

**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 - Methylenedianiline
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

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|-------------------------|--|
| 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 |