



NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC-2023-0172]

Draft Regulatory Guide: Preemption Authority, Enhanced Weapons Authority, and Firearms Background Checks

AGENCY: Nuclear Regulatory Commission

ACTION: Draft guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft Regulatory Guide (DG), DG-5081, “Preemption Authority, Enhanced Weapons Authority, and Firearms Background Checks.” This DG-5081 is proposed Revision 1 of Regulatory Guide (RG) 5.86 of the same name. This DG provides an approach acceptable to the NRC staff for use by licensees under NRC regulations, “Physical Protection of Plants and Materials,” regarding stand-alone preemption authority, combined preemption authority and enhanced weapons authority, and firearms background checks.

DATES: Submit comments by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the **Federal rulemaking website**:

- **Federal rulemaking website:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2023-0172**. Address questions about Docket IDs in Regulations.gov to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For

technical questions, contact the individuals listed in the “For Further Information Contact” section of this document.

- **Mail comments to:** Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Phil Brochman, Office of Nuclear Security and Incident Response, telephone: 301-287-3691; email: Phil.Brochman@nrc.gov, or Stanley Gardocki, Office of Nuclear Regulatory Research, telephone: 301-415-1067; email: Stanley.Gardocki@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID **NRC-2023-0172** when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2023-0172**.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. DG-5081, “Preemption Authority, Enhanced Weapons Authority, and Firearms Background Checks,” and its associated

regulatory analysis are available in ADAMS under Accession No. ML23198A185 and ML23200A284, respectively.

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID **NRC-2023-0172** in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's "Regulatory Guide" series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The DG, entitled “Preemption Authority, Enhanced Weapons Authority, and Firearms Background Checks,” is temporarily identified by its task number, DG-5081.

Proposed Revision 1 to RG 5.86 is being revised on a limited-scope basis to provide additional guidance on preemption authority, enhanced weapons authority, and firearms background checks. These new requirements are part of the NRC’s final rule, titled “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications” (hereafter the Enhanced Weapons rule), that was published in the *Federal Register* on March 14, 2023 (88 FR 15864). These provisions are found in the NRC’s regulations under section 73.15 of title 10 of the *Code of Federal Regulations* (10 CFR) and 10 CFR 73.17.

Proposed Revision 1 to RG 5.86 provides acceptable methods that eligible applicants and licensees (collectively referred to as licensees in this DG) may use to request and use either stand-alone preemption authority or combined preemption authority and enhanced weapons authority and to conduct related firearms background checks. DG-5081 also includes examples, considerations, and guidance to assist licensees and their security personnel in understanding their responsibilities in implementing the provisions of 10 CFR 73.15 and 10 CFR 73.17.

Following the publication of the final rule and RG 5.86, the NRC staff conducted several pre-implementation workshops with licensees. The NRC staff also participated in industry-led forums and symposiums in May and June 2023. In these meetings industry raised questions about RG 5.86 and identified potential inconsistencies and areas where additional clarification would be beneficial to licensees to implement the Enhanced Weapons rule effectively and efficiently. The NRC staff has reviewed the issues raised by industry and agrees that further clarification, revision, and supplementation of the guidance contained in RG 5.86 will be of value. Accordingly, the NRC staff is proposing to conduct limited-scope revisions to RG 5.86 to address these issues, including providing notice and opportunity for public comment on the proposed revisions.

To assist with stakeholder review of the limited scope changes to DG-5081, staff notes the following changes have been proposed:

Section B, "Discussion" Topics

- "Reason for Issuance" – updated to reflect rationale for changes to the RG.
- "Standalone Preemption Authority and Combined Preemption Authority and Enhanced Weapons" – updated to clarify the three potential pathways by which a licensee could obtain combined preemption authority and enhanced weapons authority.
- "Firearms Background Check, paragraph 1" – clarified background check requirements for licensee security personnel who are not assigned duties requiring access to covered weapons.
- "Firearms Background Check, paragraphs 10-12" – clarified requirements for licensee security personnel's access to covered weapons during and after the 10 CFR 73.15 approval process.

Section C, "Staff Regulatory Guidance"

- Position 5, "Completion of Training and Qualification before Use of Enhanced Weapons," paragraph 1 – modified language in first sentence to say "using."
- Position 5, paragraph 2 – clarified training requirements for staff with access to enhanced weapons who are not assigned duties that would require them to use enhanced weapons.
- Position 6.1, "General Requirements for Fingerprints and Firearms Background Checks," example 19 – clarified the conditions that must be met in order to exempt licensees from the requirement to perform a new firearms background check for security personnel transferring from one licensed facility to another licensed facility.

The staff is also issuing for public comment a regulatory analysis (ADAMS Accession No. ML23200A284). The staff developed a regulatory analysis to assess the value of issuing or revising an RG, as well as alternative courses of action.

As noted in the *Federal Register* on December 9, 2022 (87 FR 75671), this document is being published in the “Proposed Rules” section of the *Federal Register* to comply with publication requirements under 1 CFR chapter I.

III. Backfitting, Forward Fitting, and Issue Finality

Issuance of DG-5081 as a final RG would not constitute backfitting as that term is defined in 10 CFR 50.109, “Backfitting,” 10 CFR 70.76, “Backfitting,” or 10 CFR 72.62, “Backfitting,” and as described in NRC Management Directive (MD) 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,” to affect the issue finality of an approval issued under 10 CFR part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants;” or constitutes forward fitting as that term is defined and described in MD 8.4. The staff also does not intend to use the guidance to support NRC staff actions in a manner that constitutes forward fitting as that term is defined and described in MD 8.4. If a licensee believes that the NRC is using this proposed revision to RG 5.86 in a manner inconsistent with the discussion in the Implementation section of DG-5081, then the licensee may file a backfitting or forward fitting appeal with the NRC in accordance with the process in MD 8.4.

IV. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC’s public website at <https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html>. Suggestions will be considered in future updates and enhancements to the “Regulatory Guide” series.

Dated: October 24, 2023.

For the Nuclear Regulatory Commission

Stephen M. Wyman, Acting Chief,
Regulatory Guide and Programs
Management Branch,
Division of Engineering,
Office of Nuclear Regulatory Research.