

Section 2.5

Citing the Section or Specific Subsection

Question posed at the Roundtable

This document provides guidance on the following question posed at the Hearing Officer Roundtable:

- When citing a violation, should you cite the section or specific subsection?
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The most specific citation possible should be used in the NOPA

Due process requires us to tell the Respondent the exact code or regulation section he/she is being charged with violating so that the Respondent has enough information to be able to defend himself/herself and prepare for the hearing. Due process will improve if the specific code or regulation section has been cited in the Notice of Proposed Action (NOPA).

Why the citation should be as specific as possible

Some regulations are simple and have few subsections, such as Title 3, California Code of Regulations (3CCR) section 6680, pertaining to prohibited containers for pesticides or 3CCR section 6682(a), pertaining to transportation of pesticides.

Other sections may be lengthy, broken into numerous subsections and to several levels of specificity, having exemptions, clarifications, or limitations built into them. A good example of this is 3CCR section 6738 pertaining to personal protective equipment requirements. 3CCR section 6738 contains nine subsections, many of which are broken down into more subsections, and has over two thousand words. In the case of such a lengthy regulation or code section, a citation which stops at a level before the actual omission or action constituting the violation is described could fail to meet due process or make the preparation or presentation of the case, or the hearing or hearing record, unfocused, confused, or unclear.

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Citing the Section or Specific Subsection, Continued

Examples of how a lengthy section should be cited:
3CCR §6738

The more specific you are about code citations, the easier it is for the investigator, Advocate, Respondent, and Hearing Officer to focus on the elements of the alleged violation elements or requirements.

Example 1: 3CCR section 6738(d) requires an employer to assure that: “(1) When chemical resistant footwear is specified by the pesticide product labeling, one of the following types of footwear is worn: (A) Chemical resistant shoes; (B) Chemical resistant boots; or (C) Chemical resistant coverings worn over boots or shoes. (2) For aircraft operation, chemical resistant footwear need not be worn.”

Assuming the facts of the case are: (i) The employer did not assure the employee was wearing the required footwear; and (ii) the inspection or investigation report or testimony shows the employee was wearing leather shoes (instead of chemical resistant footwear). There could be up to three citation styles for the NOPA. Any one of the following citations are possible:

1. 3CCR section 6738
2. 3CCR section 6738(d)
3. 3CCR section 6738 (d)(1)

Due process would clearly be met by (3) above. This citation with the greater detail might help the Respondent better understand the allegation, assist the Advocate in making a clearer case, or help the Hearing Officer write concise findings of fact.

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Citing the Section or Specific Subsection, Continued

Examples of how a lengthy section should be cited: 3CCR §6738, continued

Example 2: 3CCR section 6738(b) requires an employer to assure: (1) that the employees wear protective eyewear when they are engaged in certain activities, i.e., activities in either paragraphs (A), (B), (C), (D) or (E).

Assuming the facts of the case are: (i) the employer did not assure that an employee was wearing protective eyewear; and (ii) when the employee was engaged in repairing lines containing pesticides. Any one of the following citations are possible:

1. 3CRR section 6738
2. 3CCR section 6738(b)
3. 3CRR section 6738(b)(1)
4. 3CRR section 6738(b)(1)(B)

It is only when citation (4) above is given that the activity (repairing a pesticide line) of the employee who was not wearing the protective eyewear is actually described. This citation describes the violation best, would provide better notice to the Respondent, and could help focus the entire hearing proceeding.

Warning: The ENFACT Database has a different citation style

The level of detail for code citations shown in the Enforcement and Compliance Action Tracking Database (ENFACT) *may* be different from the level of detail the county agricultural commissioner (CAC) uses for code citations in a NOPA or other document.

ENFACT is limited to accepting only the first level of detail after the section number. For example, no matter how many letters or symbols are entered, “3CCR section 6738(h)(1)(i)” will always be reported as “3CCR section 6738(h)” by the database. The database is not intended to have the same level of detail of a CAC’s NOPA. There is sufficient information in the shorter citation style to meet the purpose of the database, which is to generally inform about violations, rather than providing due process to persons receiving a CAC’s NOPA.

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Citing the Section or Specific Subsection, Continued

References

- 3CCR section 6680, Prohibited Containers for Pesticides
 - 3CCR section 6682, Transportation
 - 3CCR section 6738, Personal Protective Equipment
 - Enforcement Guidelines, Technical Revision, December 2002, Citable Sections -- <http://www.cdpr.ca.gov/docs/enfcmpli/admnacts/citsec.pdf>
 - FAC section 12999.5
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