

10 CFR Part 810: Updates & Understanding the Final Rule on Monetary Civil Penalties

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Agenda

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- **Brief Review: 10 CFR Part 810**
- **Recent Changes to Appendix A: Generally Authorized Destinations List**
- **Deep Dive: Understanding the Civil Penalties Final Rule**
- **Questions & Answers**

Brief Review: 10 CFR Part 810



Brief Review: 10 CFR Part 810

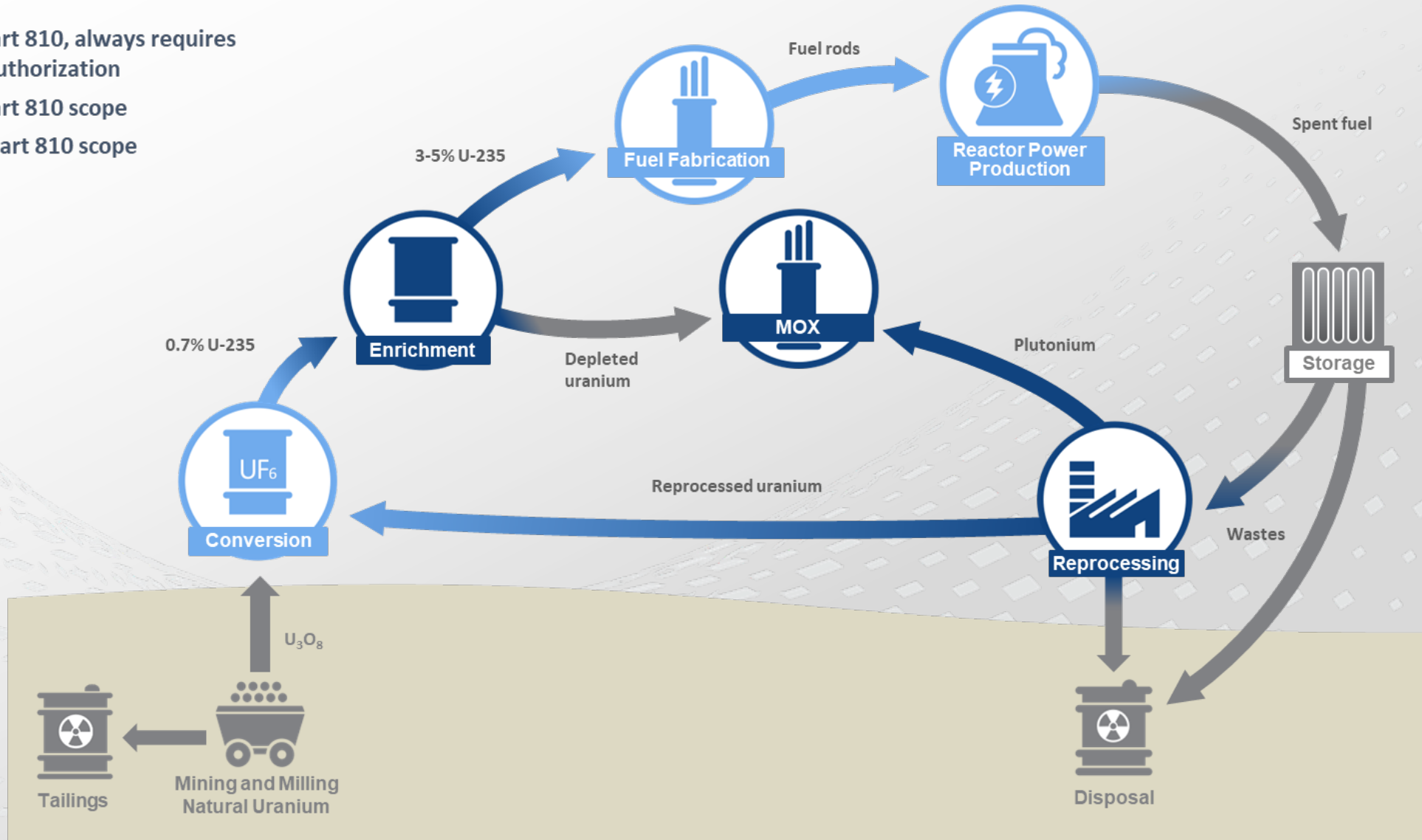
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- **Section 57b.(2) of the *Atomic Energy Act of 1954, as amended*, prohibits all direct or indirect engagement or participation in the production/development of Special Nuclear Materials (SNM) outside the United States, unless:**
 - Authorized by the Secretary of Energy following a determination that such activity will not be inimical to the interests of the United States
- **Section 57b.(2) is implemented by DOE at 10 CFR Part 810 which:**
 - Enables peaceful nuclear trade by helping ensure that nuclear technologies exported from the United States will not be used for non-peaceful purposes
 - Applies to technology transfers and assistance related to certain nuclear fuel cycle activities, commercial nuclear power plants, and research and test reactors
 - The scope includes, but is not limited to, transfers of physical documents, electronic media, software and codes, and intangible transfer of knowledge and expertise (i.e., “know-how”)

Brief Review: 10 CFR Part 810

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- Within Part 810, always requires specific authorization
- Within Part 810 scope
- Outside Part 810 scope



Brief Review: 10 CFR Part 810


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- **Generally Authorized Activities**

- The export of certain nuclear technologies and assistance are identified in Part 810 as “generally authorized” by the Secretary of Energy
- Must be to destinations listed in Appendix A to Part 810 or an activity that otherwise qualifies (e.g., operational safety information at a safeguarded facility)
- No further authorization from the Secretary is required (NOTE: some activities require prior approval)
- Reporting requirements apply and are detailed in section 810.12(e)

- **Specific Authorized Activities**

- For activities and destinations NOT generally authorized, “specific authorization” from the Secretary of Energy is required
- Specific authorization application process is detailed in section 810.9
- Certain activities (e.g., those related to enrichment and reprocessing) and transfers of Sensitive Nuclear Technology always require a specific authorization **regardless of destination** (section 810.7)
- Reporting requirements apply and are detailed in section 810.12



Appendix A, *Generally Authorized Destinations*, to Part 810: Recent updates concerning Colombia, Egypt, and Mexico



Recent Changes to Part 810, Appendix A

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- **DOE Secretarial Determination issued on December 29, 2022 regarding generally authorized (GA) destinations**
 - ***Mexico MODIFIED to be a fully GA destination***
 - Previously, only Part 810 covered technology or assistance to the Laguna Verde Units 1 & 2 NPPs was included in Appendix A
 - ***Egypt and Colombia REMOVED from Appendix A***
 - All transfers of Part 810 covered technology and assistance to these destinations now require specific authorization from the Secretary of Energy
- Appendix A amended by Final Rule published on February 8, 2023

Recent Changes to Part 810, Appendix A

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- **Savings clause: Exporters had until March 1, 2023 to submit specific authorization requests for any Part 810-controlled technology and assistance activities with Egypt and Colombia**
 - These **previously** generally authorized activities may continue, pending the review and approval by the Secretary of the request for specific authorization, IF previously reported as generally authorized activities in accordance with section 810.12.
- **Any pending specific authorization requests for Mexico will be returned without action**
 - General authorization reporting requirements will apply
- **Existing specific authorizations require exporters to submit an authorization closeout report in accordance with 810.12(b) UNLESS they have submitted a written request and justification to DOE to keep the authorization open**

Deep Dive: Understanding DOE's Civil Penalties Final Rule



Deep Dive: Part 810 Civil Penalties

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- **On January 12, 2023, DOE published a final rule amending 10 CFR Part 810 to implement procedures for the imposition of civil penalties for violations of Section 57b. of the AEA as implemented by Part 810**
 - The effective date for the rule is **February 13, 2023**
- Implements the *John S. McCain National Defense Authorization Act for Fiscal Year 2019*, which clarified DOE's authority to impose monetary civil penalties for violations of 57b.
- On October 3, 2019, DOE published a Notice of Proposed Rulemaking (NOPR) and accepted public comments through December 4, 2019
- **Civil penalties are not retroactive and do not apply to violations that occurred before February 13, 2023**
- Statute of Limitations is 5 years
- The scope of Part 810 is not changed by this rulemaking

Deep Dive: Part 810 Civil Penalties

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- **The Civil Penalties Final Rule**

- Strengthens DOE's ability to enforce Part 810 requirements
- Establishes procedures for identifying and evaluating violations and assessing monetary civil penalties
- Does not in any way impact exporters in compliance with the regulation

- **Objectives**

- Deter unauthorized transfers of U.S. nuclear technology and assistance controlled under Part 810
- Encourage full and accurate compliance with the regulation and reporting requirements
- Incentivize prompt self-reporting of regulatory violations

Deep Dive: Part 810 Civil Penalties

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- **Any U.S. person that violates any provision of section 57b. of the AEA, as implemented under Part 810, shall be subject to a civil penalty, not to exceed \$120,816 per violation, as of January 13, 2023**
 - This amount will be adjusted annually for inflation
- **If a violation is continuing, each day from the point at which the violating activity began until it is suspended constitutes a separate violation for the purpose of computing the civil penalty**

Deep Dive: Part 810 Civil Penalties

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The amount of the civil penalty will be based on:

- The nature, circumstances, extent, and gravity of the violation(s)
- The violator's ability to pay
- The effect of the civil penalty on the person's ability to do business
- Any history of prior violations
- The degree of culpability
- Whether the violator self-disclosed the violation
- The economic significance of the violations; and
- Such other factors as justice may require

Deep Dive: Part 810 Civil Penalties

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Written Notice of Violation (NOV)

- **The Deputy Administrator for Defense Nuclear Nonproliferation or their designee notifies the person by written notice of violation (NOV)**
 - Notice sent by registered or certified mail
- **NOV includes:**
 - Date, facts and nature of each act or omission with which the person is charged with violating
 - The regulatory citation for each alleged violation
 - The penalty that DOE proposes to impose, including an explanation of how the factors in 810.15(c)(5) were considered
 - The opportunity to submit a written reply within 30 calendar days of receipt of the NOV showing why such penalty should not be imposed; and
 - The possibility of collection by civil action upon failure to pay the civil penalty
- In response to a written request, the Deputy Administrator may extend the time for submitting a reply

Deep Dive: Part 810 Civil Penalties

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A reply to the NOV must:

- State any facts, explanation, and arguments which support a denial of the alleged violation
- Demonstrate any extenuating circumstances or other reason why a proposed penalty should not be imposed or should be mitigated
- Discuss the relevant authorities which support the position asserted
- Furnish full and complete answers to any questions set forth in the NOV; and
- Include copies of all relevant documents

Deep Dive: Part 810 Civil Penalties

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Failure to Reply to NOV

- If a person fails to submit a written reply within 30 calendar days of receipt, the NOV, including any penalties, constitutes a final decision
- Payment of the full amount of the civil penalty assessed in the NOV is due 30 calendar days after receipt of the NOV
- The failure to submit a reply is a waiver of the rights and processes outlined in Part 810 (810.15 (c)(4)-(14))

Deep Dive: Part 810 Civil Penalties

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Final Determination

- If a person submits a timely written reply to the NOV, the Deputy Administrator will make a final determination
- If a determination is made that the person violated or is continuing to violate Part 810, a final written NOV will be sent that:
 - Concisely states the violation(s)
 - The amount of civil penalty imposed, including an explanation of how the factors were considered
 - Further actions necessary or available to the person, and
 - Upon failure to timely pay the civil penalty, the penalty may be collected by civil action

Deep Dive: Part 810 Civil Penalties

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Hearing Request

- Any person who receives a final NOV may request a hearing concerning the allegations contained in the notice
- A written request for a hearing must be mailed to the Under Secretary for Nuclear Security within 30 calendar days of receipt of the final NOV
- If a hearing request is not made within 30 calendar days, the final NOV, including any penalties, is a final decision
 - Payment of the full amount of the civil penalty assessed in the final NOV is due 45 calendar days after receipt of the final NOV

Deep Dive: Part 810 Civil Penalties

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If a hearing is requested:

- Appeals will be heard by an Administrative Judge in the DOE Office of Hearings and Appeals (OHA)
- The person has the right to representation
- The person is responsible for producing witnesses on their behalf including requesting issuance of subpoenas
- Testimony is given under oath or affirmation. Criminal penalties apply to false statements and perjury
- Formal rules of evidence do not apply; however, OHA may use the Federal Rules of Evidence as a guide
- The Administrative Judge may order discovery or permit parties to obtain discovery

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- DOE has the burden of proving the violation(s) set forth in the NOV by a preponderance of the evidence
- The person to whom the NOV is addressed has the burden of proving any affirmative defense by a preponderance of the evidence
- The amount of the penalty associated with the violation(s) that are upheld must be adopted by the Administrative Judge unless not supported by the facts
 - In that case, the Administrative Judge includes that information in their recommended decision to the Under Secretary for reconsideration of the penalty amount based on the Judge's resolution of factual issues
- DOE will consider alternative dispute resolution, pre-decisional enforcement conferences, and settlement agreements, where appropriate

Deep Dive: Part 810 Civil Penalties

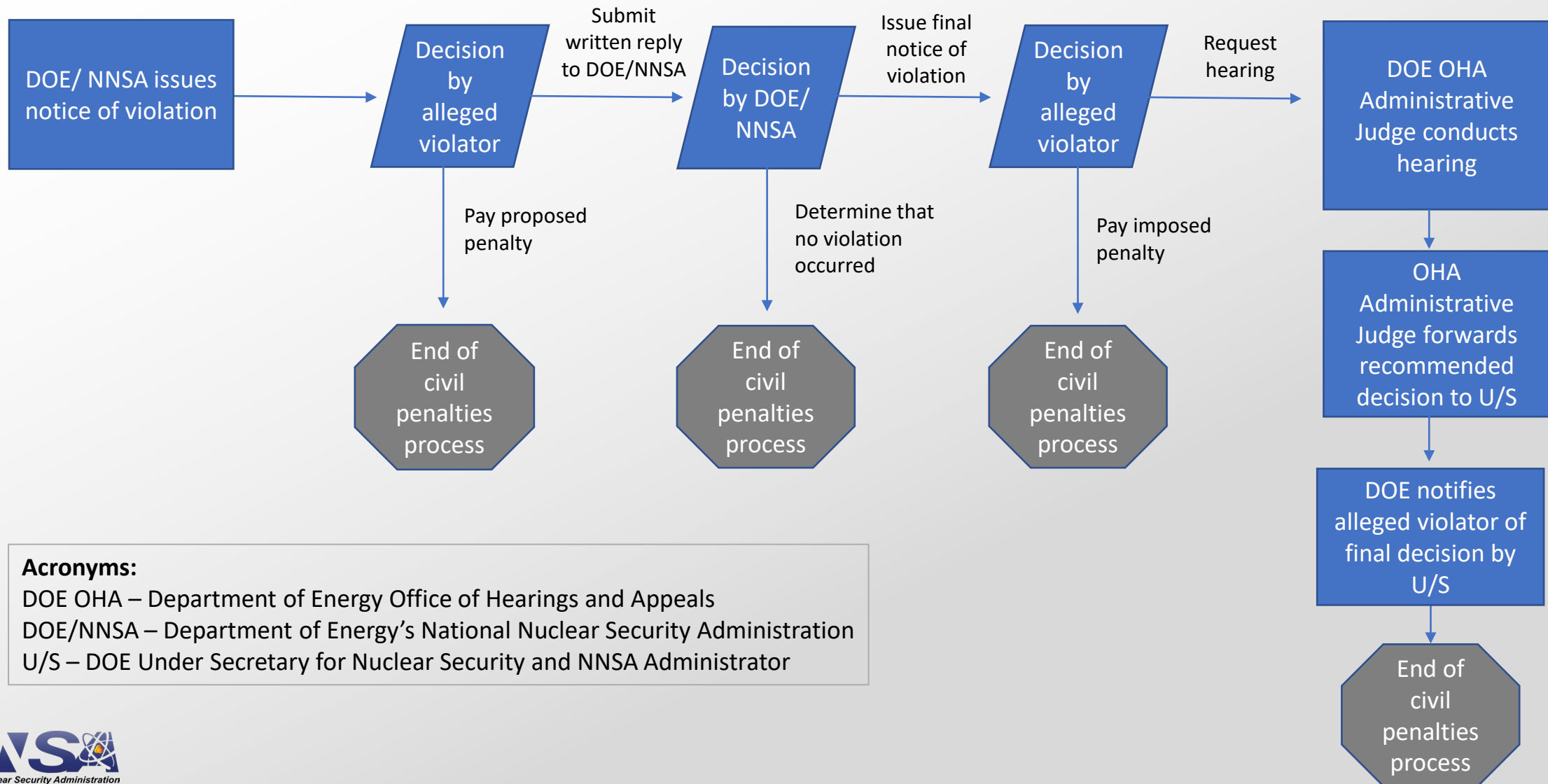
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Final Decision by Under Secretary

- The Administrative Judge issues a recommended decision that is forwarded to the Under Secretary for Nuclear Security
- The Under Secretary makes a final decision which may include compromising, mitigating, or remitting penalties in accordance with the AEA
 - The Under Secretary may not increase the civil penalty
- DOE notifies the person in writing of the Under Secretary's final decision or other action
- The person against whom the civil penalty is assessed by the final decision must pay the full amount of the civil penalty within 30 calendar days
- The Under Secretary may publish redacted versions of NOVs and final decisions

The Civil Penalties Process

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Acronyms:

DOE OHA – Department of Energy Office of Hearings and Appeals
 DOE/NNSA – Department of Energy’s National Nuclear Security Administration
 U/S – DOE Under Secretary for Nuclear Security and NNSA Administrator

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What's Next?

- DOE is preparing a ***Civil Penalties Enforcement Manual*** that will provide additional guidance on the Part 810 enforcement process and imposition of civil penalties
- As noted, the rule sets forth eight factors in 810.15(c)(5) for consideration in the imposition of civil penalties
 - DOE can use these factors to ensure a penalty is proportionate to the violation(s)
 - The circumstances of each violation(s) is different
- The scope of Part 810 is not changed by this rulemaking
- Brings DOE into consistency with other U.S. export control regulations, including those administered by State, Commerce, Treasury and the Nuclear Regulatory Commission
- Updated FAQ's addressing civil penalty authority have already been posted to the Part 810 Website

Deep Dive: Part 810 Civil Penalties

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“DOE believes that U.S. companies generally comply with the Part 810 regulation, and this Final Rule does not alter its scope. Instead, the Final Rule establishes procedures for DOE to impose monetary civil penalties in the event of a violation. This supports America’s goal of reducing the theft of U.S. technology by foreign competitors, supports U.S. jobs, and protects the valuable intellectual property of every U.S. nuclear energy organization.”

Corey Hinderstein
Deputy Administrator for Defense Nuclear Nonproliferation
National Nuclear Security Administration
U.S. Department of Energy





Questions & Answers



Deep Dive: Part 810 Civil Penalties

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For Additional Information and Resources:

- Part 810 Civil Penalties News Release
<https://www.energy.gov/nnsa/articles/departments-energy-issues-final-rule-part-810-civil-penalties>
- See the explanation and Q&A
<https://www.energy.gov/nnsa/10-cfr-part-810>
- Email Part810@nnsa.doe.gov