



NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC-2023-0173]

Draft Regulatory Guide: Suspicious Activity Reports

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-5082, "Suspicious Activity Reports." This DG-5082 is proposed Revision 1 of Regulatory Guide (RG) 5.87 of the same name. This DG provides an approach acceptable to the NRC staff for licensees to use for reporting suspicious activity under NRC regulations, "Physical Protection of Plants and Materials," to local law enforcement, the Federal Bureau of Investigation, the NRC, and the Federal Aviation Administration.

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-2023-0173**. 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-2023-0173** 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-2023-0173**.

- **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- 5082, “Suspicious Activity Reports under 10 CFR Part 73,” and its associated regulatory analysis are available in ADAMS under Accession No. ML23198A151 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-2023-0173** 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 "Suspicious Activity Reports Under 10 CFR Part 73," is temporarily identified by its task number, DG-5082.

Proposed Revision 1 to RG 5.87 is being revised on a limited-scope basis to provide additional guidance on suspicious activity reporting. 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 73.1215 of title 10 of the *Code of Federal Regulations* (10 CFR).

The NRC has determined that licensees' timely submission of suspicious activity reports to the NRC and to law enforcement is an important part of the U.S. government's efforts to disrupt or dissuade malevolent acts against the nation's critical infrastructure. Despite the increasingly fluid and unpredictable nature of the threat environment, some elements of terrorist tactics, techniques, and procedures remain constant. For example, attack planning and preparation generally proceed through several predictable stages, including intelligence gathering and pre-attack surveillance. Reporting suspicious activities that could be indicative of preoperational surveillance or reconnaissance efforts, challenges to security systems and protocols, or elicitation of non-public information related to security or emergency response programs, offer law enforcement and security personnel the greatest opportunity to disrupt or dissuade acts of terrorism before they occur. Additionally, licensees' timely submission of suspicious activity reports to the NRC supports one of the agency's primary mission essential functions of threat assessment for licensed facilities, materials, and shipping activities.

Following the publication of the final rule and RG 5.87, 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 5.87 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 5.87 will be of value. Accordingly, the NRC staff is proposing to conduct limited-scope revisions to RG 5.87 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-5082, staff notes the following changes have been proposed:

Section B, "Discussion" Topics

- "Reason for Issuance" – updated to clarify rationale for RG changes.
- "Reporting Timeliness and Order of Precedence," item number 4 and Note – updated to clarify Federal Aviation Administration (FAA) facility.
- "Reporting Timeliness and Order of Precedence," paragraphs 2-5 – updated to clarify FAA reporting requirements.

Section C, "Staff Regulatory Guidance"

- Position 5.2, "Challenges to Licensee's Security Systems and Procedures – Facilities," paragraph 3 – clarifies exceptions to the reporting requirements.

Appendix A, "Suspicious Aviation-Related Activities"

- A-2.1, "Coordination with the FAA, paragraph 2" – modified expectations regarding licensee's ongoing awareness of Notice to Airman advisories.
- A-3, "Assessing Potentially Suspicious Aviation-Related Activity" – modified the applicable FAA facility to be notified of suspicious aviation-related activity.

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-5082 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,” nor does the NRC staff intend to use the guidance to affect the issue finality of an approval under 10 CFR part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants.” 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 because reporting requirements are not included within the scope of the NRC’s backfitting or issue finality rules or forward fitting policy.

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.

[FR Doc. 2023-23796 Filed: 10/26/2023 8:45 am; Publication Date: 10/27/2023]