fuel storage installation (ISFSI), a monitored retrievable storage installation (MRS), a power reactor that has permanently ceased reactor operations, or a geological repository. In addition, these proposed amendments are consistent with safeguards requirements for spent nuclear fuel storage under a general license at operating power reactors. Because the proposed amendments codify the existing regulatory practice there would not be any additional burden placed upon current licensees.

These amendments would make minor changes to existing regulatory language to clarify the meaning of the requirements. These amendments would also make the requirements of 10 CFR part 75 (pertaining to international safeguards) applicable to the GROA. This change is needed because the Terms of Reference, dated August 1, 1994, for the Subgroup on IAEA Safeguards in the U.S., part of the Subcommittee on International Safeguards and Monitoring of the IAEA Steering Committee, states that NRC shall be the U.S. agency responsible for maintaining necessary regulations for implementing the US-IAEA Safeguards Agreement at NRC licensed or certified facilities, including the promulgation of regulations, incorporation of appropriate amendments in NRC licenses, and the issuance of such orders as may be necessary to assure compliance. These Terms of Reference regarding the agreement between the U.S. and the IAEA are available for inspection in the NRC's public document room.

These proposed amendments do not require specific protection against the malevolent use of a vehicle. As stated in the final rule "Protection Against Malevolent Use of Vehicles at Nuclear Power Plants" (59 FR 38889, August 1, 1994), the NRC staff, with contractor assistance, is studying this issue and attempting to quantify the consequences of a vehicle bomb detonated in the vicinity of an ISFSI. The results of this study will assist the staff in making a determination as to whether vehicle bomb protection is needed for ISFSIs. Also, if any significant safety issues are identified in this study, those issues would be resolved by an appropriate regulatory action, which could include rulemaking. In the interim, the staff believes that the inherent nature of the spent nuclear fuel or HLW, along with the degree of protection provided by the approved storage means, provides adequate protection against the malevolent use of a vehicle.

## **Regulatory Approach**

The proposed requirements would amend 10 CFR parts 60, 72, 73, and 75. For part 60, the Commission is proposing that the regulatory approach for safeguarding a GROA be the same as that which applies to spent nuclear fuel storage facilities licensed under part 72. The basic reason for this proposal is that the GROA operations, at least insofar as they are expected to be conducted in surface facilities, appear to present the same kinds of potential risks that are characteristic of the storage of spent nuclear fuel. And the safeguards that would thus be required are deemed to be sufficient as well to protect against acts affecting the underground facility that might be inimical to the common defense and security. This regulatory approach is predicated on maintaining the physical integrity of the spent nuclear fuel rods. If their physical integrity is not maintained, additional license conditions might be found to be necessary and would then be incorporated in the license.

The current proposal represents a departure from the Commission's prior position, as explained in the statement of considerations accompanying its promulgation of 10 CFR part 60 (46 FR 13971, 13975, February 25, 1981). The prior view was that "DOE, as a Federal agency operating under the Atomic Energy Act, has its own obligation to promote the common defense and security. Indeed, DOE is responsible under the Atomic Energy Act for protection of materials and facilities far more sensitive from a safeguards standpoint than nuclear waste materials in a geologic repository. Therefore, the rule provides that a DOE certification that its repository operations area safeguards are equal to those at comparable DOE surface facilities shall constitute a rebuttable presumption on the question of inimicality to the common defense and security.'

Implementation of the current rule has proved to be difficult for two reasons. The first has been the identification of DOE surface facilities that are "comparable," so that the protective measures are neither too burdensome nor too lax. The second reason concerns the indefiniteness of the "rebuttable presumption" language. Neither DOE nor the NRC staff nor any other potential party can be certain about the level of detail that might be necessary to support the certification or to rebut the presumption of noninimicality. It appears likely to the Commission that the specification of reasonable safeguards requirements, as it is here proposing, will enable DOE to

discharge its common defense and security obligations more efficiently than would be the case under the existing language. And there would be the added benefit of ensuring that similar operations (i.e., at a GROA as well as at spent nuclear fuel storage facilities) are addressed in a consistent manner. Moreover, by defining the requirements more clearly in advance of the submission of a license application, opportunities for timely public review and comment may be enhanced.

The proposed amendments would replace existing § 60.21(b)(3) with a requirement for DOE to submit a detailed plan to provide physical protection for the storage of HLW at a GROA in accordance with a new § 73.51. Also, the proposed amendment would replace existing § 60.21(b)(4) with a requirement for DOE to comply with a new § 60.78, which requires DOE to provide a description of a program to meet the requirements of existing §§ 72.72, 72.74, 72.76, and 72.78. The rationale for these changes is, as discussed above, to ensure that the safeguards for similar facilities are addressed in a consistent manner. In addition, because these specific requirements are being provided, the general requirement for DOE to provide \* \* \* such safeguards as it requires at comparable surface facilities \* would also be removed from §§ 60.31, 60.41, and 72.24(o), because it would not be needed. Also, all of the requirements of § 73.51 would be applicable to surface operations including the entry points to the underground facility, and the earth cover together with the remoteness of the facility would provide additional protection of the public against a significant offsite release from the underground facility. Therefore, only the more general performance objectives set out in paragraph 73.51(b) would be applicable to the underground facility. Surveillance and detection measures would be required for surface operations and access would be controlled at entry points to the underground facility; within the underground facility itself, however, no further measures would need to be implemented for purposes of this regulation.

An additional revision to Part 60 relates to the nuclear material control and accounting program that is referred to in § 60.21(c)(10). To the extent that this program relates to safeguards issues, it is more properly addressed as "general information" under § 60.21(b) rather than as part of the Safety Analysis Report under § 60.21(c). The proposed rule will accomplish this. However, existing § 60.21(c)(10) has a broader