

## Summary of Comments and Agency Decisions

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**Title:** Electric Power Generation, Transmission and Distribution; OAR 437-002-2300 through 437-002-2324, for general industry and construction.

**Administrative Order Number:** 3-2015

**Adopted:** October 9, 2015

**Effective:** January 1, 2016 for general industry and construction

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### **History**

In November 2014, Oregon OSHA proposed to adopt Federal OSHA final rules for Electric Power Generation, Transmission, and Distribution, that were published in the April 11, 2014 Federal Register. The proposal included Oregon-initiated changes to the federal rule. Three public hearings were held during November and December of 2014 resulting in several written comments and oral testimony before the comment period closed on December 12, 2014. Most of the comments received concerned the two worker rule exceptions. As a result of the comments received, Oregon OSHA decided not to adopt the rule as proposed in 2014, but to consider an alternative approach.

Two stakeholder meetings were conducted in the first half of 2015 to discuss comments along with potential changes to the 2014 proposal. Oregon OSHA received input and support from stakeholders to combine the Electric Power Generation, Transmission, and Distribution standards in Divisions 2/R and 3/V into one rule. Oregon OSHA merged 1910.269, in Division 2/R General Industry, and Division 3/V in Construction, as well as Oregon unique rules, into the new single standard, Division 2/RR Electric Power Generation, Transmission and Distribution.

In July, 2015 Oregon OSHA proposed rules for Electric Power Generation, Transmission, and Distribution. Three public hearings were held during August and September 2015. Most of the oral and written comments received concerned: the duties of a Safety Watch, the exception to the two-worker rule, and helicopters.

On October 5, 2015 Federal OSHA published in the Federal Register minor language clarifications in rules related to Line Clearance Tree Trimming as well as correcting errors in Table R-6 (Alternative Minimum Approach Distances.) The note for enclosed spaces was removed from Appendix A-3 and placed in Appendix A-5. These corrections have been incorporated in Oregon OSHA's final rules.

### **Summary and explanation**

During the public hearing phase for the proposed rules, titled Division 2/RR, Electric Power Generation Transmission and Distribution, both oral testimony and written comments were received, documented and considered. This commentary and the Agency's actions are summarized as follows:

#### **437-002-2311(2)**

The majority of comments were regarding 437-002-2311(2)(b) "Two worker rules: Exception". Twelve comments<sup>1</sup> were received stating the Oregon OSHA rule should specifically use the language of the federal rule as published in 29 CFR 1910.269(l)(2)(ii).

The Agency rewrote the exceptions rule (2)(b)(A) through (2)(b)(E)(ii) as unique Oregon requirements, rather than adopt the existing federal language. The federal exceptions, 1910.269(l)(2)(ii)(A), requirement states: *“Routine circuit switching, when the employer can demonstrate that conditions at the site allow safe performance of this work”*. The Oregon unique verbiage expands upon the federal exceptions requirement and details examples of specific actions the employer needs to take in order to establish this required demonstration, especially concerning the use of load break elbows, addressed in 437-002-2311(2)(b)(E)(i) through (ii).

Note for further clarification: Questions arose after the comment period ended regarding whether 437-002-2311(2)(b)(G) supersedes or nullifies 437-002-2311(2)(b)(E). It does not. OAR 437-002-2311(2)(b)(E) was written specifically to address the load break elbow issue.

One commenter<sup>2</sup> was positive regarding the Oregon unique two worker exception language.

One commenter<sup>3</sup> requested clarification as to whether the term “authorized” used in 437-002-2311(2)(b)(E)(i) refers to a “lockout/tagout authorized employee”.

It does not. In Oregon OSHA’s view, the term “authorized” as used in this paragraph means *“One qualified to perform the work and designated by the employer to do so.”*

#### **437-002-2311(13)**

There were six comments<sup>4</sup> related to the inadvertent omission of the Oregon unique “Safety watch” rule.

The Agency recognized the omission and added revised Oregon unique safety watch language to the rule under 437-002-2311(13).

There were three comments<sup>5</sup> regarding the qualifications of a safety watch: first, that a safety watch should be “a lineman” or a “hot apprentice”; and two, that a safety watch should be capable of providing pole-top rescue.

- 1) 437-002-2311(13) requires that a safety watch be “qualified”. The term “qualified” is defined in 437-002-2324 as *“an employee (person) knowledgeable in the construction and operation of the electrical power generation, transmission and distribution equipment involved, along with the associated hazards.”* And “Note to Paragraph (2)(b)” in 437-002-2300(2) states: *“a person must have the training required by (2)(b) to be considered a qualified employee.”*

The Agency considers this definition to be sufficient guidance for an employer to determine the qualifications for a qualified person assigned to function as a safety watch.

- 2) The rules state that a safety watch can have no other duties that would interfere with or distract from the safety watch duties. The Agency determined that it would not be appropriate for a designated safety watch to become physically involved in a rescue operation unless another qualified person takes the place of the original safety watch. Rescue is not a function of a safety watch.

#### **437-002-2323**

Two commenters<sup>6</sup> provided seventeen comments regarding the Oregon unique helicopter rules. Commentary focused on specific issues of Federal Aviation Administration jurisdiction and authority, as well as accepted standard industry practices, which were not necessary in the Oregon rule text or were not accurate.

Upon evaluation of these recommendations, the Agency decided to remove or correct specific items originally proposed, and based upon this commentary, incorporated the suggested changes into the final rule.

**437-002-2311(13), 437-002-2312(3)(b)**

One commenter<sup>7</sup> asked why Oregon OSHA changed the terminology “foreman” and “journeyman” to “employee in charge” and “worker in charge”, as in 437-002-2311(13)(b): “The foreman *or other worker in charge* of the work being performed...” and 437-002-2312(3)(b): “The employee that the employer designates...as being in charge of the clearance...becomes *the employee in charge*...” etc.

The Agency decided to use the federal OSHA terminology used in the federal power generation, transmission and distribution rules, such as in 1910.269(m)(3)(i): “The designated employee becomes the *employee in charge*...” rather than use terms related to job titles, where possible. This is to insure interpretation consistency and common understanding, especially for employers who use both the Oregon OSHA rules within the State of Oregon, and who also operate outside of Oregon.

Notation:	Commenter:	
1	Stuart Slone Leslie Ryerson Jeff Carson Brad Wilson Terry Blanc Ted Case Robert Westerman Mike Scarminach	Oregon Rural Electric Cooperative Central Electric Cooperative IBEW Local 125 Central Electric Cooperative Tillamook People’s Utility District OPUDA OSAEW IBEW
2	Mark Rettman	Oregon Public Utilities Commission
3	Stuart Slone	Oregon Rural Electric Cooperative
4	Stuart Slone Jeff Carson Travis Eri Robert Holshouser	Oregon Rural Electric Cooperative IBEW Local 125 IBEW Local 125 International Line Builders
5	Zac Dillingham Mike Scarminach	Salem Electric IBEW
6	Dave Feerst Tracy Harness	Winco Inc Northwest Line Constructors
7	Travis Eri	IBEW Local 125

NOTE: Some commenters testified multiple times, both orally and in writing.