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PG&E Letter HIL-24-006

10 CFR 73.5

U.S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, DC 20555-0001

Humboldt Bay Independent Spent Fuel Storage Installation  
Materials License No. SNM-2514, Docket No. 72-27  
Supplement to the Request for Exemption from Enhanced Weapons, Firearms  
Background Checks, and Security Event Notifications Implementation

References: 1. PG&E Letter HIL-23-009, "Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation," dated December 4, 2023 (ADAMS Accession No. ML23338A335)

Dear Commissioners and Staff:

Pursuant to 10 CFR 73.5, Pacific Gas and Electric Company (PG&E) hereby submits this supplement to Reference 1. A brief discussion of the changes and a marked-up copy of the supplement are provided in Enclosure 1 and a clean-copy of the supplement is provided in Enclosure 2. The supplement provides clarifications regarding the following areas, which were discussed with NRC staff on April 1, 2024, and on May 20, 2024:

- New definitions for "contraband" and "time of discovery".
- Federal Aviation Administration Local Control Tower Point of Contact.
- Applicability of 10 CFR 73.1200(a).
- Corrective Action Program.
- "Security Program" versus "Security Plan" terminology.

The supplement provided in Enclosure 2 replaces the previous Enclosure in Reference 1 in its entirety.

PG&E makes no new or revised regulatory commitments (as defined by NEI 99-04) in this letter. If you have any questions or require additional information, please contact me at (805) 545-4005.

Sincerely,

*Shawn P Kirven*

Shawn P. Kirven

*Director, Nuclear Security and Emergency Services*

June 26, 2024

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Date

rntt/51215537

Enclosures

cc: Humboldt Distribution

cc/enc: Kristina L. Banovac, NRC Project Manager

John D. Monninger, NRC Region IV Administrator

**Discussion of Changes  
and  
A Marked-up Copy of the Supplement to the Request for Exemption from  
Enhanced Weapons, Firearms Background Checks, and Security Event  
Notifications Implementation**

## Discussion of Changes to the Humboldt Bay ISFSI Request for Exemption

The following areas were discussed with NRC staff on April 1, 2024 and on May 20, 2024:

- New definitions for "contraband" and "time of discovery": Clarification is provided regarding the facility procedures where the new definitions are implemented, as needed. These definitions are and will remain compliant with RG 5.76 Revision 1.
- Federal Aviation Administration Local Control Tower Point of Contact: Clarification is provided, which discusses the fact that the local regional airport does not have a control tower. However, the impacted facility procedure was revised based on the guidance provided in EGM-23-001 Section A, for reporting suspicious aircraft overflights to the FAA.
- 10 CFR 50 related Exemption: PG&E agrees the scope of the 10 CFR 50 related Exemption (ML13016A210) dated November 5, 2014, does not apply to 10 CFR 73, and that discussion is deleted from Section 4. The discussion has been expanded to include the 15-minute notifications versus 4-hour notifications described in RG 5.62, where clarification is needed.
- Corrective Action Program: The statement in the "Section C, Considerations for Exemption" is revised to clarify that "HB ISFSI will continue to use the Corrective Action Program to identify security-related conditions that result in a report or notification to another agency."
- "Security Program" versus "Security Plan" terminology: The term "Security Program" is replaced with the term "Security Plan," appropriately, at various locations.

NOTE: In addition, three outdated general statements are deleted, that have no impact on the intent of the submittal.

Enclosure 2 of this submittal has been revised accordingly. A mark-up of the changes made is shown in this enclosure for ease of review.

## Supplement to Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation

### A. BACKGROUND

On March 14, 2023, the Nuclear Regulatory Commission (NRC) issued a final rule entitled “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications.”<sup>1</sup> This final rule became effective April 13, 2023, with a compliance date of January 8, 2024. The final rule contains several new elements such as:

- New terminology and associated requirements covering “conditions adverse to security”
- New definitions for “contraband” and “time of discovery” in 10 CFR 73.2
- New point of contact requirements with the Federal Aviation Administration (FAA)
- Changes to the reporting requirements applicable to security events are as follows:
  - Changes 1-hour notifications and 24-hour recording of security events to 1-hour, 4-hour, 8-hour notifications and 24-hour recording of security events.
  - Codifies the accelerated call to the NRC from NRC Bulletin 2005-02 to a new 15-minute notification.

Concurrently with the publication of the final rule, the NRC issued the following Regulatory Guides to support the implementation requirements set forth in the final rule:

- 5.62, “Physical Security Event Notifications, Reports, and Records,” Revision 2
- 5.86, “Enhanced Weapons Authority, Preemption Authority, and Firearms Background Checks,” Revision 0
- 5.87, “Suspicious Activity Reports,” Revision 0

During the August 23, 2023, public meeting, the NRC recognized there are ambiguities and inconsistencies contained by the Final Rule language and associated guidance. ~~The discussed revision date for clarifying guidance publication was April 2024, which is 3 months after the compliance date of January 8, 2024.~~ Additionally, the NRC recognized the need for rulemaking to address the issues with the final rule language.

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<sup>1</sup> “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications; final Rule and guidance,” 88 Fed. Reg. 15864 (March 14, 2023).

Accordingly, in accordance with 10 CFR 73.5, “Specific Exemptions,” Pacific Gas and Electric Company (PG&E) is requesting an exemption from the specific requirements in 10 CFR Part 73, Subpart T, “Security Notifications, Reports, and Recordkeeping,” 10 CFR 73.1200(a) through 10 CFR 73.1200(t), “Notification of Physical Security Events,” 10 CFR 73.1205(a)(1) through 10 CFR 73.1205(e), “Written Follow-up Reports of Physical Security Events,” 10 CFR 73.1210(a)(1) through 10 CFR 73.1210(h), “Recordkeeping of Physical Security Events,” and 10 CFR 73.1215(a) through 10 CFR 73.1215(f), “Suspicious Activity Reports,” until the later of December 31, 2024, or 180 days after publication of the final Regulatory Guides.

PG&E is also requesting an exemption from using the definitions for the terms “Contraband” and “Time of Discovery,” as revised in 10 CFR 73.2, “Definitions,” until the later of December 31, 2024, or 180 days after publication of the final Regulatory Guides. The exemption would not apply to the definitions of those terms that were in effect prior to the issuance of the final rule.

PG&E has not applied for nor received preemption authority for the Humboldt Bay (HB) ISFSI. Therefore, 10 CFR 73.15, “Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws;” and 10 CFR 73.17, “Firearms Background Checks for Armed Security Personnel” do not apply to the HB ISFSI and no exemption is requested.

## **B. BASIS FOR EXEMPTION REQUEST**

10 CFR 73.5 allows the Commission to grant exemptions from the requirements of Part 73, “as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.” As explained below, this exemption request meets the criteria provided in 10 CFR 73.5.

PG&E has identified several issues in the final rule and the supporting Regulatory Guides that require clarification from the NRC for PG&E to successfully implement the requirements. As mentioned above, the NRC is currently developing a resolution for code language issues and addressing guidance revisions.

~~The NRC plans to issue additional guidance in April 2024, three months after the compliance date of January 8, 2024.~~ Without additional guidance, enforcement relief, or the approval of this exemption, it is likely that PG&E will need to make changes to its physical security plans and processes twice—once to come into compliance with its own interpretation of the final rule (without the benefit of the additional guidance being developed by NRC) and again once the additional guidance is issued. The ambiguity and conflict

created by the final rule language and existing guidance, which is described below, could result in unnecessary confusion and distraction that detract from the current high level of assurance provided by implementation of PG&E's existing physical security program. Thus, implementation of the final rule prior to issuance of additional clarifying guidance, at a minimum, is in the best interest of the public. The following are several issues that have been identified as examples:

## 1. CONDITIONS ADVERSE TO SECURITY

The introduction of the term “conditions adverse to security” within 10 CFR 73.1210 is undefined, and ambiguous. The HB ISFSI has established a Corrective Action Program in accordance with 10 CFR 72.172, “Corrective Action.” The HB ISFSI has procedures/processes to determine conditions adverse to quality as it relates to the security organization.

The additional duplication of procedures and/or revision of procedures to accommodate a new term is unnecessary, adds burden, and provides no increased value, safety margin or improvements to the security programs or the Corrective Action Program.

## 2. DEFINITIONS IN 10 CFR 73.2

The new 10 CFR 73.2 definitions for Contraband includes unauthorized firearms, explosives, incendiaries, or other dangerous materials (e.g., disease causing agents), which are capable of causing acts of sabotage against a licensed facility.

- *Contraband*: The contraband definition requires ISFSIs licensed under 10 CFR 73.51 to protect against circumstances beyond the current Design Basis Threat as described in ISFSI Orders. **This term is defined in the facility procedure HBI-137, “ISFSI Personnel Searches”. This definition is and will remain compliant with RG 5.76 Revision 1.** Unless this exemption is issued, the application of this expanded definition will require changes to the HB ISFSI's methods of compliance with search requirements specified in ISFSI Security Orders and 10 CFR 73.51(d)(9), which requires:

§ 73.51(d) *Physical protection systems, components, and procedures.*

(9) All individuals, vehicles, and hand-carried packages entering the protected area must be checked for proper authorization and visually searched for explosives before entry.

- *Time of Discovery*: The new 10 CFR 73.2 definition for Time of Discovery uses the term “cognizant individual,” which “is considered anyone who, by position, experience, and/or training, is expected to understand that a particular condition or event adversely impacts security.”

This term is defined in the facility procedure HBI-131, “Event Reporting and Notifications”. This definition is and will remain compliant with RG 5.76 Revision 1. Reportability of security events is determined by the ISFSI Shift Manager function. The threshold for reporting security events is consistent with the security posture described in the Security Program Plan. The new definition expands the pool of personnel previously used to determine reportable security events. The broader nature and lower threshold for recognition of something that simply “adversely impacts security,” versus “a reportable security event,” contributes to the expansion of the pool of personnel needed to respond to lower threshold events. ~~Additionally, the expanded definition could result in unnecessary confusion and distraction that detract from the current high level of assurance provided by implementation of the existing physical security program.~~

The application of the expanded definition will require HB ISFSI to modify programs and procedures; and expand training across a broader spectrum of ISFSI personnel.

### 3. FEDERAL AVIATION ADMINISTRATION (FAA) LOCAL CONTROL TOWER POINT OF CONTACT

10 CFR 73.1215 establishes reporting requirements for suspicious activities involving aircraft to a licensee’s FAA local control tower. ~~HB-ISFSI does not have an agency agreement with the FAA nor reporting requirements to the FAA.~~ Specifically, licensees are required to:

- Establish a point of contact with their local FAA control tower; and
- Document the point of contact in written communication procedures.

The regulation language is very specific in regard to establishing a point of contact with the local control tower. Compliance with the requirement to establish and document a FAA local control tower point of contact is not feasible, since the public regional airport for Humboldt County does not have a control tower. However, the impacted facility procedure HBI-131, “Event Reporting and Notifications” is revised, based on the guidance provided in EGM-23-001 Section A, for reporting suspicious aircraft overflights to the FAA.



~~The Airport Operations Manager has informed PG&E the Humboldt County Office of Emergency Services (OES) is contacted for suspicious activity reports and provides local law enforcement agency (LLEA) response. PG&E currently has an agreement with Humboldt County OES and will continue to contact them for suspicious activity reports.~~

~~There is no change in the HB ISFSI security threats that would warrant a change to the current HB ISFSI security posture. Therefore, the requirement to establish and document a FAA local control tower point of contact adds difficulty for compliance without adding additional safety margin to the protection or operation of the HB ISFSI.~~

#### 4. REGULATORY GUIDES

Examples where clarification is needed in Regulatory Guide 5.62, Revision 2, “Physical Security Event Notifications, Reports, and Records” include:

- ~~• 10 CFR 73.1200(a) required a 15-minute notification for hostile actions. Hostile actions in Regulatory Guide 5.62, Revision 2, Section 7.1, includes discovery of unauthorized explosive materials, and incendiary materials. In the Safety Evaluation for Humboldt Bay Power Plant Unit 3—New Emergency Preparedness Rule Exemption (ML13016A210), dated November 5, 2014, the NRC staff concluded that an ISFSI is not a nuclear power plant and that the HBPP site was excluded from the definition of hostile action.~~

~~The 15-minute notification for hostile action conflicts with an NRC previously approved HB ISFSI exemption.~~

#### 4-hour versus 15-minute notification requirement

- § 73.1200(e)(1)(iii) and (iv) require a 4-hour notification for the actual or attempted (respectively) introduction of contraband into a protected area (PA), vital area (VA), or material access area (MAA).
  - The definition of contraband in § 73.2 includes “incendiaries.”
- § 73.1200(a) requires a 15-minute notification for hostile actions.

- RG 5.62, Revision 2, Section 7.1, page 24, provides examples of hostile actions, including:
  - (4) The discovery of unauthorized explosive materials, incendiary materials, or an improvised explosive device within the licensee's site boundary.
- The code language thus requires a 4-hour notification for an incendiary device at or inside a PA, VA, or MAA, whereas the RG drives licensees to a 15-minute notification for an incendiary device at the site boundary, which is further away from safety-related equipment.

Facility personnel are trained in referencing published RGs, facility procedures and guidance, and other industry documents as a best practice to support the accuracy of determination of notification events. However, the conflict between a 15-minute notification requirement and 4-hour notification requirement that is described above is burdensome and creates the potential for confusion and a reporting error. As a result, clarity is needed to support the implementation of notification requirements in a consistent and successful manner.

- 4-hour notification vs. 24-hour recording of "lost or uncontrolled weapon":
  - § 73.1200(e)(1)(v) requires a 4-hour notification for a lost or uncontrolled weapon.
  - § 73.1210(f) requires recording within 24-hours any "threatened, attempted, or committed act not previously defined in this section that has resulted in or has the potential for decreasing the effectiveness of the licensee's physical security program below that committed to in a licensee's NRC-approved physical security plan."
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  - RG 5.62, Rev. 2, Section 18.2, pp. 37-38, provides examples of the "Recordable Events and Conditions Regarding Decreases in Effectiveness" that 73.1210(f) requires. The regulatory guide includes an event involving the loss of control of an authorized security weapon within a PA, VA, MAA, or controlled access area (CAA).

The conflict between the notification and recording of a lost or uncontrolled weapon only exists because of the regulatory guidance in RG 5.62. Additional clarity is needed to support the implementation of notifications and recordkeeping in a consistent and successful manner.

### C. CONSIDERATIONS FOR EXEMPTION

As highlighted in the selected examples above, ~~HB ISFSI moving towards a compliance date of January 8, 2024,~~ without full clarity on key parts of the final rule would result in an inadequate implementation. The unknown success path towards compliance of the final rule as written, in current code language, along with the conflict and confusion from the published, publicly available positions of the NRC, are key elements for this request. HB ISFSI would find itself in a situation where the modification to security plans and procedures would be required at least twice, based on interpretation of this new rule. HB ISFSI is requesting the following considerations be taken into account during review of this request:

- The current site security plan implements the requirements previously contained in 10 CFR 73.71, "Reporting of Safeguards Events," for reporting the suspension of security measures.
- HB ISFSI will continue to comply with security event reporting, as previously required in 10 CFR 73.71, "Reporting of Safeguards Events," and Appendix G to Part 73, "Reportable Safeguards Events."
- HB ISFSI will use the definitions for the terms "Contraband" and "Discovery (time of)," in its current site Security Plan consistent with how these terms are currently defined in Regulatory Guide 5.76, Revision 1, "Physical Protection Programs at Nuclear Power Reactors."
- ~~HB ISFSI Corrective Action Program that identifies security-related conditions.~~ HB ISFSI will continue to use the Corrective Action Program to identify security-related conditions that result in a report or notification to another agency.
- Voluntary reporting of suspicious activities will not change in the interim until the new compliance date and allow for final revised regulatory guide issuance.
- The burden associated with rework for HB ISFSI is unnecessary while awaiting final clarity with publication of associated Regulatory Guides. Examples of where rework will be required are:
  - Revisions of associated procedures/processes, job aids, training materials, and lesson plans that are used to describe and elaborate on reporting requirements.
  - The re-training of impacted HB ISFSI personnel with updated information contained within the revised guidance documents for:

- Security
- Regulatory/Compliance
- Emergency Response

PG&E has not applied for and received preemption authority via confirmatory orders for the Humboldt Bay (HB) ISFSI. Therefore, 10 CFR 73.15, “Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws;” and 10 CFR 73.17, “Firearms Background Checks for Armed Security Personnel” do not apply to the HB ISFSI and no exemption is requested.

#### **D. JUSTIFICATION FOR EXEMPTION**

Based on NRC’s projected timeline for completion of revision to the applicable Regulatory Guides associated with this final rule, HB ISFSI is requesting a new compliance date of December 31, 2024, or 180 days after publication of final Regulatory Guides, whichever is later.

As stated above, HB ISFSI will continue to implement the Security ~~Program-Plan~~ as previously approved by the NRC. The existing Security ~~Program-Plan~~ will continue to provide high assurance that ISFSI activities do not constitute an unreasonable risk to public health and safety. The delay in implementation of the final rule will not impact proper implementation of the current HB ISFSI Security ~~Program-Plan~~ and will ensure that the final rule is effectively implemented. Thus, granting of this exemption will not endanger the life or property or common defense and security.

Implementation of the final rule without further clarity and refined guidance may result in unintended consequences which could reduce the effectiveness of the current Security ~~Program-Plan~~. Therefore, it is in the public’s interest that the Security ~~Program-Plan~~ and associated procedures/processes comprehensively and accurately implement the regulation and guidance documents once resolution of identified issues has been obtained.

The granting of this exemption would not violate the Atomic Energy Act, as the compliance date for the final rule is not required nor specified in the AEA as amended, any provisions of the Commission’s regulations, or any other legally binding requirements imposed by the Commission.

Thus, issuance of this exemption request would be consistent with 10 CFR 73.5 because it is “authorized by law and will not endanger life or property or the common defense and security and [is] otherwise in the public interest.”

#### **E. ENVIRONMENTAL ASSESSMENT**

PG&E is requesting an exemption from the specific requirements for the 2023 Security Rule, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications," effective as of April 13, 2023.

Pursuant to 10 CFR 51.22(c)(25), an exemption from Parts 2 and 3 of the final rule regarding security event notifications and suspicious activity reporting are subject to a categorical exclusion from the preparation of an environmental assessment or environmental impact statement if (vi) the requirements from which an exemption is sought involve: (A) recordkeeping requirements; (B) reporting requirements; or (E ) Education, training, experience, qualification, requalification or other employment suitability requirements.

Therefore, the proposed one-time exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of this proposed exemption request.

**Supplement to the Request for Exemption from Enhanced Weapons,  
Firearms Background Checks, and Security Event Notifications  
Implementation  
(Clean Copy)**

## **Supplement to Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation**

### **A. BACKGROUND**

On March 14, 2023, the Nuclear Regulatory Commission (NRC) issued a final rule entitled “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications.”<sup>1</sup> This final rule became effective April 13, 2023, with a compliance date of January 8, 2024. The final rule contains several new elements such as:

- New terminology and associated requirements covering “conditions adverse to security”
- New definitions for “contraband” and “time of discovery” in 10 CFR 73.2
- New point of contact requirements with the Federal Aviation Administration (FAA)
- Changes to the reporting requirements applicable to security events are as follows:
  - Changes 1-hour notifications and 24-hour recording of security events to 1-hour, 4-hour, 8-hour notifications and 24-hour recording of security events.
  - Codifies the accelerated call to the NRC from NRC Bulletin 2005-02 to a new 15-minute notification.

Concurrently with the publication of the final rule, the NRC issued the following Regulatory Guides to support the implementation requirements set forth in the final rule:

- 5.62, “Physical Security Event Notifications, Reports, and Records,” Revision 2
- 5.86, “Enhanced Weapons Authority, Preemption Authority, and Firearms Background Checks,” Revision 0
- 5.87, “Suspicious Activity Reports,” Revision 0

During the August 23, 2023, public meeting, the NRC recognized there are ambiguities and inconsistencies contained by the Final Rule language and associated guidance. Additionally, the NRC recognized the need for rulemaking to address the issues with the final rule language.

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<sup>1</sup> “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications; final Rule and guidance,” 88 Fed. Reg. 15864 (March 14, 2023).

Accordingly, in accordance with 10 CFR 73.5, "Specific Exemptions," Pacific Gas and Electric Company (PG&E) is requesting an exemption from the specific requirements in 10 CFR Part 73, Subpart T, "Security Notifications, Reports, and Recordkeeping," 10 CFR 73.1200(a) through 10 CFR 73.1200(t), "Notification of Physical Security Events," 10 CFR 73.1205(a)(1) through 10 CFR 73.1205(e), "Written Follow-up Reports of Physical Security Events," 10 CFR 73.1210(a)(1) through 10 CFR 73.1210(h), "Recordkeeping of Physical Security Events," and 10 CFR 73.1215(a) through 10 CFR 73.1215(f), "Suspicious Activity Reports," until the later of December 31, 2024, or 180 days after publication of the final Regulatory Guides.

PG&E is also requesting an exemption from using the definitions for the terms "Contraband" and "Time of Discovery," as revised in 10 CFR 73.2, "Definitions," until the later of December 31, 2024, or 180 days after publication of the final Regulatory Guides. The exemption would not apply to the definitions of those terms that were in effect prior to the issuance of the final rule.

PG&E has not applied for nor received preemption authority for the Humboldt Bay (HB) ISFSI. Therefore, 10 CFR 73.15, "Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws;" and 10 CFR 73.17, "Firearms Background Checks for Armed Security Personnel" do not apply to the HB ISFSI and no exemption is requested.

## **B. BASIS FOR EXEMPTION REQUEST**

10 CFR 73.5 allows the Commission to grant exemptions from the requirements of Part 73, "as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest." As explained below, this exemption request meets the criteria provided in 10 CFR 73.5.

PG&E has identified several issues in the final rule and the supporting Regulatory Guides that require clarification from the NRC for PG&E to successfully implement the requirements. As mentioned above, the NRC is currently developing a resolution for code language issues and addressing guidance revisions.

Without additional guidance, enforcement relief, or the approval of this exemption, it is likely that PG&E will need to make changes to its physical security plans and processes twice—once to come into compliance with its own interpretation of the final rule (without the benefit of the additional guidance being developed by NRC) and again once the additional guidance is issued. The ambiguity and conflict created by the final rule language and existing guidance, which is described below, could result in unnecessary



confusion and distraction that detract from the current high level of assurance provided by implementation of PG&E's existing physical security program. Thus, implementation of the final rule prior to issuance of additional clarifying guidance, at a minimum, is in the best interest of the public. The following are several issues that have been identified as examples:

#### 1. CONDITIONS ADVERSE TO SECURITY

The introduction of the term "conditions adverse to security" within 10 CFR 73.1210 is undefined, and ambiguous. The HB ISFSI has established a Corrective Action Program in accordance with 10 CFR 72.172, "Corrective Action." The HB ISFSI has procedures/processes to determine conditions adverse to quality as it relates to the security organization.

The additional duplication of procedures and/or revision of procedures to accommodate a new term is unnecessary, adds burden, and provides no increased value, safety margin or improvements to the security programs or the Corrective Action Program.

#### 2. DEFINITIONS IN 10 CFR 73.2

The new 10 CFR 73.2 definitions for Contraband includes unauthorized firearms, explosives, incendiaries, or other dangerous materials (e.g., disease causing agents), which are capable of causing acts of sabotage against a licensed facility.

- *Contraband*: The contraband definition requires ISFSIs licensed under 10 CFR 73.51 to protect against circumstances beyond the current Design Basis Threat as described in ISFSI Orders. This term is defined in the facility procedure HBI-137, "ISFSI Personnel Searches". This definition is and will remain compliant with RG 5.76 Revision 1. Unless this exemption is issued, the application of this expanded definition will require changes to the HB ISFSI's methods of compliance with search requirements specified in ISFSI Security Orders and 10 CFR 73.51(d)(9), which requires:

§ 73.51(d) *Physical protection systems, components, and procedures.*

(9) All individuals, vehicles, and hand-carried packages entering the protected area must be checked for proper authorization and visually searched for explosives before entry.

- *Time of Discovery*: The new 10 CFR 73.2 definition for Time of Discovery uses the term "cognizant individual," which "is considered anyone who, by

position, experience, and/or training, is expected to understand that a particular condition or event adversely impacts security.”

This term is defined in the facility procedure HBI-131, “Event Reporting and Notifications”. This definition is and will remain compliant with RG 5.76 Revision 1. Reportability of security events is determined by the ISFSI Shift Manager function. The threshold for reporting security events is consistent with the security posture described in the Security Plan. The new definition expands the pool of personnel previously used to determine reportable security events. The broader nature and lower threshold for recognition of something that simply “adversely impacts security,” versus “a reportable security event,” contributes to the expansion of the pool of personnel needed to respond to lower threshold events.

The application of the expanded definition will require HB ISFSI to modify programs and procedures; and expand training across a broader spectrum of ISFSI personnel.

### 3. FEDERAL AVIATION ADMINISTRATION (FAA) LOCAL CONTROL TOWER POINT OF CONTACT

10 CFR 73.1215 establishes reporting requirements for suspicious activities involving aircraft to a licensee’s FAA local control tower. Specifically, licensees are required to:

- Establish a point of contact with their local FAA control tower; and
- Document the point of contact in written communication procedures.

The regulation language is very specific in regard to establishing a point of contact with the local control tower. Compliance with the requirement to establish and document a FAA local control tower point of contact is not feasible, since the public regional airport for Humboldt County does not have a control tower. However, the impacted facility procedure HBI-131, “Event Reporting and Notifications” is revised, based on the guidance provided in EGM-23-001 Section A, for reporting suspicious aircraft overflights to the FAA.

### 4. REGULATORY GUIDES

Examples where clarification is needed in Regulatory Guide 5.62, Revision 2, “Physical Security Event Notifications, Reports, and Records” include:

#### 4-hour versus 15-minute notification requirement

- § 73.1200(e)(1)(iii) and (iv) require a 4-hour notification for the actual or attempted (respectively) introduction of contraband into a protected area (PA), vital area (VA), or material access area (MAA).
  - The definition of contraband in § 73.2 includes “incendiaries.”
- § 73.1200(a) requires a 15-minute notification for hostile actions.
  - RG 5.62, Revision 2, Section 7.1, page 24, provides examples of hostile actions, including:
    - (4) The discovery of unauthorized explosive materials, incendiary materials, or an improvised explosive device within the licensee’s site boundary.
- The code language thus requires a 4-hour notification for an incendiary device at or inside a PA, VA, or MAA, whereas the RG drives licensees to a 15-minute notification for an incendiary device at the site boundary, which is further away from safety-related equipment.

Facility personnel are trained in referencing published RGs, facility procedures and guidance, and other industry documents as a best practice to support the accuracy of determination of notification events. However, the conflict between a 15-minute notification requirement and 4-hour notification requirement that is described above is burdensome and creates the potential for confusion and a reporting error. As a result, clarity is needed to support the implementation of notification requirements in a consistent and successful manner.

#### 4-hour notification vs. 24-hour recording of “lost or uncontrolled weapon”:

- § 73.1200(e)(1)(v) requires a 4-hour notification for a lost or uncontrolled weapon.
- § 73.1210(f) requires recording within 24-hours any “threatened, attempted, or committed act not previously defined in this section that has resulted in or has the potential for decreasing the effectiveness of the licensee’s physical security program below that committed to in a licensee’s NRC-approved physical security plan.”
  - RG 5.62, Rev. 2, Section 18.2, pp. 37-38, provides examples of the “Recordable Events and Conditions Regarding Decreases in

Effectiveness” that 73.1210(f) requires. The regulatory guide includes an event involving the loss of control of an authorized security weapon within a PA, VA, MAA, or controlled access area (CAA).

The conflict between the notification and recording of a lost or uncontrolled weapon only exists because of the regulatory guidance in RG 5.62. Additional clarity is needed to support the implementation of notifications and recordkeeping in a consistent and successful manner.

### C. CONSIDERATIONS FOR EXEMPTION

As highlighted in the selected examples above, without full clarity on key parts of the final rule would result in an inadequate implementation. The unknown success path towards compliance of the final rule as written, in current code language, along with the conflict and confusion from the published, publicly available positions of the NRC, are key elements for this request. HB ISFSI would find itself in a situation where the modification to security plans and procedures would be required at least twice, based on interpretation of this new rule. HB ISFSI is requesting the following considerations be taken into account during review of this request:

- The current site security plan implements the requirements previously contained in 10 CFR 73.71, “Reporting of Safeguards Events,” for reporting the suspension of security measures.
- HB ISFSI will continue to comply with security event reporting, as previously required in 10 CFR 73.71, “Reporting of Safeguards Events,” and Appendix G to Part 73, “Reportable Safeguards Events.”
- HB ISFSI will use the definitions for the terms “Contraband” and “Discovery (time of),” in its current site Security Plan consistent with how these terms are currently defined in Regulatory Guide 5.76, Revision 1, “Physical Protection Programs at Nuclear Power Reactors.”
- HB ISFSI will continue to use the Corrective Action Program to identify security-related conditions that result in a report or notification to another agency.
- Voluntary reporting of suspicious activities will not change in the interim until the new compliance date and allow for final revised regulatory guide issuance.
- The burden associated with rework for HB ISFSI is unnecessary while awaiting final clarity with publication of associated Regulatory Guides. Examples of where rework will be required are:

- Revisions of associated procedures/processes, job aids, training materials, and lesson plans that are used to describe and elaborate on reporting requirements.
- The re-training of impacted HB ISFSI personnel with updated information contained within the revised guidance documents for:
  - Security
  - Regulatory/Compliance
  - Emergency Response

PG&E has not applied for and received preemption authority via confirmatory orders for the Humboldt Bay (HB) ISFSI. Therefore, 10 CFR 73.15, “Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws;” and 10 CFR 73.17, “Firearms Background Checks for Armed Security Personnel” do not apply to the HB ISFSI and no exemption is requested.

#### **D. JUSTIFICATION FOR EXEMPTION**

Based on NRC’s projected timeline for completion of revision to the applicable Regulatory Guides associated with this final rule, HB ISFSI is requesting a new compliance date of December 31, 2024, or 180 days after publication of final Regulatory Guides, whichever is later.

As stated above, HB ISFSI will continue to implement the Security Plan as previously approved by the NRC. The existing Security Plan will continue to provide high assurance that ISFSI activities do not constitute an unreasonable risk to public health and safety. The delay in implementation of the final rule will not impact proper implementation of the current HB ISFSI Security Plan and will ensure that the final rule is effectively implemented. Thus, granting of this exemption will not endanger the life or property or common defense and security.

Implementation of the final rule without further clarity and refined guidance may result in unintended consequences which could reduce the effectiveness of the current Security Plan. Therefore, it is in the public’s interest that the Security Plan and associated procedures/processes comprehensively and accurately implement the regulation and guidance documents once resolution of identified issues has been obtained.

The granting of this exemption would not violate the Atomic Energy Act, as the compliance date for the final rule is not required nor specified in the AEA as amended, any provisions of the Commission’s regulations, or any other legally binding requirements imposed by the Commission.

Thus, issuance of this exemption request would be consistent with 10 CFR 73.5 because it is “authorized by law and will not endanger life or property or the common defense and security and [is] otherwise in the public interest.”

**E. ENVIRONMENTAL ASSESSMENT**

PG&E is requesting an exemption from the specific requirements for the 2023 Security Rule, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications," effective as of April 13, 2023.

Pursuant to 10 CFR 51.22(c)(25), an exemption from Parts 2 and 3 of the final rule regarding security event notifications and suspicious activity reporting are subject to a categorical exclusion from the preparation of an environmental assessment or environmental impact statement if (vi) the requirements from which an exemption is sought involve: (A) recordkeeping requirements; (B) reporting requirements; or (E ) Education, training, experience, qualification, requalification or other employment suitability requirements.

Therefore, the proposed one-time exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of this proposed exemption request.