

**North Carolina Department of Labor  
Division of Occupational Safety and Health**

**Raleigh, North Carolina**

Field Information System

Operational Procedure Notice 136

**Subject:** 29 CFR 1926.28(a) and 13 NCAC 7F.0201(1)

**A. Purpose.**

This OPN provides clarification for construction related personal protective equipment (PPE) citations.

**B. Scope.**

This instruction covers all construction activities.

**C. Background.**

29 CFR 1926.28(a) was found to be citable only under certain conditions. (See OSHRC Docket number 82-1137 issued January 16, 1986). Subsequently, OSHNC went through the rulemaking process and adopted a state specific standard (see 13 NCAC 7F.0200) with the identical wording because the federal standard was determined to be improperly adopted. The NC state specific standard is the applicable one in North Carolina.

**D. Action.**

OSHNC will cite the state specific standard 13 NCAC 07F.0201(1), not 29 CFR 1926.28(a) for general PPE citations and will cite 29 CFR 1926.95 or another more specific standard in 29 CFR part 1926.

**E. Expiration.**

This OPN is effective on the date of signature. It will remain in effect until revised or canceled by the Director.

Signed on Original

Kevin O'Barr  
Safety Standards Officer

Signed on Original

Allen McNeely  
Director

2/10/06

Date of Signature

**Appendix A:** 29 CFR part 1926 standards that require the use of PPE

- 1926.28 - Personal protective equipment
- 1926.52 - Occupational noise exposure
- 1926.57 - Ventilation
- 1926.60 - Methyleneedianiline
- 1926.62 - Lead
- 1926.64 - Process safety management of highly hazardous chemicals
- 1926.65 - Hazardous waste operations and emergency response
- 1926.95 - Criteria for personal protective equipment
- 1926.96 - Occupational foot protection
- 1926.100 - Head protection
- 1926.101 - Hearing protection
- 1926.102 - Eye and face protection
- 1926.103 - Respiratory protection
- 1926.104 - Safety belts, lifelines and lanyards
- 1926.105 - Safety nets
- 1926.106 - Working over or near water
- 1926.250 - General requirements for storage
- 1926.300 - General requirements (Hand and power tools)
- 1926.302 - Power-operated hand tools
- 1926.304 - Woodworking tools
- 1926.353 - Ventilation and protection in welding, cutting and heating
- 1926.354 - Welding, cutting and heating in way of preservative coatings
- 1926.416 - General requirements (Electrical)
- 1926.451 - General requirements (Scaffolds)
- 1926.453 - Aerial lifts
- 1926.501 - Duty to have fall protection
- 1926.502 - Fall protection systems criteria and practices
- 1926.550 - Cranes and derricks
- 1926.551 - Helicopters
- 1926.701 - General requirements (Concrete and masonry construction)
- 1926.760 - Fall protection (Steel erection)
- 1926.800 - Underground construction
- 1926.951 - Tools and protective equipment
- 1926.955 - Overhead lines
- 1926.1101 - Asbestos
- 1926.1127 - Cadmium

**Appendix B:** Chronology of standard

January 1, 1972	Fed OSHA adopted language from a consensus standard
December 16, 1972	Fed OSHA reprinted with a language change
September 20, 1982	Fed OSHA opened with L. E. Myers (cited in October)
January 16, 1986	OSHRC ruled the 1972 language change was substantive and did not go through appropriate rulemaking procedures limiting the ability to cite 29 CFR 1926.28(a)
October 5, 1992	Memo from Fed OSHA explaining conditions under which 1926.28 may be cited
February 12, 1993	Memo from OSHNC to Fed OSHA announcing intent to write a state specific standard.
June 1 & August 2, 1993	OSHNC State specific rule takes effect
June 30, 1993	Fed OSHA publishes new PPE standard 1926.95
1994 – 1995	Fed OSHA has 1926.28 (a) correction on Unified Agenda but it disappears without action
December 2005	OSHNC standards review shows need for this clarification