all the workers. So it is already possible to do

1 that because many employers can have that database which  
2 we do.

3 We use the 300 log from the union, which is  
4 under our collective bargaining agreement we get to view  
5 to compare the injury and illnesses that were recorded  
6 in the internal database to the 300 log, and if we see  
7 any discrepancies, we inquire with management about  
8 those discrepancies so we can straighten them out.

9 We also -- having access to do those logs and  
10 the intentional database, we are able to ask workers  
11 about the safety concerns of an injury and illness they  
12 had and how to -- what they think should be used to  
13 prevent or fix that, and then we share that with  
14 management.

15 We also have new hires who, under our  
16 agreement, are not protected until -- have union  
17 protection until they finish probation. But we  
18 encourage those workers to still report the injury and  
19 illness. And if they want to see a log, they can still  
20 come to the union and we will request it for them,  
21 privately, so they don't have to worry about any  
22 retaliation against us.

23 We had a case where the employer gave a  
24 warning notice that an employee had too many -- their  
25 interpretation of too many injuries. We then

1 immediately notified that employer, that manager, that  
2 it might be a violation of the Fairfax letter, and they  
3 immediately stopped that and never issued those letters  
4 again. And that's how we address all those things.

5 Thank you.

6 MR. NGUYEN: Thank you.

7 MR. FRUMIN: Eric Frumin again from Change To  
8 Win.

9 Regarding the benefits of the rule, we've seen  
10 the reaction from the employers in this extended  
11 rule-making at Federal OSHA here about all the reasons  
12 not to -- why OSHA should not collect the data or should  
13 not release it, but little discussion about how useful  
14 these data really are.

15 And that doesn't surprise me. We have seen  
16 major employers simply ignore the important value of  
17 these data for prevention purposes, even when we have  
18 analyzed their own data for them, similar to what Eric  
19 just described at the airline where the union goes  
20 through the documents and helps the employer understand  
21 what happened.

22 In 2010, I and other researchers performed a  
23 very detailed study on the hotel industry, this one,  
24 which relied largely on the Form 300 logs of the five  
25 largest hotel companies in the nation whose properties



1 accounted for over 70 percent of the full-service hotel  
2 rooms in the country. It involved nearly 3,000 injuries  
3 over a three-year period and in both the proposed and  
4 the final versions of the rule OSHA explicitly  
5 acknowledged this study as an example of, quote, the  
6 research on workplace safety and health in the U.S.,  
7 using the data in the OSHA BLS system.

8 This was a landmark cite and the first of its  
9 kind. It examined the issue of how race and gender  
10 discrimination helped to create workplace hazards and  
11 produced some remarkable findings. For instance, we  
12 found women workers overall and Asian and Hispanic men  
13 were about 1.5 times more likely to have been injured.

14 We found that female housekeepers had about  
15 three times the risk of injury than male housekeepers,  
16 that Hispanic housekeepers were 70 percent more likely  
17 to be injured than white female housekeepers. And we  
18 found that injury rates in some of the five companies  
19 were double or more of those in comparable companies in  
20 the same industry.

21 To the best of our knowledge, none of the  
22 companies involved have since provided publicly any  
23 further analysis of their own underlying data which  
24 would change these results or challenge the conclusions,  
25 even for their own companies.

1           These data are also important for OSHA and  
2 Cal/OSHA to use in targeting enforcement actions for the  
3 most dangerous industries and the most recalcitrant  
4 employers. First and foremost, Cal/OSHA can use these  
5 detailed site-specific data to much more clearly focused  
6 and targeting of establishments for programmed  
7 inspections on higher risk establishments within an  
8 industry.

9           For instance, in the mental health hospital  
10 sector, a company called Universal Health Services of  
11 Delaware is the nation's largest operator of mental  
12 hospitals with about 40 percent of the market. It has a  
13 notorious record of violating OSHA standards and has  
14 been cited repeatedly by federal and state OSHA programs  
15 in states around the country.

16           Among the most serious of those were those  
17 violations where the company's failure to prevent  
18 violence against its staff, most recently just a few  
19 weeks ago in Denver, Colorado. But, sadly, only two of  
20 those inspections were in California, including their  
21 facilities in Fremont and Torrance, and both of those  
22 inspections arose from worker complaints. Both of  
23 those violations were sustained on appeals to either the  
24 appeals court or higher courts.

25           If Cal/OSHA had easy access to the company

1 logs, the workers at this company would not have to wait  
2 for the recalcitrant management to finally see the light  
3 or to call OSHA inspectors themselves. That is an  
4 untenable position for these workers at such a large  
5 employer, and Cal/OSHA has every reason to focus on UHS  
6 facilities in its inspection targeting as an example of  
7 the high-risk employer which repeatedly puts its  
8 employees at very serious risk.

9 Cal/OSHA is currently conducting many  
10 programmed inspections by simply randomly picking  
11 employers in high-risk industries without choosing those  
12 with the highest known injury rates. These new data  
13 will allow Cal/OSHA to not only prioritize those bad  
14 actors for the primary inspections, as Federal OSHA has  
15 long done, but also to determine in advance which of  
16 these employers had patterns of injury more likely to  
17 result from violations of Cal/OSHA standards.

18 Given that Cal/OSHA persists in finding a much  
19 smaller proportion of serious violations in the same  
20 industries as your counterparts and other state plans or  
21 by Federal OSHA, an approved targeting program using  
22 these data is long overdue. Thank you.

23 MR. NGUYEN: Thank you very much. Again, we  
24 are inviting folks to make general comments right now;  
25 then we'll jump to the bullet points. I do take that as

1 your comments on the benefits, second bullet point.

2 But if anybody has any more general comments  
3 regarding this issue, we invite you guys to do that;  
4 then we'll move into the bullet points and address each  
5 of those as we go in order. That will help us in terms  
6 of keeping our thoughts organized as we move through  
7 this process.

8 A couple other reminders. One, if I could  
9 remind folks to speak more slowly, I think that would be  
10 helpful. And if you do have written comments you  
11 prepared you wanted to read into the record today,  
12 you're welcome to do that and keep your comments within  
13 the five-minute limit, but you're also welcome to submit  
14 written comments to us by email.

15 We also just wanted to let you know that we  
16 decided to extend the written comment submission period  
17 to May 31st. It makes a little bit more sense to do it  
18 to the end of May. So please get those written comments  
19 if you have them by the end of this month. Thank you  
20 very much.

21 MS. CONSTI: Hi. I'm Carmen Consti,  
22 Regulatory Policy Professionals with California Nursing  
23 Association.

24 I want to make a number of clarifying points  
25 on a number of things that folks have pointed out. So

1 for the federal rule, it needed certain types of  
2 information that would not be collected by OSHA and from  
3 the form 301s. Full names would not be collected;  
4 addresses would not be collected; information about your  
5 physician's name and address would not be collected. So  
6 this is no fear of your name or address being  
7 surreptitiously collected by hackers.

8 And, secondly, the legislative mandate of  
9 AB2384 is clear that OSHA should have robust and  
10 effective collection and reporting of this data and make  
11 it publicly accessible on the internet. That is clear,  
12 regardless of whether or not that statement was in the  
13 federal rule preamble or not.

14 Secondly -- or another point is that as a  
15 union we have collected information from Cal/OSHA  
16 through the Public Records Act request. We know this is  
17 burdensome for workers, for the union and for Cal/OSHA.  
18 It's a waste of resources to go through that process  
19 just so employers can hide and delay access to their  
20 information.

21 Every day that this information is delayed,  
22 the likelihood of another worker getting injured or  
23 being killed on the job from preventable injury and  
24 illness can happen, and we want to prevent that. It's  
25 very simple. The information is already collected by

1 employers, and employees can access it if they request  
2 it.

3 But there's a burden of having to go through  
4 the process of getting that information. It's simple.  
5 The rule would be simple, and it would be effective.  
6 And for nurses without this rule, over 300 hospitals in  
7 California would not have to publish their data. That's  
8 300 hospitals in California which, when -- and we know  
9 that when nurses are unsafe, patients are unsafe. So  
10 all of you are all risk when nurses are at risk. And we  
11 have to remember that role of making sure that workers  
12 are safe on the job, and it impacts everybody that  
13 interacts with these industries.

14 MR. NGUYEN: Thank you. Any other general  
15 comments before we move on?

16 MR. BLAND: Do I need the mic? Kevin Bland  
17 with Ogeltree Deakins representing the Western Steel  
18 Council, the Residential Contractors Association and  
19 California Framing Contractors Association here today.

20 As a general comment, I heard a lot of  
21 anecdotal stories and information today, I understand,  
22 but at the end of the day I think it's important to  
23 recognize the purpose of Cal/OSHA and the purpose of the  
24 Act itself is for safety. It's not the Free Discovery  
25 Act to be used to gain information for all of this

1 privacy that we hold highly in our hearts as  
2 individuals, as employees.

3 I haven't always been on the management side.  
4 I was a union iron worker at the Local 433 in the day,  
5 worked for crane companies in my past and then went to  
6 law school. Don't ask me why. So I've been on all  
7 sides of this.

8 But there is so much that can be used here for  
9 elicited purposes as compared to something that's  
10 beneficial -- this is after an accident or after  
11 something has happened, and we're talking about accident  
12 prevention. If we spent this much effort and time  
13 before the accident instead of trying to gather this  
14 information, and where they had the privacy concerns and  
15 all the things in balance, I think we would be much  
16 better served in this.

17 I do understand the importance, though, of  
18 some analytical analysis that can be gained from some of  
19 the data, but I feel this is way overboard as to what  
20 the benefits of the data is, especially with the  
21 personal information that's gathered here. Even at the  
22 federal level where they did the summary, you can gain  
23 data and information from there.

24 I think that there are outliers in every  
25 industry and just like there's outliers for every

1 employee that we talk about, the fringes. But the  
2 majority of employers and I think the majority of  
3 employees and the majority of us in here are here for  
4 the right reasons, but I think we have to be careful  
5 whenever we start eroding away our personal rights under  
6 the guise of safety and gathering information that can  
7 be misused, abused by individuals that may not have the  
8 same purpose and intent that was on the piece of paper  
9 that was set there with the goals stated that we'll talk  
10 about here in a minute. So I wanted to just plant that  
11 seed of thought and make sure we don't forget the people  
12 we are trying to protect here, that's the employees, and  
13 part of that protection goes to this privacy.

14 I do want to -- one thing, too, on the  
15 collective bargaining agreements, those of you that are  
16 under collective bargaining agreements, that's the whole  
17 idea. You get to bargain for what you get to obtain  
18 from that employer, what the employer has to give to  
19 you. That's why you have a collective bargaining  
20 agreement. You sit at the table and hash it out, like I  
21 did for years, and you decide what's within the  
22 agreement and what's not.

23 The other thing that I wanted to point out,  
24 too, real quick, is we talk about a lot of things -- we  
25 hear the word "retaliation." Well, there are laws



1 against retaliation already. There are laws against  
2 retaliating for reporting accidents. If you retaliate,  
3 that's against the law now.

4 This isn't something that's going to prevent  
5 or change that, and so we need to keep that in mind. A  
6 lot of things we're talking about here, there are  
7 already laws on the books to prevent that.

8 So I appreciate you taking the time to listen  
9 to my soap box here, but I think I better shut up before  
10 I get too much written in the Cal/OSHA Reporter.

11 UNIDENTIFIED SPEAKER: Too late.

12 MS. (UNINTELLIGIBLE): My name is  
13 (unintelligible). I work for Sedgwick CMS. We're a  
14 third party administrator. So I'm not talking from the  
15 side of the employer or the side of the union; I'm  
16 talking about the side of actually collecting this data.  
17 We represent a very large number of clients. Just to  
18 give you a framework, last year we submitted over  
19 218,000 establishments on the ITA side on behalf of our  
20 clients.

21 So my point is the technology. The site -- if  
22 we are going to collect all this data, the site or means  
23 of collecting the data has to be very robust. Trying to  
24 upload 280,000 establishments when the site crashes,  
25 when the locations were (unintelligible) -- it was just

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1 a nightmare the last couple of years. So I hope that if  
2 this goes through that you are going to collect the 301,  
3 300A, that this technology will match what they  
4 requested. Thank you.

5 MR. NGUYEN: Thank you.

6 MR. PALDERIN: My name is Michael Palderin  
7 representing CalTrans here today. (Name undecipherable  
8 on sign-in sheet)

9 Just a quick concern: We didn't have too much  
10 of an issue with the 300A and submitting those, but when  
11 looking at something like submitting the 301s which have  
12 much more detailed information, it would require  
13 updating our database systems. And a project that large  
14 is quite intense for us. Where it would also cause time  
15 and investment, it also requires approval from our  
16 oversight agencies such as Department of Technology,  
17 DGS, as well as the California Transportation Agency.  
18 And while it's something we've begun working on, that's  
19 a two-year process.

20 So implementing something like this with  
21 immediate requirements may be something for  
22 organizations as large as us with over 20,000 employees,  
23 it's something that's significantly difficult for us to  
24 do.

25 MR. NGUYEN: Thank you. Okay, thank you,

1 everybody, for those general comments. Let's move into  
2 our specific bullet points. And if you have any  
3 comments that you haven't already made related to the  
4 specific topic areas, we invite you to come up to make  
5 that, starting with the first topic of what are the  
6 goals of the original 2016 federal rule. If folks have  
7 comments specific to that question that you haven't  
8 already shared, we invite you up to make those comments.

9 UNIDENTIFIED SPEAKER: Isn't that what we just  
10 commented on?

11 MR. BLAND: I'll set a goal real quick. I  
12 just happened to just pull up what the -- this is from  
13 the actual OSHA website, osha.gov, on the announcement  
14 of the rule and the goal, which the question is -- and  
15 this is from OSHA themselves -- "Why is OSHA Collecting  
16 These Data?"

17 So the goal, it says:

18 "Collection of these entry and illness  
19 data will improve OSHA's ability to  
20 identify establishments that  
21 experience high rates of occupational  
22 safety and injuries. OSHA will use  
23 the data to interact with these  
24 establishments to both outreach and  
25 enforcement initiatives with the goal

1 of reducing injuries and illnesses."

2 That is what the stated goal was. There's  
3 nothing in this stated goal that says provide this  
4 publicly to everyone, provide private information. The  
5 goal was to take what the injuries were and work with  
6 that industry to try to reduce those injuries.

7 And so if we get too broad here based on this  
8 goal, we've then exceeded what the goal is. And I think  
9 it's very important to keep that framework narrow. This  
10 is kind of a dovetail from before, but that's the actual  
11 goal that was written by OSHA themselves in their own  
12 publication.

13 MR. NGUYEN: And, yes, I do recognize that the  
14 general comments did touch upon these individual bullet  
15 points, but we wanted to highlight these specifically in  
16 case anybody had specific comments. So to the extent  
17 you have any you'd like to share in addition to what you  
18 have already shared, please, we invite you to do so. If  
19 you've already shared those comments specific to any of  
20 these bullet points, don't feel the need to come up and  
21 restate them.

22 MS. ROBBINS: This is Maggie Robbins from Work  
23 Safe. During the discussions about the original federal  
24 rule, it was clear that the intention was broader than  
25 just call OSHA using it to target consultation and

1 enforcement. It was very clear that the intention is to  
2 bring the way this country uses injury and illness data  
3 to better use, taking advantage of our 21st century  
4 technologies and our abilities to analyze data better  
5 than you could, say, in 1950 when everything was on  
6 paper.

7           And the idea was that sunshine changes  
8 behavior. And by having sunshine, I mean public access  
9 to the non-private information that's in those forms.  
10 Nobody's ever been suggesting that names would be, birth  
11 dates would be, addresses would be submitted. Nobody is  
12 asking for that. That information can be scrubbed from  
13 records. So that is not what we're talking about.

14           What we're talking about, rather, is the  
15 injury and illness experience in some detail down at the  
16 departmental level to the job task level so that we can  
17 actually look at what's going on in the work site, what  
18 changes need to be made, how we can prevent those same  
19 injuries happening again. That's what we're here about.  
20 That's the intention.

21           So that isn't just about employers using data  
22 or Cal/OSHA using data, it's about workers using data;  
23 it's about researchers; it's about public health  
24 agencies; it's about worker advocates who are not  
25 unions; it's about anybody, right, so that you can look

1 at your competitors and see what they're doing. And  
2 maybe they have a worse or better experience; maybe  
3 there's something to be learned.

4 I know the employer I used to work with, they  
5 would have loved to have had an external benchmark to  
6 use to gauge their own performance, and not just at an  
7 injury level, but the type of injury, whether it's  
8 patient handling, blood exposures, or whatever,  
9 infectious diseases or in different departments. Being  
10 able to benchmark would have been a powerful tool and  
11 incentive within the organization to do better.

12 So I think by not using the data and by hiding  
13 behind the screen of we're going to be revealing  
14 personal information, we lose the opportunity to use  
15 this information, and it's our loss if we us lose that  
16 opportunity. Thank you.

17 MR. NGUYEN: Thank you.

18 MR. FRUMIN: So the preamble in the federal  
19 register to the final rule May 12th -- sorry. Eric  
20 Frumin, Change To Win. I apologize.

21 The preamble to the final rule goes on at  
22 great length to explain the goals of the rule, and it  
23 certainly includes the discussion of the issues that I  
24 addressed about helping OSHA and state OSHA agencies, to  
25 improve their targeting. That's one of the prime

1 purposes.

2 But with regard to this contentious issue of  
3 public access that several people have commented on,  
4 that was a very strong goal, explicitly discussed in the  
5 rule, and not explicitly discussed in a short way. If  
6 someone wants to know what OSHA said about what the  
7 goals were, instead of looking for a bullet on the OSHA  
8 data recording website, they could look at what OSHA  
9 actually said in the preamble.

10 And there are about ten different specific  
11 goals that OSHA outlines specifically for the public  
12 release of the data, putting aside the question of  
13 whether a public release was mandated by the rule.  
14 First, quote -- this all starts on the Federal Register,  
15 May 12th, Page 2963, First:

16 "The online posting of establishments'  
17 specific data will encourage employers  
18 to improve their workplace safety and  
19 health."

20 And I'm just picking out excerpts here.

21 Second:

22 "These data will be useful to  
23 employers who want to improve their  
24 benchmarking."

25 Third:

1 "Online availability of the data will  
2 allow employees to compare their own  
3 workplace. OSHA believes an employee  
4 is in establishments of 250 or more  
5 employees will access and make use of  
6 these data more frequently when the  
7 case-specific information is available  
8 without having to request the  
9 information from their employers.  
10 Uninhibited access to the information  
11 will allow them to better identify  
12 hazards."

13 Fourth:

14 "Access to these data will improve the  
15 workings of the labor market"...et  
16 cetera.

17 Fifth:

18 "Access to the data will permit  
19 investors to identify investment  
20 opportunities"... et cetera.

21 Sixth:

22 "Using data collected under this final  
23 rule, members of public will be able  
24 to make more informed decisions."

25 Finally, for those of you with interest in the



1 construction sector:

2 "In large construction contracts,  
3 particularly those involving work  
4 contracted for by state and local  
5 governments, preference is often given  
6 to subcontractors with lower injury  
7 and illness rates."

8 So it goes on to great length including its  
9 relevance to functions that are very important to  
10 government entities like the EIR and its counterpart  
11 agencies at the state, county and local level. So I  
12 think there should be no question when this rule was  
13 issued; OSHA foresaw many tangible benefits from the  
14 public disclosure aspect of the rule. Thank you.

15 MR. NGUYEN: Thank you.

16 MR. ORTIZ: Ralph Ortiz, Teamster's SFO,  
17 0856896. A number of years ago, a few years, actually,  
18 San Francisco airport was looking at contracting with  
19 various companies to provide vendor services. One of  
20 those is many of those vendors whose employees are not  
21 under a collective bargaining agreement. They don't  
22 have a union.

23 So the discussions from unions that were  
24 attending this meeting was the airport wanted to know  
25 what their safety record was. Well, without access to

1 this injury and illness data for those -- for the  
2 airport, they would have no way of knowing or  
3 determining how safe those employers are providing  
4 safety for their employees by not knowing their injury  
5 and illness rates and what type of injuries they were  
6 having.

7 We know the airport needs services directly  
8 related to working in and around aircraft, and that's a  
9 safe industry everybody works at. So without having  
10 access to those records, there was no way that the  
11 airport would know the vendors they were hiring, what  
12 type of -- how they were protecting their employees and  
13 what type of safety record they had. Thank you.

14 MS. ABELLA: Sherry Abella from SEIU Local  
15 2015 Long-term Care Workers Union.

16 Benefits. I mean, I don't have to tell any of  
17 you what a pain it is to deal with paper, right? Paper  
18 is a pain. We can figure it out and make it better.  
19 That is a benefit.

20 In my research and looking and my requesting  
21 OSHA laws and reviewing them, I found inconsistencies in  
22 they way they reported. Each employer has their own way  
23 of phrasing information. I found inconsistencies in  
24 between the summary and the events.

25 If there was an electronic portal where the

1 employers could just go and upload their information, it  
2 would be consistent. They wouldn't be worried about  
3 mistakes. They wouldn't be worried about do we make a  
4 report or not. In some of the things I've received,  
5 they're wrong. They have been not -- they have not been  
6 compliant with the law. But I believe in some of these  
7 reports it was a mistake on the employer's part.

8 So this would make it level; it would make it  
9 clear; everyone could comply; and the data would be  
10 useful on a big data scale. This is the opposite  
11 anecdotal. We want this information so we can look at  
12 it and we can see trends and patterns and we can change  
13 situations that are making workers sick, that are  
14 killing workers. Thank you.

15 MS. KINO: Alyssa Liz Kino with United Auto  
16 Workers. We represent a million workers and retirees on  
17 a national level, and we have tens of thousands of  
18 members here in California in industries ranging from  
19 post-doc, academic, researchers as well as workers in  
20 the aerospace industry and auto part distributions here  
21 in California, and we have been very engaged in the  
22 process in support of the 2016 Federal OSHA rule.

23 My comments are mostly on Bullet Point 2, the  
24 benefits of this data and how it can be used to improve  
25 worker safety. And I'm speaking from our experience in

1 facilities where we have collective bargaining  
2 agreements where we represent workers who have  
3 unfettered access that they have gained through our  
4 collective bargaining.

5 But I think our experience where workers do  
6 have access to that data because employers are already  
7 required to report it illustrates how critical it is for  
8 workers that don't have the advantage of collective  
9 bargaining to have access to the same data, and not just  
10 workers, but, of course, advocates, employers,  
11 academics, to advance the science of occupational  
12 health.

13 So, for example, where we have employers and  
14 where we represent workers, we have locations where  
15 we're proud of the accurate recordkeeping and advanced  
16 safety systems. We work collaboratively with our  
17 employers to build the best safety programs we can,  
18 particularly around ergonomics, which is a big risk in  
19 our industries.

20 Detailed reports from the 300, the 301 logs  
21 provide the most comprehensive information about what's  
22 occurring. And, yes, it is a lagging indicator, but  
23 those lagging indicators, we use them for purposes of  
24 targeting prevention efforts, of focusing our resources  
25 where the highest risks are, be it acute risks or

1 repetitive motion injuries. The data of what happened  
2 in the past allows us to shape the future to improve it  
3 for workers.

4 And we have done this in unionized facilities,  
5 but we have also participated with researchers, and in  
6 peer-reviewed studies, have been able to reduce  
7 ergonomic injuries while preventing any kind of  
8 violations of privacy.

9 Through data collection we have been able to  
10 create safer workplaces. We've reduced lost time, lost  
11 workdays. We've developed successful ergonomic  
12 programs. We understand firsthand how valuable the use  
13 of that data is, analyzing accidents -- and, you know,  
14 we think, based on our experience, if OSHA and public  
15 advocates had better access to that data, you could make  
16 better uses of OSHA resources targeting employers that  
17 have the highest risks, so we make good use of those  
18 public powers to help improve workers' safety in  
19 California.

20 I'll just point to a couple of things -- we  
21 have surprised ourselves in research we have  
22 participated in where in the assembly line facilities  
23 there are lots of hazards. But we have also found that  
24 in parts distribution centers where the expectation  
25 would be the risks are maybe lower than in an assembly,

1 we've actually found the risks can be higher there,  
2 higher injuries.

3 So we have been able to focus on health and  
4 safety prevention programs in the areas in the employers  
5 and in the kinds of industries that have the highest  
6 risks. And sometimes that can be counter-intuitive  
7 based on -- if you don't have the data, you might make  
8 assumptions, and the data can help point you to where  
9 you wouldn't have known to look, which has been our  
10 experience. Thank you.

11 MR. SHORE: Thank you. I just want to make a  
12 comment that one of the things we're trying to get to  
13 here is the difference between summary reporting of the  
14 300A and, as the last speaker indicated, the detailed  
15 reporting of the 300 and the 301 incident reports. And  
16 so we are trying to get to what are the benefits of  
17 collecting this detailed data as opposed to the current  
18 data collection that is already going on.

19 MR. NGUYEN: Thanks, Glenn, for that  
20 clarification.

21 With that, we'd like to invite speakers to  
22 come speak specifically on the second bullet point, the  
23 benefits of requiring reporting 300 and 301 data, that's  
24 the 300 log data and the 301 incident report data.

25 MR. WILSON: Thanks. My name is Mike Wilson,

1 and I'm with the BlueGreen Alliance. It's a national  
2 coalition of largest unions in the country, seven  
3 environmental organizations with 16 million members and  
4 supporters. And with respect to your specific question,  
5 I have a general comment, and then I'd like to address  
6 your comment.

7 In the Federal OSHA's leading up to the action  
8 that they took to repeal the provisions in the 2016  
9 rule, I want to read a short statement that was from  
10 Joseph Sellers, General President of Association of  
11 Sheet Metal, Air, Rail and Transportation Workers;  
12 Michael Langford from the United Utility Workers Union  
13 of America; Collin O'Mara of the National Wildlife  
14 Federation; Leo Gerard, President of the United  
15 Steelworkers; Cathleen Rest, Executive Director, Union  
16 of Concerned Scientists; Michael Brune of the Sierra  
17 Club and Rhea Suh, National Resources Defense Council.

18 In that -- stating that OSHA's proposal -- and  
19 this is in support of -- speaking to the support of  
20 California taking the action that's -- that's  
21 contemplated here, that the proposal, OSHA's proposal  
22 would roll back the requirement that large employers  
23 submit information on injuries at their workplaces to  
24 OSHA, information the companies already maintain.

25 The agency is proposing to strike this

1 requirement, even though this information would  
2 significantly assist the agency in allocating its scarce  
3 resources, including compliance with systems enforcement  
4 to help prevent over three million serious workplace  
5 injuries that occur every year.

6 The collection of and access to these data is  
7 also essential to the efforts of state OSHA agencies as  
8 well as other public agencies and researchers, as we  
9 heard from the UAW earlier, workers and worker  
10 representatives whose mission is identification and  
11 prevention of workplace hazards. The proposed rule  
12 would allow large employers in dangerous industries to  
13 continue to hide their records of workplace injuries.

14 OSHA claims it is repealing employee injury  
15 reporting requirements for large employers in order to  
16 protect a worker's privacy. This is not based on  
17 evidence or fact. Workers around their organizations  
18 advocated for the 2016 and for the electronic submission  
19 of these data.

20 Further, the 2016 injury rule was specifically  
21 designed to protect worker secure privacy. The 2016  
22 provisions clearly stated no information that would  
23 identify individual workers was to be reported. If such  
24 information was accidentally submitted, OSHA made it  
25 clear that the information would not be released to the



1 public.

2           And, of course, OSHA's sister agency, the  
3 Department of Labor of the Mine Safety and Health  
4 Administration has been collecting detailed information  
5 for decades, makes the information publicly available  
6 and effectively withholds personally identifiable  
7 information, just as OSHA would.

8           It is simply untrue to claim, as OSHA does in  
9 this proposal, that a description of an injury contains  
10 information that is too sensitive for employers to  
11 report to OSHA. Since OSHA's website was created  
12 decades ago, inspections that were conducted in response  
13 to a serious injury or a fatality have included a  
14 lengthy description of the incident, and this  
15 information has been available to the public with a few  
16 clicks of a keyboard.

17           Moreover, any worker, their representative or  
18 former employee can obtain copies of this information  
19 from their employer within a day of requesting it. It  
20 is fabrication for the agency to claim that an injury  
21 description is somehow too sensitive to disclose and  
22 that OSHA must therefore roll back this requirement to  
23 protect workers.

24           What I would add to this is that the CDC  
25 struggles every year to estimate the costs of injuries

1 and illnesses in the United States, and we typically see  
2 that their estimate is about two thirds of illnesses are  
3 not reported; they're not captured by the health care  
4 system; they're not well recognized by workers  
5 themselves, but we still see about 50,000 premature  
6 deaths from occupational diseases.

7           When CDC estimated the costs of injuries and  
8 illnesses using data that they did have back to 2007, it  
9 came to about \$250 billion dollars excluding costs of  
10 pain and suffering or care provided by family members,  
11 accounting only for medical care and lost productivity.  
12 That was about 1.7 percent of U.S. GDP in 2007.

13           If you assume that California's proportion of  
14 injury and illness costs, about 14 percent, is the same  
15 as the state's typical 14 percent of the annual share of  
16 GDP, which, my understanding, is a reasonable assumption  
17 from Paul Lee at UC Davis, that corresponds in 2017 to a  
18 cost for occupational injuries and illnesses in  
19 California of about \$35 billion.

20           We're not going to be able to solve that  
21 problem without good information; that's what it comes  
22 down to. So in 2017, we invested over \$6 billion in  
23 client protection efforts in California, and that was  
24 because we understand the nature of the problem and we  
25 understand what's coming and we understand the costs of

1 that problem.

2 We need to build a similar infrastructure  
3 around occupational injuries and illnesses, and this is  
4 a good start to doing that.

5 MR. NGUYEN: Thank you.

6 MS. ARMENTAS: (Name illegible on sign-in  
7 sheet.) Good morning. My name is Christine Armentas.  
8 I'm with the Occupational Health branch at the  
9 California Department of Public Health.

10 Our Occupational Health branch of the work  
11 that we do relies heavily on data we can get regarding  
12 injury illnesses and hazards in workplaces. Some of our  
13 data sources include those that we covered earlier in  
14 the session today along with direct reports from  
15 employers and employees, sometimes media.

16 We have a team of industrial hygienists,  
17 physicians, health educators, communications  
18 specialists, epidemiologists within our branch, and we  
19 work on injury prevention and outreach to employers,  
20 employees and physicians who do medical surveillance and  
21 also care for injured workers.

22 So relating a little to the forms and how we  
23 think that we could use this information -- so Form  
24 300A, in our view, is too broad for us to be able to  
25 make a meaningful intervention. The only categories of

1 events that you can document there are injuries, skin  
2 disorders, respiratory conditions, poisonings, hearing  
3 loss and all other illnesses. As a physician, there are  
4 countless diagnoses and issues that could lead to any of  
5 these categories. So it doesn't actually lend itself to  
6 us being able to create targeted interventions for  
7 specific job tasks leading to injuries.

8           However, the data provided in Forms 300 and  
9 301 is much more useful. It really gets to the core of  
10 what is happening in each of these situations, which  
11 would allow us to conduct more targeted interventions  
12 and, of course, this is a better use of time and  
13 resources for the employers we work with, the employees,  
14 and also public health. Thank you.

15           MR. NGUYEN: Thank you.

16           MS. ROBBINS: Maggie Robbins from Work Safe.  
17 I just wanted to add one additional thought on the more  
18 detailed information, which is what I think I was  
19 speaking to before.

20           It was mentioned recently of the Mine Safety  
21 and Health Administration collecting highly detailed  
22 data. They have been doing it for many years. They've  
23 also been putting it online. There's nobody jumping up  
24 and down about privacy concerns here. They have it  
25 without personal identifiable information.

1           But the level of information that they get is  
2 highly detailed and publicly available, and they do it  
3 as a way to both help them with their own targeting  
4 interventions and also to make it more available to  
5 other workers, other organizations, public health  
6 agencies and so on.

7           This is not rocket science. We can do this.  
8 Public health agencies get all sorts of private  
9 information. They use it for analytical purposes, for  
10 research purposes, for designed interventions and  
11 programs. We have the ability to do this. I don't  
12 think we should think of this as being rocket science.  
13 It's not. Thank you.

14           MR. NGUYEN: Thank you.

15           MR. STEIGER: Mitch Steiger with the  
16 California Labor Federation. And I just wanted to speak  
17 specifically to the benefits of having access to this  
18 information in this form versus what we've got right  
19 now.

20           So, one of main benefits of this is that the  
21 online portal can be designed in a way that the  
22 information can be sorted. In terms of numbers of  
23 employers, this is a pretty small sample statistically,  
24 but in terms of numbers of workers it's a very large  
25 number, and large enough to where if we want to learn

1 more about specific types of injuries we can figure ways  
2 to manipulate the data and organize it and sort it so we  
3 can see how prevalent something is, how likely something  
4 is to occur again, whether there are simple, relatively  
5 simple ways to prevent this from happening in the  
6 future.

7           And we really don't have that now, and it  
8 keeps coming up. I go to a lot of issue-specific  
9 advisory committees where we're struggling, continually  
10 struggling to find out how big a problem something is.  
11 And, you know, we'll have -- there was this one incident  
12 that happened a couple years ago where this happened,  
13 and another one a couple years ago where this happened.

14           We all know it happens far more often, but the  
15 system that we have to collect this data and the ways  
16 that we have to organize and look at it are so out of  
17 date and so unable to be manipulated in the way that we  
18 need to organize them that we don't really know what to  
19 do with it.

20           So we're just kind of stabbing in the dark  
21 when we do these new rule-making proposals. And it's  
22 not based on what's the biggest problem, where can we  
23 get the biggest bang for our dollar in terms of reducing  
24 illnesses and injuries; it's just who shows up at the  
25 standards board and makes the most noise. It's often

1 me. It's just not a very strategic way to do this.

2 And the more we go down the road with this and  
3 things like this where we collect the information  
4 electronically -- we do a lot of it. We do it so  
5 there's a large number of records so we can get a good  
6 sense of what it actually looks like out there. And the  
7 more we can sort and determine, "Well, there was this  
8 petition to the standards board, but according to all  
9 the evidence it doesn't look like this is a thing," or  
10 "There was a petition to the standards board and this is  
11 a serious problem," we have example after example of  
12 employers that are doing this. And so as we move forward  
13 and explore what this kind of technology can do, this is  
14 a step in the right direction.

15 But it's also important to remember that what  
16 we're talking about really isn't that different from  
17 what we've got now. Employers already have to collect  
18 this data. They've already got to prepare it so that  
19 someone who can see it they've already got to give it  
20 to, or who asks for it, post it, if a reporter really  
21 wants to get it, they probably can. Remember, if the  
22 public really wants to get it, they probably can.

23 So this is one of those examples where we can  
24 get a lot without having to do much that different.  
25 Most of the burden is going to be on the state to

1 develop the system and operate it, but this isn't  
2 something where we've got some whole new reporting  
3 requirement and no one knows how it's going to work. If  
4 anything, this is going to be easier, because now it can  
5 be electronic instead of written down.

6 So I think this really stands out and the  
7 benefits stand out as ones where we get a lot without  
8 having to do much, but it also allows this entire  
9 infrastructure that we've got to help prevent illness  
10 and injury, to help make it work a lot better than it  
11 does now. Thank you.

12 MR. NGUYEN: Thank you.

13 MS. ABELLA: Sherry Abella from SEIU Local  
14 2015, the Long-term Care Workers union. We have about  
15 380,000 members, to give a scope of how large a union we  
16 are. And if you can imagine going through and  
17 collecting all of these OSHA reports by paper from each  
18 facility is overwhelming.

19 So I want to make it clear when I spoke  
20 earlier that I was talking about electronic submission  
21 of all the OSHA logs, all of the (unintelligible) logs,  
22 because, as the document I showed you a sample of the  
23 work I'm collecting right now, that the summary provides  
24 almost no useful information.

25 I can do very little with that except now 20



1 people got hurt. That's terrible. I don't know what to  
2 do about it. I don't know how to bring it up. I don't  
3 know how to, you know, cite issues with the workers.  
4 I've got almost no information. And it took an insane  
5 amount of work just to get that.

6 So, again, to see resources to really build  
7 with the mission of making a safe and helpful  
8 environment for workers, we need to have the complete  
9 logs so that we can study and make choices to save money  
10 and save lives.

11 MR. NGUYEN: Thank you. Before we announce  
12 our next topic, which will be the concerns regarding the  
13 requirements for reporting 301 data, it seems like this  
14 might be a good time to take a lunch break now. If  
15 there's anybody that would still like to speak on the  
16 benefits of requiring the reporting of the 301 data, we  
17 can take those comments now. If not, this will be a  
18 natural time for us to go ahead and take a lunch break.

19 (Lunch break)

20 MR. NGUYEN: We'll get started picking up  
21 where we left off last time before lunch. So our next  
22 bullet item we are going to get into will be the  
23 concerns regarding the requirement -- any concerns folks  
24 may have regarding the requirements for reporting 300  
25 and 301 data. And I know a lot of commentaries spoke to

1 that issue as far as the privacy concerns raised  
2 earlier. So if you have anything to add on that, we  
3 welcome you to provide comments on any concerns you may  
4 have under 300 or 301 reporting requirements in original  
5 2016 final rule.

6 As a reminder, if you could speak loudly and  
7 slowly so the court reporter can accurately transcribe  
8 the comments, and to the extent that you can, if you  
9 could keep from turning your back to the court reporter,  
10 because not only it's important she hears what you have  
11 to say, it helps her to be able to see you speak while  
12 you're making your comments. We appreciate that.

13 So let's go ahead and jump back into it. And  
14 anyone who has additional comments regarding concerns  
15 related to the 300 and 301 reporting requirement and  
16 2016 final rule, we welcome you to come up and speak to  
17 that. Thank you.

18 MS. TREANOR: Hello. My name is Elizabeth  
19 Treanor. I'm with the Fillmore Regulatory Roundtable,  
20 and I just wanted to mention there are a lot of reasons  
21 why the 301 data would be very useful. For instance,  
22 300A data forms filed would not tell you whether it was  
23 musculoskeletal disorders or chemical burns or falls,  
24 what caused the injury; it just tells you the aggregate  
25 of the injury or what the total number of injuries is.

1           And so for that reason, I agree with Mitch  
2           that large employers would use the data if it were  
3           available if they could do benchmarking, see where they  
4           could improve and perhaps do some sharing that way. The  
5           concerns that we had is we don't have a proposal in  
6           front of us, so we don't know exactly what the division  
7           is contemplating here.

8           And so we just wanted to, up front, say this  
9           was a concern that we had, that some employers that  
10          identified the ability to link data, for instance, job  
11          title, description of incident, to information that  
12          would be potentially very embarrassing to the employee,  
13          and they wanted to avoid that. So that was the concern  
14          that they had.

15          And we do agree that there are some benefits  
16          to it, but before we would support it, we'd certainly  
17          like to know what the actual rule says. It would be  
18          very helpful. Thank you.

19                 MR. NGUYEN: Thank you.

20                 MR. FRUMIN: Eric Frumin, from Change To Win.  
21          I'd like to address two concerns. One is the question  
22          that's been raised about worker privacy. In our view,  
23          it was -- the privacy question was verbally a pretext  
24          used by an administration bent on reducing workers'  
25          rights and protecting employers who don't need

1 protection from the regulation; on the contrary, who  
2 should be closely regulated. So they chose the privacy  
3 question since there was no other available pretext that  
4 they could point.

5 And it was only that. It was a pretext. We  
6 know it was a pretext because the issue of worker  
7 privacy was raised extensively through the rule-making.  
8 It was raised during the stakeholders' meetings, it was  
9 raised in the proposal, it was raised in the comments,  
10 it was addressed in the final rule.

11 And the employer representatives from very,  
12 very sophisticated employer associations made a number  
13 of claims about how the release of these records and the  
14 forms that OSHA was describing, including the redaction  
15 of -- or the elimination of identifiable information was  
16 going to cause some kind of chaos and lead workers to  
17 not report injuries, or result in the under-reporting of  
18 injuries and the distortion of OSHA's ability to target  
19 inspections and so forth.

20 So we challenged that. We asked them, "Could  
21 you ever point to an incident where this actually  
22 happened?" Now, anecdotal evidence has its limits, but  
23 we figure, okay, we'll try. Give us an anecdote. We  
24 asked them, repeatedly, and they never did. You know  
25 why? Because it doesn't happen.

1           Another concern that we have about this is  
2 that the universe of employers covered by this is too  
3 small. This covers in California a tiny number of  
4 employers. At most, using the labor market data from  
5 EDD, you're talking under 1 percent of all employers in  
6 the state who will be potentially covered by it before  
7 you even apply the exemptions. So it's a minuscule  
8 number of employers, considering the state of the  
9 California public and private sector economies. But of  
10 course, the number of workers covered is substantial.

11           However, there will be a substantial number of  
12 employers -- we haven't crunched the EDD data; we need  
13 to do that; we think, in fact, you all should do that --  
14 who employ a lot of people but not necessarily in one  
15 facility with more than 250 employees.

16           Sister Abella from Local 2015 was describing  
17 to me -- she's not here; she had to leave. She was  
18 describing to me a very large nursing home operator.  
19 Nursing homes typically employ a hundred employees. But  
20 he's got something like one out of 14 nursing homes in  
21 the states, hundreds and thousands of employees who  
22 stayed under the rule. And this is an industry with  
23 very high injury risks. We know this from the  
24 occupational data.

25           So we would suggest that, in considering how

1 to move forward, you look carefully at adopting a more  
2 expansive benchmark, OSHA-considered alternative  
3 benchmark. You could come to a different decision. You  
4 could lower the threshold for individual establishments.

5 You could consider an option that OSHA  
6 described in the proposal of covering enterprise-wide  
7 reporting where, given a particular threshold, it would  
8 be the number of employees, 500, something like that,  
9 maybe, something clear and manageable for an employer,  
10 or maybe the number of establishments that even if an  
11 individual establishment didn't have 250 employees, that  
12 the enterprise would have (unintelligible) for the  
13 establishments under the enterprise's umbrella.

14 And since your unemployment insurance  
15 information or perhaps your workers' comp information  
16 might well be compiled on an enterprise-wide basis --  
17 that is, employers have insurance policies on the  
18 statewide level rather than an establishment level --  
19 this could be a feasible option for the agency in  
20 analyzing the feasibility of collecting a larger --  
21 collecting the data from a larger number of  
22 establishments with a smaller number of employees per  
23 establishment but still achieving the goal of making  
24 reporting feasible for employers who have that capacity,  
25 particularly in the industries who, by definition, have

1 some degree of noticeable risk; otherwise they wouldn't  
2 be keeping the logs in the first place.

3 So we recommend this to you in your  
4 deliberations going forward. We hope you can find a way  
5 to expand this beyond a pretty narrow window. It would  
6 add maybe two and a half million workers, but only maybe  
7 15,000 establishments, for instance, if you lowered it  
8 to a hundred employees per establishment. Not that many  
9 establishments out of millions in the state, but the  
10 allotted workers. Thank you.

11 MR. NGUYEN: Thank you.

12 MR. BLAND: Kevin Bland again still  
13 representing the same folks as I was before when I was  
14 here earlier this morning. Hope everyone enjoyed their  
15 lunch.

16 I do want to reiterate the concern of privacy,  
17 and I want to dovetail on something that Elizabeth  
18 Treanor mentioned. We're talking about this and we hear  
19 a lot of testimony as if we have a rule we're talking  
20 about -- it doesn't do this; it does that.

21 We don't have any regulatory language to look  
22 at in front of us to make these determinations as if  
23 we're talking about something that exists. We don't  
24 have something that exists right now, so we're a little  
25 bit arguing in a vacuum here.

1           It would be helpful for us as employers -- and  
2 as you notice, there hasn't been a whole lot to get up  
3 yet because there's no language to talk about. All  
4 there is is ideas of what this could be or could not be.  
5 We have the privacy concerns. I don't need to reiterate  
6 those from earlier. We have the concern of data is good  
7 if it's good data. It can be beneficial if it's good  
8 data, but we have no safeguard or no way to do that.

9           And to Mitch's point earlier, we're sitting in  
10 the same advisory committees 90 percent of the time, and  
11 this is an issue. I'd love to have something effective  
12 that would provide us some guidance. We did it one time  
13 privately as an association, one of the associations I  
14 represent for the pneumatic nailer rule-making about --  
15 I don't know how long it's been, about 15 years ago,  
16 maybe.

17           And we went through and we had a third party  
18 and we redacted all information about the adequacy. We  
19 wanted to know what was the cost; what did the rule need  
20 to say. The current rule said don't leave a nailer  
21 unattended, for example. I know I'm getting off, but  
22 it's an example.

23           So an unattended nailer never caused an  
24 injury, but we couldn't get rid of that regulation  
25 without that, right? We couldn't get something that was



1 actually going to protect employees, but it had to be  
2 good data, reliable data that meant something.

3 And it also needed to be controlled so it  
4 couldn't be used for illicit purposes. We're not saying  
5 anyone here is here for illicit purposes, but once it  
6 becomes public and once that information and whatever  
7 information -- it could be this narrow and not a big  
8 deal or it could be broad. I mean, if you look at the  
9 form, it has date of birth, employee's name, all that.  
10 I know everyone said that's not there. I don't know  
11 what's in there because I haven't seen regulation yet,  
12 haven't seen any regulatory language yet.

13 So I want to ensure there is a big concern  
14 with the data that's going to be compiled, the data  
15 that's going to be made public. One thing, there's  
16 protections. For example, right now under the labor  
17 code, whenever an employee complains to Cal/OSHA, a  
18 formal complaint, or one of their employer  
19 representatives which is under the collective bargaining  
20 agreement, the information is so protected to ensure  
21 that employee's identity is protected so the employer  
22 does not know whenever the inspector goes out, they may  
23 not even look at the same department originally. They  
24 may go to three departments, so there's no way to  
25 identify who that employee is.

1           And we don't have that safeguard here because  
2 we don't see the language, but I don't hear anyone  
3 talking about it. We're talking about the benefit of  
4 data, which it's hard to argue the data isn't  
5 beneficial, but until we know how it's collected, when  
6 it's collected, what information, what that data is, we  
7 can't sit up here and support that and support this  
8 proposed regulation that doesn't exist yet. And I think  
9 it would be very important to have that in front of us  
10 before we go forward. Thank you.

11           MS. HUDSON: Good afternoon. My name is Kim  
12 Hudson. I'm with the Associated General Contractors of  
13 California, representing our membership.

14           Echoing the concerns of our members, we raise  
15 the concern of lack of consent from the employees as it  
16 currently stands and to have their information shared on  
17 a public platform. Understanding that information is  
18 not immediately attainable outside of a PRA or  
19 otherwise, the concern still stands that consent be  
20 collected from employees to avoid the potential of  
21 grievances against employers. Thank you.

22           MR. NGUYEN: Thank you. Just to clarify, we  
23 do realize that there's no proposed regulatory language  
24 that Cal/OSHA has provided, and that's not what we're  
25 here today to do, to review any proposed language.

1 We've convened this Advisory Committee meeting in  
2 response to the Labor Code 6410.2B mandate that said,  
3 hey, within 120 days we have to bring folks together to  
4 evaluate the goals -- to evaluate one of the goals of  
5 the 2016 final rule and to see what type of changes need  
6 to be made to implement those goals from the 2016 final  
7 rule.

8           So on the one hand, you're right; there's no  
9 proposal put forth by Cal/OSHA to chew on. That's very  
10 true. But also there is some structure that 6410.2B  
11 does point us to and does require us to consider, and  
12 that structure is found in the Federal 2016 final rule,  
13 6410.2B, does direct us to look at the goals of the 2016  
14 final rule and directs us to consider the fact that  
15 parts of that 2016 final rule has either been eliminated  
16 or substantially diminished.

17           So this is the opportunity for stakeholders  
18 like yourselves to come up to comment on those issues  
19 that Labor Code 6410.2B has mandated Cal/OSHA to  
20 consider with, obviously, your input. Thank you.

21           MS. HELASKY: Hello. Still Kathy Helasky from  
22 NIMBY Brothers. A gentleman asked for an anecdotal  
23 evidence for a story, so I thought I would provide some.

24           My company has a very robust culture of  
25 reporting all incidents, even very, very minor ones. I

1 mean, I can think of three or four instances just in the  
2 last six months of an employee in the field who reported  
3 something and told me he did not want to report it, not  
4 because he was afraid of retribution, because he knows  
5 we don't do that, but because he was embarrassed. He's  
6 like, "I made a bad decision; I made a wrong move; I'm  
7 fine; I'm just embarrassed that I tripped and fell or I  
8 possibly sprained my ankle," or in, you know, more  
9 severe cases they're also embarrassed sometimes about  
10 the fact that they're on light duty and they can't  
11 provide for their families as much as they want to.  
12 And, you know, they may still be drawing a check for  
13 light duty, but they're not helping out as much at home  
14 et cetera.

15           And in the more severe cases -- I can think of  
16 one where the guy was out of work and he felt horribly,  
17 because in his mind he had made a mistake. And even  
18 though he was taken care of and everything was done  
19 properly and reported and everything, he felt horribly.

20           And so for all the proponents who think the  
21 privacy issue is a screen of some kind, a smoke screen,  
22 I deal with the workers in the field. They do care  
23 about their name being out there. They should have a  
24 voice. And I don't think that people like myself  
25 representing an employer is saying not to have any type

1 of regulation on this point but, as has been pointed out  
2 this whole meeting, it's about what should be taken into  
3 consideration when writing such regulation.

4 So we're trying to tell you that privacy is a  
5 valid concern, so it should be taken into consideration  
6 so that whatever does come out of this effort is  
7 actually very responsible to all parties concerned, not  
8 just certain parties who want data. Data is good, but  
9 it can also be abused.

10 And there's plenty of laws and regulations out  
11 there that started with one premise and then you come  
12 and talk to people and you realize all these unforeseen,  
13 unintentional potential consequences and it causes you  
14 to have to change how it's written so that you write  
15 something that's responsible.

16 And so I think that's all we're asking for, is  
17 that you take privacy concerns seriously so that the  
18 workers ultimately are protected, but that you get  
19 responsible data in the end.

20 Also, someone mentioned that having to report  
21 the data would make it more consistent and uniform. I'm  
22 not sure how that is, because people can make mistakes  
23 reporting the data electronically just like on paper.  
24 And so, you know, if you're also looking for uniformity  
25 and consistency, you're really going to have to -- talk

1 about drop-down menus for categorizing and all that  
2 stuff because I am sure ten different people filling out  
3 an OSHA 300 log would have ten different ways of doing  
4 it in terms of uniformity and consistency.

5 All right, that's it. Thanks.

6 MR. NGUYEN: Thank you.

7 MR. SHORE: The next area that we want to  
8 discuss on the agenda is what would it cost to implement  
9 the 300 and 301 electronic reporting requirement. I  
10 think we're looking for comments in two areas. One is  
11 the cost to employers to make such electronic reports of  
12 300 and 301 data available, which would include what  
13 data collection mechanisms are already in place that  
14 people have, and how difficult it would be to translate  
15 those to reporting.

16 The other side is cost to the division to  
17 establish any online systems to receive supports if we  
18 were to go in that direction, so we're also looking for  
19 suggestions or comments about any comparable data  
20 collection instruments that are already out there  
21 collecting things like 300 and 301, and any examples  
22 people have would be helpful.

23 MR. PALDERIN: CalTrans again. I kind of  
24 spoke to it earlier, but for us it's a complete overhaul  
25 of our data system. For a private industry I imagine

1 it's a bit more easy to change something like that, but  
2 for a state entity it is not.

3 And I think it needs to be taken into  
4 consideration what that will entail for very large  
5 organizations such as ourselves. It's a matter of time  
6 more so than the cost of -- financial costs, because  
7 these are changes that we want to make for our own  
8 workers' safety anyway. And there's things we're going  
9 to do regardless, but it's a matter of how long it's  
10 going to take to make those changes and implement them  
11 and get all those things in place.

12 MR. NGUYEN: Thank you.

13 MR. BLAND: Kevin Bland again.

14 Just briefly on this topic, there's no way to  
15 give you an estimate until we know what it is. So I'm  
16 going to go with \$10 million to \$150 million range right  
17 now, just based on not having anything in front of me to  
18 look at.

19 But in all seriousness, it's hard for us to do  
20 any sort of financial analysis for any size company  
21 until we know what we have to do.

22 MS. (UNINTELLIGIBLE:) Sonjia (unintelligible)  
23 with Sedgwick again. I agree with you, not knowing is  
24 it going to be an API like Federal OSHA suggested or the  
25 CSB file? It's very difficult to estimate any costs.

1           But your question, what's a comparative  
2 system, the BAS survey when we submitted the forms, the  
3 tabs -- the summary tab looks very much like the 300A  
4 that we have for electronic reporting, and the cases  
5 look like what you're asking for for the 300, so that  
6 should be a good comparative system.

7           MR. STEIGER: Mitch Steiger with the  
8 California Labor Federation. To take the two sections  
9 in order, I guess, in order starting with, I guess, the  
10 costs to the state, assuming for the sake of argument  
11 that we did something similar to what the federal  
12 government did, what they said was the agency believes  
13 that the annual benefits, while unquantified, exceed the  
14 annual costs.

15           So their argument would align with other  
16 research we've seen that when you do make these  
17 investments in worker health and safety, they pay for  
18 themselves many times over in the long run. And that  
19 happens for a lot of different reasons, but primarily in  
20 terms of reducing eventual workers' comp costs.

21           So it gets a little weird when estimating  
22 costs of the state because you have Cal/OSHA paying to  
23 do this for ideally future less -- workers' comp costs  
24 in the future that wouldn't be realized by Cal/OSHA,  
25 necessarily. So it's kind of -- the costs are in one



1 area and the savings are in another area. But overall,  
2 we do think there are significant savings.

3 And as far as what the actual costs of setting  
4 up the website would be, that's a really hard thing to  
5 estimate, though, again, if we were to do something like  
6 the federal rule whether based on employers with over  
7 100 workers or 250 workers, that it's a very small  
8 fraction of the overall number of employers. It's far  
9 less than one percent if it's 250 -- it's in the  
10 neighborhood of 1 percent if it goes down to 100, but a  
11 manageable number of people.

12 We are on the governing committee of the  
13 workers' comp insurance bureau, the WCRB that's just a  
14 few blocks in the other direction. They have a website  
15 you can use to see if an employer has workers' comp  
16 coverage. And it's not everyone 250, but everyone -- if  
17 you have two people, that website will find you.

18 And I need to go back -- I couldn't find the  
19 e-mail on my phone, but if I remember right, I asked  
20 them this about a year ago when we were working on the  
21 bill, and they said it was in the neighborhood of  
22 \$600,000 to develop the website.

23 There's another bill we're involved in the  
24 legislature now that would require DLSE, the Division of  
25 Labor Standards Enforcement, to also develop a website

1 that has to do with call centers and determining what  
2 happens when a call center work gets out-sourced. There  
3 would be a website that would apply to a lot of  
4 employers.

5 They also -- they found the exact same amount  
6 of money. They said it would cost about \$600,000 to do  
7 that one. So I don't know off the top of my head how  
8 relevant that is to this if we were to do something like  
9 the federal rule, but they were able to do it for -- I  
10 think up-front costs of 1677, AB1677, the call center  
11 bill, or more. It was like \$1.3 million to set it up,  
12 \$600,000 ongoing. I think the rating bureau said it was  
13 \$600,000 to set up theirs.

14 So just as kind of a ballpark of what it might  
15 cost the state in terms of what it would cost employers.  
16 Again, we really think the costs of setting up, whatever  
17 an employer would have to do differently, whether it's a  
18 new sort of electronic reporting system that they don't  
19 have now. For a lot of employers, this might be a  
20 savings because they're reporting electronically.

21 I know I can type a whole lot faster than I  
22 can write, so ideally this would be set up in a way to  
23 save employers money in terms of less time entering this  
24 data into the system.

25 But I think it's also really important to talk

1 about the costs of a workers' comp claim. I haven't  
2 checked in a while, but I think the last time an after  
3 indemnity workers' comp claim was about \$85,000, and I  
4 think it's been a few years since I looked, but it's  
5 probably getting close to \$100,000 now. That's one  
6 claim that has any kind of indemnity at all.

7 So ideally putting this in the regs would then  
8 drive a process that would end with employers focused on  
9 safety more, knowing that everyone is going to have  
10 access to this information, being able to see patterns  
11 more than they do now. If it only prevents a couple of  
12 workers' comp injuries, to say nothing of the human cost  
13 and cost to that worker, the financial savings, we think  
14 would -- in the long run would dwarf whatever the costs  
15 would be of setting it up for the employer community.

16 MR. NGUYEN: Thank you.

17 MS. ROBBINS: Maggie Robbins from Work Safe.  
18 I obviously can't tell you how much it's going to cost  
19 to set up a database. However, I do think it would be  
20 worth thinking about what data resources are available  
21 to Cal/OSHA.

22 And one thing I think of is the quarterly  
23 census of employment and wages that is already gathered.  
24 It's got -- it's a platform that employers are accessing  
25 and providing information. It's highly reliable. It's

1 used. It's used by the Bureau of Labor Statistics to  
2 gather information about employers within the state.

3 So I would think that you could talk to  
4 contractors who do this kind of database development  
5 about how to add to that system in a separate system  
6 that feeds into it, that we can access that information  
7 so you don't duplicate entering your employer  
8 information addresses and EINs, et cetera, et cetera.

9 So I would encourage you to look at it not as  
10 a whole new system, but as an appendage to an existing  
11 system that's already in use.

12 MR. NGUYEN: Thank you.

13 MR. FRUMIN: Eric Frumin from Change to Win.  
14 So Glenn mentioned there's been a lot of contention  
15 about the fate of the 2016 rule, the reversals by the  
16 Labor Department, the challenges, the court cases and so  
17 forth. And one of the questions that arose in those  
18 challenges was whether the labor department under this  
19 administration wanted to spend an amount of money  
20 involved to bring this part of the reporting to  
21 completion.

22 So there are materials, affidavits from labor  
23 department, U.S. Labor Department senior leadership on  
24 this question that could inform your own understanding  
25 of how much they have spent already in their work on

1 their website in general and how much more they were  
2 planning to spend to get the injury tracking application  
3 ready to accept these data.

4 They already had the injury tracking  
5 application to accept 300As, so it was an incremental  
6 amount of money necessary to expand it to these data.  
7 So in one of the Labor Department documents, the head of  
8 the director of technical assistance, her name is Amanda  
9 Eaton, swore under oath that all they needed to spend to  
10 bring it to completion was about \$300,000. So if you  
11 have trouble finding it, we'll provide that for the  
12 record.

13 A minuscule amount of funding for that agency.  
14 So it was clear that, again, this was a pretext, but an  
15 indication that at least even in that order of magnitude  
16 of this is the kind of funding that, given the  
17 legislature's strong commitment to this idea that  
18 Cal/OSHA and DIR should be able to reasonably request  
19 funding necessary to bring this home. Of course, you  
20 have to request it. And that is your own decision, but  
21 that's a separate issue from whether you will be able to  
22 require the reporting in the first place. We hope both  
23 of them go forward.

24 MR. NGUYEN: Thank you. If there are no other  
25 comments regarding the SKOs -- I'm sorry.

1 MS. SNYDER: (Name illegible on sign-in sheet)  
2 I'm Jude Snyder with the San Francisco PUC, and I just  
3 wanted to add to something Maggie was saying before,  
4 which was when she was talking about how there's already  
5 databases that can be expanded, we also already collect  
6 a lot of the information that's in the 300 and 301 forms  
7 in various state forms.

8 So another potential to look into would be to  
9 see if we could link the existing systems together  
10 rather than have to have a new system created that will  
11 allow 300 and 301 reporting. It might be possible to  
12 bring together with the Department of Workers'  
13 Compensation and look at their DWC1 forms, the 5020  
14 forms, to look at the serious incident reporting forms  
15 that Cal/OSHA's already collected.

16 A lot of this information is already out  
17 there, and when I look at the 301, there's really only  
18 two to three discreet pieces of information that I can't  
19 find on another form somewhere else. So I wanted to  
20 bring it up as a potential method of how this could move  
21 forward.

22 MR. NGUYEN: Thank you. Okay. If there are  
23 no other comments on the cost question, we'd like to  
24 invite folks to comment on any other issues or concerns  
25 that have not already been previously addressed.

1 UNIDENTIFIED SPEAKER: I have a question. Can  
2 you elaborate on what you said earlier on the  
3 information would be made public? Did I hear for 15  
4 years?

5 MR. NGUYEN: No. So in the 2019, January 2019  
6 final rule, the preamble of the final rule, Federal OSHA  
7 seems to suggest that it does not intend to make public  
8 the 300A data that it's currently receiving through the  
9 ITA for at least four years. Four. I must be mumbling.

10 UNIDENTIFIED SPEAKER: I just wanted a  
11 clarification on that. Is that to get the site up and  
12 running to make that data available, or is the intent to  
13 make it available on an ongoing basis four years, so at  
14 any point in time you won't have a four-year-old?

15 MR. NGUYEN: So in the 2019 federal final rule  
16 preamble it talks a little bit about the question of  
17 whether they will make the 300A data available publicly.  
18 It doesn't discuss any technological impediments to it.  
19 From what I could tell, there were two paragraphs in  
20 that January 2019 final rule that even addresses it, and  
21 it doesn't discuss any impediments on that, but it  
22 discusses more whether the Federal OSHA now considers it  
23 to be exempt for employer purposes and the impacts that  
24 it might have on Federal OSHA's own targeted  
25 enforcement.

1           MR. HALL: Michael Hall with Pacific Maritime  
2 Association. The comments focused to the division are  
3 really more industry-specific to the marine cargo  
4 handling industry, things to consider for future  
5 adoption. I mean, I'm certainly not going to sit here  
6 and read all 12 pages of my comments, but I'll go over  
7 some high level bullet points.

8           A good majority of the comments that will be  
9 submitted have to deal with something that hasn't been  
10 talked about today, fed versus state jurisdiction here  
11 in California. Employees in the marine cargo handling  
12 industry move in and out of Cal/OSHA coverage multiple  
13 times per day.

14           This is going to lead to increased regulatory  
15 burden hours for having to separate or at least attempt  
16 to separate Federal OSHA jurisdiction recordkeeping for  
17 1904 versus the submittal for the California side.

18           The problems with that is many injuries are  
19 subjective. You don't know if the injury occurred  
20 aboard the vessel, if it occurred on land for Cal/OSHA  
21 jurisdiction. So it will be quite difficult to try to  
22 separate the fed data out of the state data or  
23 vice-versa, I suppose.

24           To be clear on this one, hypothetically  
25 speaking, if you eventually go to an online system, the



1 300A that would be submitted to Cal/OSHA is going to be  
2 different from the 300A submitted to the feds, which  
3 will be different from the paper 300A that is posted for  
4 three months. So none of the data is going to jive, so  
5 that could be rather confusing to Cal/OSHA, I suppose.

6 Then Fed-OSHA will also have to update the  
7 regulatory burden hours with the OMB. If California  
8 does eventually require electronic submission, that will  
9 also impact the fed side under OMB regulatory hours,  
10 because I'm now having to do extra work now I didn't  
11 have to do for Fed-OSHA.

12 Assuming Cal/OSHA does eventually adopt a  
13 website, it's important for employers to be able to  
14 correct or amend information after it's submitted. 300A  
15 information does change after the fact. While employers  
16 are not required to update a 300A for five full years,  
17 nothing is saying they can not do so.

18 We feel it's important, if data is going to be  
19 submitted or posted online, that we have the ability to  
20 update it correctly. And then we would also advise  
21 against basing enforcement action based upon 1904 record  
22 keeping data. 1904 is a no fault system based upon the  
23 geographic presumption. OSHA has repeatedly stated that  
24 many circumstances related to a reportable injury is  
25 beyond the employer's control and in no way implies an

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1 OSHA rule or standard has been violated or that any  
2 worker is eligible for work comp benefits. Thanks.

3 MR. NGUYEN: Thank you.

4 UNIDENTIFIED SPEAKER: I have a question. My  
5 question is, you are talking about there's three  
6 different 300As and three different Log 300s --

7 MR. HALL: Hypothetically, yeah.

8 UNIDENTIFIED SPEAKER: How do you separate it  
9 now?

10 MR. HALL: We don't. It doesn't matter.  
11 We're not submitting to Cal/OSHA, so we just submit one.

12 UNIDENTIFIED SPEAKER: So are you saying it's  
13 not accurate? I'm unclear why two different --

14 MR. HALL: What I'm saying is why should I  
15 submit in the future data to Cal/OSHA that they're not  
16 entitled to.

17 UNIDENTIFIED SPEAKER: Well, that's different  
18 than saying I can't do it, which is what I was hearing  
19 you say. For some reason the logs will be different,  
20 and I was trying to get my head around why you're saying  
21 they would be different.

22 MR. HALL: Because I don't feel Cal/OSHA has  
23 the right to private property they're not entitled to.

24 UNIDENTIFIED SPEAKER: Along the same lines,  
25 airline employers, if we are going to have to

1 differentiate between Cal/OSHA, Fed-OSHA for a flight  
2 attendant who's flying out of San Francisco going to  
3 Phoenix, Arizona, when is it Cal/OSHA or Fed-OSHA?  
4 We're already having a hard time with international  
5 flights deciding whether a flight attendant flying from  
6 here to Paris, when are they still on top of U.S. soil  
7 or international space. So adding now state, if we  
8 change, it will be much harder.

9           So my point is when you're thinking of that,  
10 if there is a clause or something for Maritime, for  
11 airline, for such industries, that it be presented in  
12 the regulation.

13           MR. SHORE: I'd like to follow up with that.  
14 How do you handle workers' compensation cases that can  
15 be both federal --

16           UNIDENTIFIED SPEAKER: Morgan can respond.

17           UNIDENTIFIED SPEAKER: You generally can --  
18 there's some flexibility regarding which jurisdiction.  
19 You can choose where the employees report back to, not  
20 necessarily where they are at the moment of the injury.  
21 So you can choose where they are at the time of the  
22 injury or you can choose where they report back to.

23           So if you have a flight attendant based out of  
24 Phoenix and they're flying to California, you can choose  
25 California. And it's usually a discussion between the

1 employer and employee, and (unintelligible) litigation  
2 where there's one state that has more lenient workers'  
3 compensation practices, so it can fall under either  
4 jurisdiction.

5 UNIDENTIFIED SPEAKER: For OSHA it's  
6 different, a lot harder. Those international flight  
7 attendants and pilots are -- it's challenging. And now  
8 we're going to add state to that too? It's going to be  
9 very challenging. So just a thought to keep in mind.

10 UNIDENTIFIED SPEAKER: For OSHA record keeping  
11 you may have an employee whose injury gets placed on a  
12 log for a certain state because of the airport that  
13 they're based out of. So it's pretty straightforward.  
14 It's not much of an issue for Federal OSHA as long as  
15 the injury is placed on a log for that establishment.  
16 But if there's different requirements where you need to  
17 submit additional data, whether under Cal/OSHA or  
18 Federal OSHA, it makes that point more distinct.

19 MR. NGUYEN: Thank you. Last call for  
20 comments.

21 All right, well, first of all, we'd like to  
22 thank everybody again for coming today or providing the  
23 comments that you provided. We really do appreciate  
24 this interactive process with stakeholders. We  
25 appreciate the time and efforts made to provide us those

1 comments.

2           Again, the record isn't closed, so if you do  
3 have any written comments that you would like to submit,  
4 we encourage you to e-mail those comments to the  
5 electronic reporting e-mail address that we have up here  
6 dedicated for this advisory committee.

7           In terms of next steps, once the written  
8 comment period ends, we will gather those comments and  
9 consider them as part of this process, obviously, but  
10 we'll also post the written comments we have received on  
11 our website. We'll also provide minutes of this meeting  
12 once they are available and post those on the website as  
13 well.

14           After consideration of all the comments that  
15 have been made, we'll look to see what other -- what the  
16 next steps in this process should be. If we do convene  
17 another advisory meeting, we'll obviously put forth a  
18 notice on that so you and anybody else interested can  
19 come in to provide additional comments that you would  
20 like.

21           So thank you very much, and we look forward to  
22 hearing from you all for other additional comments, and  
23 we'll get that information out as soon as they become  
24 available.

25           UNIDENTIFIED SPEAKER: Do you have any

1 targeted timeline for when you'll make your decision  
2 about proceeding or not?

3 MR. NGUYEN: We don't have any timeline at  
4 this point. I think we'll have to take everything  
5 you've said and any other written comments that we  
6 receive and then talk to folks both in Cal/OSHA and  
7 Department of Industrial Relations to see what the next  
8 steps and timeline look like. All right, thank you,  
9 everybody.

10 (Adjourned at 2:10)

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