



U.S. Nuclear Regulatory Commission

Office of Nuclear Security and Incident Response

NSIR Temporary Staff Guidance

Temporary Staff Guidance No.: **TSG-NSIR-2021-01**

Temporary Staff Guidance Title: **ADDITIONAL GUIDANCE FOR FORCE-ON-FORCE
INSPECTIONS DURING THE PUBLIC HEALTH
EMERGENCY**

Effective Date: **February 28, 2021**

Approved By: **Sabrina Atack**

Date Approved: **February 26, 2021**

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Responsible Organization: **NSIR/DSO/SOSB**

ADAMS Accession No.: **ML21043A259**



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Temporary Staff Guidance – Additional Guidance for FOF Inspections During the PHE

1. OBJECTIVE

This temporary staff guidance (TSG) document provides staff guidance for the evaluation of potential hardship criteria that may impact the conduct of force-on-force (FOF) inspection activities during the Coronavirus 2019 (COVID-19) Public Health Emergency (PHE). Licensee staff, as well as the U.S. Nuclear Regulatory Commission (NRC) staff, may need to implement flexible strategies for personal protection from COVID-19 that may impact the conduct of FOF inspections during this time period. As a result, this TSG is intended to provide guidance for NRC FOF inspectors for related inspection activities as they may be impacted by the PHE. Conversely, this TSG is not intended to be used for issues not impacted by the PHE or for any time period following the end of the PHE.

This TSG supports the stated objective of the Security Cornerstone in the Reactor Oversight Process, as well as, the cornerstone performance expectation as stated in Inspection Procedures (IPs) 71130.03¹ and 92707²:

Security Cornerstone Objective: To provide assurance that the licensee's security system uses a defense-in-depth approach and can protect against the design basis threat (DBT) of radiological sabotage from external and internal threats and the theft or loss of radiological materials.

Security Performance Expectation: To assess each licensee's physical protection program to ensure that it has been appropriately developed, designed, and implemented to protect target set equipment and prevent significant core damage and spent fuel sabotage from the DBT of radiological sabotage in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 73.1, "Purpose and Scope"; 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage"; and 10 CFR 73.58, "Safety/Security Interface Requirements for Nuclear Power Reactors."

This document outlines a process for determining when a hardship exists that may preclude the implementation of IP 71130.03 for the conduct of NRC-led triennial force-on-force inspections and has the following objectives:

- use established criteria to determine when a hardship exists;
- resolve conflicts;
- determine appropriate IP to use when conducting FOF inspection activity during the COVID-19 PHE;
- outline communications methods between NRC and licensees to inform inspection planning;
- enable FOF inspection activities to be conducted in a manner to maximize licensee and NRC staff personal protection from COVID-19; and
- enable FOF inspection activities to be conducted consistently and equitably for all licensees during the PHE while recognizing site-specific conditions to ensure

¹ Inspection Procedure (IP) 71130.03, "Contingency Response—Force-on-Force Testing."

² IP 92707, "Security Inspection of Facilities Impacted by a Local, State, or Federal Emergency Where the NRC's Ability to Conduct Triennial Force-on-Force is Limited."

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the FOF inspectors have available options to maximize flexible alternatives to implement full scope and/or key elements of FOF exercises.

2. **BACKGROUND**

On January 31, 2020, the U.S. Department of Health and Human Services declared a PHE for the United States to aid the nation's healthcare community in responding to COVID-19. As discussed during a public meeting held on March 20, 2020, with nuclear industry representatives and members of the public, this is an unprecedented time for our country, the NRC, and its regulated entities. A summary of this meeting is available at Agencywide Documents Access and Management System (ADAMS) Accession No. ML20093F120.

On January 14, 2021, a public meeting was held with nuclear industry representatives to discuss how the NRC staff intends to conduct the triennial FOF inspection program in calendar year 2021. (ADAMS Accession No. ML21011A236)

On February 3, 2021, another public meeting was held with nuclear industry representatives and members of the public regarding FOF inspection activities and criteria for hardships in 2021. (ADAMS Accession No. ML21034A16)

The unique nature of performing FOF inspections during the PHE may impact the resource estimate because considerations for which IP will be used will impact the overall scope of the inspection. Effective communication, coordination, and preparation is essential prior to implementation of the IPs.

3. **FORCE-ON-FORCE INSPECTION GUIDANCE RELATED TO HARDSHIP CRITERIA DURING THE PHE**

3.1 **General Overview and Guidance**

Based on an evaluation of the options to conduct FOF exercises during the COVID-19 PHE, staff plans to use the existing IP 71130.03 framework with COVID-19 mitigation protocols (included as Addendum 5 to the IP) as its primary approach, and to use IP 92707 when hardship conditions do not permit use of IP 71130.03.

The IP 71130.03 framework is preferred, when site-specific conditions permit, because it provides a holistic assessment of performance, involves proven methods for mitigating conflicts of interest, and is a well-established framework. However, in some cases, site-specific conditions due to COVID-19 impacts on staffing and circumstances such as scheduling conflicts related to execution of critical safety activities and other conditions pertaining to COVID-19 may necessitate use of the revised IP 92707.

In support of the NRC's FOF inspection program, staff has developed guidance for inspectors to utilize when making a determination of the appropriate inspection procedure for use during the COVID-19 PHE.

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3.2 Basic Criteria for Hardship

To determine hardship, one of the following criteria must be met:

- significant number of site-security personnel are positive or under quarantine due to COVID-19 impacts, which places an unreasonable burden on the licensee's ability to staff positions required for conduct of IP 71130.03;
- the inspection dates conflict with safety-related and/or emergent work that was rescheduled due to COVID-19;
- the inspection dates conflict with an outage that was rescheduled due to COVID-19;
- positivity rates in area surrounding site make travel to the site a greater risk to licensee individuals needed to support the inspection of IP 71130.03; or
- due to site protocols for COVID-19 mitigation measures, use of certain positions (e.g., bullet resistance enclosures (BREs), central alarm station (CAS), secondary alarm station (SAS)) are restricted, which will pose an unreasonable burden on licensee or make it unlikely for overall outcome of exercises to be characterized (team lead will provide recommendation to branch chief for consideration for hardship).

Note: NRC staff may make a decision to use IP 92707 when the conditions above are not met if inspectors are unavailable due to COVID-19 impacts or the NRC determines that travel to conduct inspection activities would present an undue risk to the health and safety of participants.

3.3 Hardship Determination Process and Path Forward Following Review

If a licensee requests hardship be considered, the team lead will review the request based on the criteria listed in Section 3 to ensure the criteria is met and/or being appropriately applied. The team lead will provide a recommendation to the branch chief in the Office of Nuclear Security and Incident Response, Division of Security Operations, Security Performance Evaluation Branch (NSIR/DSO/SPEB).

During the review process additional information may be requested from the licensee and/or regional counterpart to ensure the hardship criteria is being appropriately applied.

Upon a determination that a hardship exists, the branch chief or designee will communicate with the licensee and confirm that IP 92707 will be used.

If the branch chief determines that the information provided by the licensee does not meet the criteria for hardship, the branch chief or his/her designee will communicate the finding to the licensee and continue with the scheduled inspection using IP 71130.03.

Licensees may appeal the finding of "no hardship" by submitting an appeal to the Director of the Division of Security Operations via written correspondence (e-mail).

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4. **RESPONSIBILITIES**

NSIR Division of Security Operations, Director

NSIR DSO Director is responsible to make the final decision of hardship, as informed by branch chief and team leads if an appeal is made by a licensee. In making this decision, the DSO Director should consult with the NSIR Director.

NSIR SPEB, Branch Chief

NSIR SPEB chief is responsible for ensuring that hardship criteria have been appropriately applied and to make initial decision of hardship, as informed by team leads and frequent communication with regional branch chiefs. The SPEB chief or designee will document the hardship decision in an e-mail to the licensee with a carbon copy to the team lead, team members, DSO management, and the regional branch chief. The e-mail will be added to ADAMS.

NSIR SPEB, Team Lead

Inspection team lead is responsible for ensuring that hardship criteria have been appropriately applied, and coordinates with the licensee and the regional security inspector, and his/her branch chief as appropriate, early and often to understand site- and/or region-specific information (e.g., COVID-19 impacts on site, region has suspended inspections at a site).

Inspection team lead will evaluate initial hardship submittals provided by the licensee and follow-up as appropriate with the licensee. Specifically, the team lead will communicate the initial recommendation related to the licensee submittal for hardship to the branch chief, and following branch chief review, will communicate with the licensee to plan the inspection activity identified as an outcome of the hardship review (i.e., 71130.03 or 92707).

The team lead will facilitate any discussions, to include appeals, associated with hardship submittals.

5. **DOCUMENTATION**

The SPEB chief will document the hardship decision in an e-mail to the licensee, which will be added to ADAMS along with the incoming hardship request e-mail from the licensee.

A list of sites and reasons for hardship will be kept in a shared folder to ensure the criteria is being consistently applied across all licensees.