

# PUBLIC SUBMISSION

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Draft Regulatory Guide; Issuance, Availability

*2/15/2012*  
*77 FR 8902*

**Comment On:** NRC-2012-0035-0001  
Draft Regulatory Guide: Issuance, Availability; Decommissioning of Nuclear Power Reactors

**Document:** NRC-2012-0035-DRAFT-0002  
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## General Comment

We are students of the Georgetown University Law Center. We are interested in the issues presented by the clarification of the 1996 rulemaking by the NRC. We wish to call the NRC's attention to some positive and negative implications of this rulemaking. Please see the attached .pdf for further details of our concerns with this rulemaking.

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## Attachments

RulemakingAssignment (1)

*SUNSI Review Complete*  
*Template = ADM-013*

*E-RIDS = ADM-03*  
*Call = J. Shepherd*  
*(SCS2)*  
*M. Case (mjc)*

## **COMMENT on docket ID NRC–2012– 0035**

As Citizens of the United States of America and students of the Georgetown University Law Center, we feel a great sense of concern about our energy infrastructure. Specifically, we are interested in the state of affairs of our nuclear power systems. Although we feel that a greater level of clarity and less ambiguity is something to be desired in the regulation of nuclear power, the current proposed regulatory guide brings up a point of potential concern. Although clarification is the only stated intention of the proposed rulemaking, it may potentially have the de-facto result of easing the procedural requirements of the decommissioning process.

Whether the net result of this change is positive or negative is difficult to predict, the lowering of restrictions on procedures for decommissioning could have some serious consequences for the future of our nuclear energy industry. Writing as proponents of nuclear power as a safe, clean alternative to fossil fuels, we would like to discuss some of the potential positive and negative implications of this clarification. Specifically, we would like to discuss two possible effects; firstly, the potential for this regulatory change to encourage premature exit from the nuclear industry, and secondly, its potential to encourage new entry into the nuclear energy market.

The primary negative foreseeable impact of this clarification of the 1996 rule is its potential effect on the longevity of infrastructure in the nuclear power industry. We fear that, in the wake of Fukushima and in the shadow of Three Mile Island and Chernobyl, there is an increasing level of popular distrust of nuclear power as a viable alternative to fossil fuel. Given the worsening public sentiment towards nuclear energy, lowered standards for the

decommissioning of nuclear power plants may provide nuclear power plant operators with greater opportunity for a speedy exit from an increasingly untenable and unpopular market. Restrictions and regulatory hurdles in the decommissioning process constitute a mitigating factor against the volatile and fickle winds of public opinion; potentially providing an opportunity for participants in the nuclear power industry to ride out a momentary public outcry. By lowering the standards associated with the 1996 decommissioning procedure, the NRC may inadvertently provide an exit to power plants that would previously have been encouraged to continue in operation. Nuclear power plant operators may take the relaxed standards implied by this clarification as an opportunity to move into different industries while the barrier to exit is low.

Nuclear power is not an easy industry to enter into; the regulations concerning it are very restrictive and the communities willing to have a nuclear facility located nearby are few and far between. Furthermore, frequent community outcries can make the continued operation of a nuclear power plant difficult to say the least. Despite all this, it is our belief that nuclear power provides a significant benefit to the American people, and that public outcry is misguided. Lowering the procedural barriers to exit from the industry may drastically undercut the long-term viability of our nuclear power industry by encouraging the exodus of operators from the market. It is not in the NRC's interest to encourage operators to leave the market, nor is it in the interest of the American people.

Nevertheless, this proposed clarification may create incentive for entry *into* the nuclear power industry; an effect which would significantly counteract the issue discussed above. It is a truism of economic theory that barriers to exit from a market are in some sense indistinguishable from barriers to entry into that market. High exit barriers raise the stakes and make potential entrants into the market significantly more wary. As was mentioned earlier, the barriers to entry

in the nuclear power industry are already inordinately high; however, lowered procedural restrictions on the decommissioning process could help to alleviate this problem. In many other industries, capitalists and entrepreneurs are willing to gamble; relying on quick liquidation and exit from the market to act as a stopgap in case of failure. With nuclear power, the regulations surrounding decommissioning make exit from the industry difficult; thus reducing the incentive for entry.

As proponents of nuclear energy, we have difficulty advocating against anything that reduces barriers to entry into the industry. This clarification of the 1996 rulemaking has the potential to make new investors more willing to take a chance on nuclear power, owing to the greater ease of exit. Across the nation, new investors researching energy production industries may look at the new NRC rules and believe that nuclear energy is worth the risk with the new clarification of decommissioning procedures. This greater level of investment and entry may lower public opposition to nuclear power and provide more communities with non-fossil fuel energy, incidentally reducing our dependence on foreign oil.

This leaves the NRC with a serious question of policy. Two industry models present themselves. In the current market, some investors may shy away from the nuclear power industry, afraid of commitment, while the existing infrastructure remains intact for longer periods due to the inability of current operators to leave quickly and efficiently. If this is the situation that the NRC finds preferable, then it should abandon this proposed rulemaking and keep the regulations in their current, somewhat ambiguous, state. On the other hand, the proposed clarification could result in a significantly more fluid market. An America in which there is a significant influx of new nuclear power investors while former operators leave the industry more frequently on the basis of broad public pressure. If this latter model is preferable,

then the NRC should continue with the implementation of this proposed rulemaking.

Established systems or new investors? Bet on the future or rely on the past? Stability or flux?

The NRC is faced with a choice between two industry paradigms. We do not here advocate in favor of one or the other, but merely wish to point out that the proposed clarification represents a step in the latter direction.

Respectfully submitted for your consideration,

Students of Georgetown Law;

Jeffrey R. Asjes

Benjamin G. Leatham