

**FISCAL AND REGULATORY IMPACT ANALYSIS FOR ADOPTION OF THE FEDERAL OCCUPATIONAL SAFETY AND HEALTH
PERSONAL PROTECTIVE EQUIPMENT STANDARD AMENDMENTS TO 29 CFR 1926**

Submitted to OSBM on Date: February 6, 2025

Agency: North Carolina Department of Labor (NCDOL)

Contact: Jill Cramer, at (919) 707-7710 jill.cramer@labor.nc.gov (until 2/28/2025) or Ashley Snyder, NCDOL Rulemaking Coordinator at 919-717-7715, ashley.snyder@labor.nc.gov

Rule related to:

Occupational Safety and Health Division (OSH) Verbatim Adoption of federal Occupational Safety and Health Administration (hereinafter “OSHA”) Standards

Authority: § 95-131. Development and promulgation of standards; adoption of federal standards and regulations.

- (a) All occupational safety and health standards promulgated under the federal act by the Secretary, and any modifications, revision, amendments or revocations in accordance with the authority conferred by the federal act or any other federal act or agency relating to safety and health and adopted by the Secretary, shall be adopted as the rules of the Commissioner of this State unless the Commissioner decides to adopt an alternative State rule as effective as the federal requirement and providing safe and healthful employment in places of employment as required by the federal act and standards and regulations heretofore referred to and as provided by the Occupational Safety and Health Act of 1970. Chapter 150B of the General Statutes governs the adoption of rules by the Commissioner.¹

Additional Statutory Authority: NCGS §§ 95-130; 95-131; 95-133; 95-136; 95-137

Occupational Safety and Health Act of North Carolina, Article 16 of Chapter 95: NCGS § 95-110.5. Powers and duties of Commissioner.

NC Administrative Code Rule proposed for amendment: 13 NCAC 07F .0201 CONSTRUCTION (see *Appendix 1 for proposed rule text on page 10*)

Federal Rule: <https://www.govinfo.gov/content/pkg/FR-2024-12-12/pdf/2024-29220.pdf>

U.S. Department of Labor; Occupational Safety and Health Administration; 29 CFR Part 1926; Personal Protective Equipment in Construction. Amendments to 29 CFR 1926 begin on page 100321 89 Federal Register, No. 239 issued Thursday, December 12, 2024.

¹ copied in part: [G.S. 95-131 \(ncleg.gov\)](https://www.ncleg.gov)

Federal OSHA first published 29 CFR 1926.95, *Criteria for personal protective equipment (PPE) in Construction* on February 9, 1979.

History of the Amendment to the Personal Protective Equipment Standard in Construction

The Advisory Committee on Construction Safety and Health (ACCSH), a continuing advisory body established by statute (40 U.S.C. 3701 et seq.) that provides advice and assistance to the OSHA Assistant Secretary on construction standards and policy matters related to construction, first addressed the issue of proper PPE fit in construction at a ACCSH meeting held on July 28, 2011. The matter continued to be addressed and refined. On May 13, 2019, OSHA published the final rule in the Federal Register, but construction was not addressed. On July 17, 2019, OSHA presented a draft proposed rule to ACCSH for its recommendation, as required by 29 CFR 1912.3(a).

On July 20, 2023, OSHA published the final version of the amendment to 29 CFR 1926.95 for the Personal Protective Equipment in a Construction Notice of Proposed Rulemaking, proposing to revise 29 CFR 1926.95(c) to clarify that personal protective equipment used in the construction industry must properly fit workers to protect them from hazards they may encounter in the workplace.

The final federal amendment to the existing personal protective equipment standard at 29 CFR 1926 was promulgated on 12/12/2024 with a federal effective date of January 13, 2025. OSHA requires that State Plan states adopt verbatim all federal standards or adopt a standard that is as effective as the federal standard.

History of the Personal Protective Equipment on Construction Standard in North Carolina

North Carolina first adopted the OSHA Construction Standards in 29 CFR 1926 with an effective date of February 1, 1976. There were also state-specific standards found in 13 NCAC 7D. 0601 - .0606 that had an effective date of July 15, 1976, but which were repealed August 2, 1993.

The NC Department of Labor performed an extensive overhaul of the OSHA Standards in 1993. Effective August 2, 1993, the NCDOL adopted the federal Construction Standards verbatim in 13 NCAC 07F .0201 to include all the provisions for the OSHA Standards for Construction, Title 29 of the Code of Federal Regulations Part 1926 promulgated as of June 30, 2022, but which were exclusive of subsequent amendments. Those standards were incorporated by reference except as modified or amended in 13 NCAC 07F .0202 through .0207. Specifically, 13 NCAC 07F.0204 addresses Personal Protective and Life Safety Equipment. Historically, NCDOL has adopted every OSHA amendment to 29 CFR 1926 after a thorough internal review.

The specific subsections of 29 CFR 1910.95 to be amended are as follows:

29 CFR 1926 Subpart E _ Personal Protective and Lifesaving Equipment (amendment to federal authority)

- 29 CFR 1926.95 Criteria for personal protective equipment
 - 29 CFR 1926.95(c) - Design and Selection

Fiscal Impact:

State Impact: Unquantifiable benefits associated with remaining in compliance with federal standards

Local Impact: Unquantifiable benefits associated with remaining in compliance with federal standards

Private Impact: Net unquantifiable benefits associated with remaining in compliance with federal standards

Substantial Economic Impact: NO

The Federal Register regarding this amendment also provides: “The Final Economic Analysis for this rulemaking demonstrates that this rule is economically feasible and will not have a significant economic impact on a substantial number of small entities.” Federal Register, Volume 89, No. 239, page 100322.

Purpose:

NCDOL is proposing to amend 13 NCAC 07F. 0201 to incorporate by reference the OSHA Personal Protective Equipment (PPE) amendment to the existing Construction PPE standard found at 29 CFR Part 1926.95(c). This amendment will make the North Carolina Occupational Safety and Health Division’s State Plan as effective as the federal program.

Federal OSHA Standard:

OSHA has amended the existing Personal Protective Equipment Standard in Construction to require that employers ensure all personal protective equipment (1) is of safe design and constructed for the work to be performed and (2) is selected to ensure that it properly fits each affected employee. The revision will align the language in the PPE standard for Construction with the corresponding language in OSHA’s standards for both General Industry and Shipyards. and will affirm OSHA’s interpretation of the PPE standard for construction as requiring properly fitting PPE. Properly fitting PPE is a critical element of an effective occupational safety and health program. PPE must fit properly to provide appropriate protection to employees from workplace hazards. Improperly fitting PPE may fail to provide any protection to an employee, reduce the effectiveness of protection, present additional hazards, or discourage employees from using such equipment in the workplace.

The full OSHA amendment may be found at this link: Final rule for 29 CFR 1926.95: <https://www.govinfo.gov/content/pkg/FR-2024-12-12/pdf/2024-29220.pdf>

North Carolina “State Plan” status:

The North Carolina Occupational Safety and Health Act, enforced by the NC Department of Labor’s Occupational Safety and Health Division, is a federally approved State Plan under the US Department of Labor’s Occupational Safety and Health Administration.

The first step in the approval process for a state to gain OSHA approval is to become a Developmental Plan. During this process, a state must assure OSHA that within three years it will have in place all the structural elements necessary to be deemed effective. These elements include: appropriate legislation; regulations and procedures for standards setting, enforcement, appeal of citations and penalties; a sufficient number of qualified enforcement personnel. Once a state has completed and documented all necessary developmental steps, it is eligible for Certification. Certification renders no judgment as to actual state performance but merely attests to the structural completeness of the State Plan.

At any time after initial approval, when it appears that the State Plan is capable of independently enforcing standards, OSHA may enter into an Operational Status Agreement with the State Plan. This commits OSHA to suspend the exercise of discretionary federal enforcement in all or certain activities covered by the State Plan.

State Plans may additionally seek Final Approval under Section 18 (e) of the Act. After at least one year following certification, the State Plan becomes eligible for final approval if OSHA determines that it is providing, in actual operation, worker protection is "at least as effective" as the protection provided by OSHA. Under Final Approval, OSHA relinquishes its authority to cover occupational safety and health matters covered by the state.²

The North Carolina State Plan was initially approved on February 1, 1973. The North Carolina State Plan Certification was October 5, 1976. The Final Approval of the North Carolina State Plan was effective December 18, 1996, with an amendment on June 9, 2000, and October 19, 2000.³

Pursuant to the requirements of OSHA, State plan states must adopt standards that are verbatim to or are “at least as effective as” federal OSHA standards. OSHA requires that all state plans continue to adopt all standards that OSHA adopts unless the state adopts a standard that is equal to or more stringent than the adopted federal standard.

² [State Plan Frequently Asked Questions | Occupational Safety and Health Administration \(osha.gov\)](#)

³ [North Carolina State Plan | Occupational Safety and Health Administration \(osha.gov\)](#)

State Plan states are required to adopt a federal standard with six (6) months of the date of promulgation of the federal OSHA standard. The Assistant Secretary of Labor may permit extensions for good cause.⁴

Pursuant to federal law, OSHA may begin a takeover of a state plan if the plan is not “at least as effective as” the federal program. There are various factors that are assessed by OSHA through an established system of review to include quarterly and annual reviews. OSHA monitors and evaluates State Plans annually through the Federal Annual Monitoring Evaluation (FAME) process. This process is used to: determine whether the State Plan is continuing to operate at least as effectively as OSHA, track a State Plan's progress in achieving its strategic and annual performance goals, and ensure that the State Plan is meeting its mandated responsibilities under the Act and other relevant regulations. In addition, the North Carolina Occupational Safety and Health Division works closely with OSHA. OSHA does review state plans regularly and has historically considered taking over some state plan programs.

Regulatory Baseline:

For the purposes of this analysis, the regulatory baseline is the federal PPE standard in Construction that became effective January 13, 2025, and which North Carolina is mandated to adopt verbatim within six (6) months of the federal promulgation in accordance with its State Plan status.

Analysis of Impacts on North Carolina:

As a State Plan state, North Carolina is required to incorporate the OSHA regulations verbatim within 6 months of federal promulgation. As such, the majority of impacts (benefits and costs) associated with the adoption and implementation of the updated PPE standard are attributable to the federal action. The main impacts attributable to North Carolina’s proposed adoption (by reference) of the updated PPE Standard are associated with the timely adoption of the standard and maintaining compliance with its status as a State Plan state⁵.

Impacts of adopting the federal PPE amendment in Construction in a timely manner and maintaining compliance with State Plan status include:

⁴ [1953.5 - Special provisions for standards changes. | Occupational Safety and Health Administration \(osha.gov\)](#)

⁵ Section 18 of the federal Occupational Safety and Health Act of 1970, 29 USC 667() encourages states to develop and operate their own state plans. OSHA then approves such plans, monitors the State Plans, and provides partial funding for approved State Plan operating costs. See: [State Jurisdiction and State Plans | Occupational Safety and Health Administration \(osha.gov\)](#)

- In the near term, if North Carolina does not adopt the proposed revisions in a timely manner, there would be a potentially extended period of time when the federal PPE amendment in Construction in North Carolina would conflict with the standard in effect in other states. At a minimum, this would cause confusion for those North Carolina employers who also operate in multiple states. Confusion and uncertainty over standards related to PPE would inherently increase the likelihood of illness and injury to workers. Failure to adopt the proposed revisions would also deprive workers in North Carolina of the additional protections that will result from implementing the updated standards. Workers would not benefit from the improved criteria of the employer ensuring the PPE property fits the employee.
- In the longer term, if North Carolina does not adopt the proposed revisions to the federal PPE Standard amendment in Construction, there would be an increased likelihood that OSHA would review NC’s Occupational Safety and Health program to determine whether the state’s program is “as effective as” the federal program and the federal standards. If the review determines that the State program is not “as effective as” the federal program⁶, that determination would introduce a risk of losing State Plan status and significant federal funding that supports the State’s program. Ultimately, if North Carolina were to lose State Plan status, then the US Department of Labor’s Occupational Safety and Health Administration (federal OSHA) would implement and enforce all of its OSHA standards in North Carolina.
- Having an approved State Plan allows the state to implement its program to be more responsive to specific local needs. As compared to relying on federal implementation of OSHA, having a State Plan increases workplace safety through closer involvement with employers in the state as well as greater educational and training opportunities tailored to North Carolina employers.
- Federal OSHA does not cover public sector employees, but all 27 State Plan programs cover both state and local government employees, which is a direct benefit for the protection of public employees. <https://www.osha.gov/stateplans>
- Federal OSHA determines whether State Plans operate “at least as effectively as” the federal program by tracking every state plan’s progress in achieving its strategic and annual performance goals, and by ensuring that the state plan meets the

⁶ Section 18(c)(6) [State Jurisdiction and State Plans | Occupational Safety and Health Administration \(osha.gov\)](#)

responsibilities mandated the federal OSH Act. At a minimum, a review is held every quarter. Over the past twenty-four years, North Carolina has met the goals established for state plans.

OSHA identified the importance of properly fitting PPE in the construction industry, explaining that improperly fitting PPE may not protect workers from hazards and could create additional hazards (81 FR 46710– 46711). The agency noted several studies and reports that identified instances of improperly fitting PPE either failing to protect workers from the hazard for which the PPE was intended (e.g., loose-fitting goggles exposing an employee’s eyes to flying debris) or introducing additional hazards (e.g., loose-fitting gloves becoming caught in machinery). In addition, OSHA identified evidence that employees are more likely to remove or not use ill-fitting PPE.

After a multi-step review process and having evaluated the information relevant to this particular issue, OSHA concluded that revising the existing standard as proposed will better effectuate the purpose of the federal OSH Act than relying on the language of existing consensus standards.

For the proposal, OSHA estimated minimal costs to comply with the rule since it simply clarifies an existing requirement. OSHA did, however, request information from commenters about the impact of the rule on the provision of properly fitting PPE. Based on responsive comments in the record, OSHA has determined that it is appropriate to account for additional costs. In particular, OSHA has added costs for purchasing properly fitting harnesses and earplugs, which were not included in the proposal. In addition, OSHA has added ongoing annual costs for non-compliant employers to continue to provide properly fitting PPE to their employees after initially replacing it. OSHA has also added costs for rule familiarization time as well as the time for employers to assess, research, and identify properly fitting PPE for those workers who are not currently being provided with it. Where more recent economic data is available, OSHA updated the data used for its analysis. Finally, OSHA attributed (but did not quantify) health and safety benefits to this final standard based on evidence in the record that workers are being injured due to improperly fitting PPE.

OSHA has determined that this rule could impose three main types of costs on establishments in the construction industry: (1) rule familiarization, (2) researching PPE, and (3) replacing PPE. The costs for researching properly fitting PPE for purchase and for replacing improperly fitting PPE will only be incurred by employers who are out of compliance with the already existing requirement to provide workers with PPE that fits properly.

1. Rule Familiarization

Employers in some affected establishments will spend time familiarizing themselves with the rule. OSHA estimates that rule familiarization will take ten minutes for a health and safety coordinator to complete and that 50 percent of the establishments in the three construction NAICS industries will take time to familiarize themselves with the rule. OSHA has assumed that only 50 percent of establishments will need familiarization time not only because this final rule is simply a clarification of an existing requirement, but because the rule aligns the construction regulatory text on PPE fit with the general industry requirement, with which many construction employers are likely familiar. OSHA, therefore, believes that many employers already know that they must provide PPE that fits properly and will not need to spend time familiarizing themselves with this final rule. The loaded wages used to calculate the cost of rule familiarization time are taken from BLS' Occupational Employment and Wage Statistics (OEWS) dataset for 2023 (<https://www.bls.gov/oes/tables.htm>) for Occupational Health and Safety Specialists and Technicians.

2. Researching PPE for Purchase

For this final rule, OSHA is accounting for costs related to researching and finding non-standard-sized PPE. Some commenters said that it is difficult to locate PPE in certain non-standard sizes. For instance, one commenter said that it was challenging to find PPE, including protective footwear, to fit her smaller frame and that she hopes this final rule will eliminate the need for "extensive searches for 'small' gear" (Document ID 0031). Another commenter said that "[h]igh-visibility coats that fit a pregnant belly are hard to find" (Document ID 0115), while a third commenter said that small size high visibility vests and boots are difficult to come by and that even proactive employers can encounter limited supply in non-standard sizes (Document ID 0079). Other commenters, however, noted the availability of PPE to fit a wide range of worker body shapes and sizes (Document ID 0108, 0112; see also Document ID 0014, 0117). Based on these comments, OSHA has estimated that it may take some additional time for employers to find appropriate PPE in non-standard sizes for workers not currently using the appropriately sized PPE.

3. Replacing PPE

The types of PPE used in construction fall into the following three categories: PPE provided by the employer and not of universal fit, PPE items purchased by the employee and reimbursed by the employer, and PPE of universal fit. PPE items identified as universal fit are those that are adjustable and capable of fitting most people. OSHA assumes that PPE items purchased by the employee and then reimbursed by the employer already fit properly, since the employee will select the size that fits them best. The remaining PPE items are those provided by the employer that are not PPE with a universal fit.

Although OSHA acknowledged that this rule simply clarifies an existing requirement, they estimated the potential costs across the U.S. given the likelihood that a small number of employers are not currently meeting their obligation to provide property fitting PPE. OSHA estimated that adoption of this rule would result in total one-time costs of about \$5.48 million and total annual costs of about \$437,000 (in 2023\$). These costs would be spread among three types of construction industries (NAICS 236, 237, and 238) and across all U.S. states.⁷ Extrapolating from the total U.S. costs, we used North Carolina's contribution to the U.S. GDP⁸ to estimate total one-time costs of about \$164,000 (calculated as 3% of \$5.48 million) and annual costs of about \$13,000 (calculated as 3% of \$437,000). These are likely overestimates as OSHA's analysis was based on very conservative predictions of the number of employers currently not in compliance.

As OSHA describes in its analysis, they expect this rule clarification will improve compliance. Improved compliance should, in turn, produce benefits to workers who are not currently provided with properly fitting PPE. These benefits would be in the form of prevented illness and injury, which OSHA could not quantify. For informational purposes, OSHA calculated the number of injuries and/or fatalities that would have to be prevented to yield a net benefit (9 nonfatal injuries or illnesses avoided every year or 1 fatality avoided every 14 years.)

These impacts are the result of the federal promulgation of the Personal Protective Standard amendment in Construction and are not directly attributable to the proposed adoption of the standard by North Carolina. Nevertheless, they provide important context as to the value of remaining in compliance with this federal OSHA standard. Per G.S. 150B-21.4(b1), this proposed rule change to adopt verbatim a federal Occupational Safety and Health Standard would not be considered a substantial economic impact.

End

JFC February 6, 2025

⁷ <https://www.govinfo.gov/content/pkg/FR-2024-12-12/pdf/2024-29220.pdf>

⁸ North Carolina's percentage of contribution to total U.S. GDP is about 3%. U.S. Bureau of Economic Analysis, Gross Domestic Product: All Industry Total in North Carolina [NCNGSP], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/NCNGSP>, June 27, 2024.

APPENDIX A

SUBCHAPTER 07F - STANDARDS SECTION .0200 – CONSTRUCTION STANDARDS 13 NCAC 07F .0201 CONSTRUCTION

The provisions for the Occupational Safety and Health Standards for Construction, Title 29 of the Code of Federal Regulations Part 1926 promulgated as of ~~June 30, 2022~~, January 1, 2025, and exclusive of subsequent amendments, are incorporated by reference except as modified or amended in 13 NCAC 07F .0202 through .0207.

History Note: Authority G.S. 95-131; 150B-21.6;

Eff. August 2, 1993;

Amended Eff. April 14, 2005; March 14, 2005; September 17, 2004; July 1, 2003; December 11, 2002; August 1, 2002; January 18, 2002; September 1, 2000; February 22, 1999; October 8, 1998; July 1, 1998; April 8, 1998; March 7, 1997; February 11, 1997; September 1, 1996; February 1, 1996; January 1, 1996; October 1, 1995; September 6, 1995;

Item (5): Subpart U-Blasting and Use of Explosives, was recodified to Rules - .0701-.0716 Eff. August 3, 2005;

Amended Eff. November 22, 2006; August 24, 2006; May 30, 2006;

Recodified Items (1) - (6) to Rules .0202 - .0207 Eff. December 17, 2007;

Amended Eff. October 2, 2015; November 20, 2014; October 8, 2014; November 18, 2013;

November 8, 2013; June 18, 2013; February 5, 2013; June 11, 2012; October 31, 2011;

November 8, 2010; August 19, 2010; July 1, 2010; April 23, 2009; February 13, 2008;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016;

Amended Eff. January 1, 2025; September 1, 2022; March 8, 2021; February 1, 2021; September 23, 2020;

February 14, 2020; October 7, 2019; May 3, 2019; May 1, 2018; July 1, 2017; September 2, 2016