

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

Raleigh, North Carolina

Field Information System

Operational Procedure Notice 136A

Subject: 13 NCAC 7F.0202, North Carolina State-specific rule modifying 29 CFR 1926.28(a) - Personal Protective Equipment.

A. **Purpose.**

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

B. **Scope.**

This instruction covers all construction activities.

C. **Background.**

On January 16, 1986, the federal OSH Review Commission issued a decision related to the adoption of 29 CFR 1926.28(a) and found it to be citable only under certain conditions because the wording in the standard was changed from “and” to “or” without formal rulemaking. (See OSHRC Docket number 82-1137.)

Subsequently, the NCDOL OSH Division conducted rulemaking repealing 29 CFR 1926.28(a) and adopted a state specific standard using “or” in the state-specific rule. (See 13 NCAC 7F.0202)

D. **Action.**

CSHO’s will cite the state specific standard 13 NCAC 7F.0202 **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.**

OPN 136 is canceled. This OPN is effective on the date of signature. It will remain in effect until revised or canceled by the director.

Signed on Original
Susan V. Haritos
Health Standards Officer

Signed on Original
Allen McNeely
Director

5/27/2011
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

January 1, 1972	OSHA adopted language from a consensus standard
December 16, 1972	OSHA reprinted with a language change
September 20, 1982	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 OSHA explaining conditions under which 1926.28 may be cited
February 12, 1993	Memo from the NCDOL OSH Division to OSHA announcing intent to write a state specific standard.
June 1 & August 2, 1993	NCDOL OSH Division state-specific rule takes effect
June 30, 1993	OSHA publishes new PPE standard 1926.95
1994 – 1995	OSHA has 1926.28 (a) correction on Unified Agenda but it disappears without action
December 2005	NCDOL OSH Division standards review shows need for this clarification. OPN written to provide citation guidance
May 2011	ETTA standards review shows need for update to reflect recodified rule and to reemphasize citation guidance