

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

NUSCALE POWER, INC.)	EA-10-073
AND ALL OTHER PERSONS)	Project No. 0769
WHO SEEK OR OBTAIN ACCESS TO)	
SAFEGUARDS INFORMATION)	
DESCRIBED HEREIN)	

ORDER IMPOSING SAFEGUARDS INFORMATION
PROTECTION REQUIREMENTS FOR ACCESS
TO SAFEGUARDS INFORMATION
(EFFECTIVE IMMEDIATELY)

I.

NuScale Power, Inc. (NuScale) has submitted a letter of intent to the U.S. Nuclear Regulatory Commission (NRC) for a design certification application in 2012.

In June 2009, the Commission published a rulemaking in the *Federal Register* (74 FR 28112) requiring applicants for a variety of licensing activities, including nuclear power plant designers, to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft and to incorporate design features and functional capabilities into the nuclear power plant design to provide additional inherent protection with reduced use of operator actions. A discussion of the specific requirements for applicants for new nuclear power reactors can be found in Section V of the *Federal Register* notice. To assist designers in completing this assessment, the Commission has decided to provide the detailed aircraft impact characteristics that should be used as reasonable inputs for reactor vendors and architect/engineers who have the need to know and who meet the NRC's requirements for the disclosure of such information to use in the required aircraft impact assessments.

The NRC derived these characteristics from agency analyses performed on operating reactors to support, in part, the development of a broadly effective set of mitigation strategies to combat fires and explosions from a spectrum of hypothetical aircraft impacts. Although these detailed characteristics were not selected as a basis for designing new reactors, the staff is suggesting them as a starting point for aircraft impact assessments. On July 10, 2009, the NRC issued a draft regulatory guide (DG)–1176, “Guidance for the Assessment of Beyond-Design-Basis Aircraft Impacts.” The agency did not receive any comments on the document. The staff is currently working to finalize the regulatory guide and intends to include these aircraft impact characteristics in the safeguards information (SGI) version of its final regulatory guide. In addition, the staff recognizes that no national or international consensus has been reached on the selection of appropriate characteristics for such analyses. Therefore, the information should be considered preliminary and subject to authorized stakeholder comment. The detailed aircraft characteristics that are the subject of this Order are hereby designated as SGI,¹ in accordance with Section 147 of the Atomic Energy Act of 1954, as amended (AEA).

On October 24, 2008, the NRC revised Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, Section 73.21, “Protection of Safeguards Information: Performance Requirements,” to include applicants in the list of entities required to protect SGI (73 FR 63546). The NRC is issuing this order to NuScale to impose requirements for the protection of SGI in addition to the requirements set forth in 10 CFR 73.21. These additional requirements include nomination of a reviewing official, restrictions on storage of SGI, and access to SGI by certain individuals.

¹ SGI is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

To implement this Order, NuScale must nominate an individual who will review the results of the Federal Bureau of Investigation (FBI) criminal history records check to make SGI access determinations. This individual, referred to as the “reviewing official,” must be someone who seeks access to SGI. Based on the results of the FBI criminal history records check, the NRC staff will determine whether this individual may have access to SGI. If the NRC determines that the individual may not be granted access to SGI, the enclosed order prohibits that individual from obtaining access to any SGI. Once the NRC approves a reviewing official, that reviewing official, and only that reviewing official, can make SGI access determinations for other individuals who have been identified by NuScale as having a need to know SGI, and who have been fingerprinted, have had a criminal history records check and a background check, in accordance with this order. The reviewing official can only make SGI access determinations for other individuals, but cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if NuScale wishes to have a new or additional reviewing official, the NRC must approve that individual before he or she can act in that capacity.

II.

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such orders, as necessary, to prohibit the unauthorized disclosure of SGI. To provide assurance that NuScale is continuing to implement appropriate measures to ensure a consistent level of protection to prohibit unauthorized disclosure of SGI, and to comply with the fingerprinting, criminal history records check, and background check requirements for access to SGI, NuScale shall implement the requirements for the protection of SGI as set forth in 10 CFR 73.21, 10 CFR 73.22, and this Order.

Certain categories of individuals are relieved by rule from the fingerprinting requirements under 10 CFR 73.59, "Relief from Fingerprinting, Identification and Criminal History Records Checks and Other Elements of Background Checks for Designated Categories of Individuals." Those individuals include Federal, State, and local law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress; certain employees of members of Congress or congressional committees who have undergone fingerprinting for a prior U.S. Government criminal history check; and representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, individuals who have had a favorably-decided U.S. Government criminal history check within the last 5 years, or individuals who have active Federal security clearances (provided in either case that they make available the appropriate documentation), have already been subjected to fingerprinting and criminal history checks and, thus, have satisfied the fingerprinting requirement.

In addition, pursuant to 10 CFR 2.202, "Orders," I find that in light of the matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

III.

Accordingly, pursuant to Sections 147, 149, 161b, 161i, 161o, 182, and 186 of the AEA, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 73, "Physical Protection of Plants and Materials," IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT NUSCALE AND ALL OTHER PERSONS WHO SEEK OR OBTAIN ACCESS TO

SAFEGUARDS INFORMATION AS DESCRIBED HEREIN SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN 10 CFR 73.21, 10 CFR 73.22, AND THIS ORDER.

- A.
1. No person may have access to any SGI if the NRC, when making an SGI access determination for a nominated reviewing official, has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person nominated may not have access to SGI.
 2. NuScale shall store SGI designated by this Order only in the facility or facilities specifically approved in writing by the NRC for storage of SGI designated by this Order. NuScale may request, in writing, NRC approval of additional facilities for the storage of the SGI designated by this Order that the NRC will consider on a case-by-case basis.
 3. NuScale may provide SGI designated by this Order to individuals (such as foreign nationals, U.S. citizens living in foreign countries, or individuals under the age of 18) for whom fingerprinting and an FBI criminal history records check is not reasonably expected to yield sufficient criminal history information to form the basis of an informed decision on granting access to SGI, provided that the individual satisfies the requirements of this Order, and that NuScale has implemented measures, in addition to those set forth in this Order, to ensure that the individual is suitable for access to the SGI designated by this Order. Such additional measures must include, but are not limited to, equivalent criminal history records checks conducted by a local, State, or foreign governmental

agency, and/or enhanced background checks including employment and credit history. The NRC must review these additional measures and approve them in writing.

- B. No person may provide SGI to any other person except in accordance with Section III.A. above. Before providing SGI to any person, a copy of this Order shall be provided to that person.
- C. NuScale shall comply with the following requirements:
1. NuScale shall, within 20 days of the date of this Order, submit the fingerprints of one individual whom (a) NuScale nominates as the “reviewing official” for determining access to SGI by other individuals and (b) has an established need to know the information. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as NuScale’s reviewing official.² NuScale may, at the same time or later, submit the fingerprints of other individuals to whom NuScale seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the attachment to this Order.
 2. NuScale shall, in writing, within 20 days of the date of this Order, notify the Commission: (1) if it is unable to comply with any of the requirements described in the Order, including the attachment; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances.

² The NRC’s determination of this individual’s access to SGI in accordance with the process described in Enclosure 3 to the transmittal letter of this order is an administrative determination that is outside the scope of this order.

The notification shall provide NuScale's justification for seeking relief from, or variation of, any specific requirement.

NuScale shall submit responses to C.1. and C.2 above to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, NuScale shall mark its responses as "Security-Related Information - Withhold Under 10 CFR 2.390."

Except for the requirements for fingerprinting, the Director, Office of New Reactors, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by NuScale.

IV.

In accordance with 10 CFR 2.202, NuScale must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing with regard to this Order, within 20 days of the date of this Order. Where good cause is shown, the NRC will consider extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law by which NuScale or other entities adversely affected rely, and the reasons as to why the NRC should not have issued this Order. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for

Materials Litigation and Enforcement at the same address, and to NuScale, if the answer or hearing request is by an entity other than NuScale. Because of possible delays in delivery of mail to U.S. Government offices, the agency asks that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to (301) 415-1101 or via e-mail to hearingdocket@nrc.gov, and also to the Office of the General Counsel either through facsimile transmission to (301) 415-3725 or via e-mail to OGCMailCenter@nrc.gov. If an entity other than NuScale requests a hearing, that entity shall set forth, with particularity, the manner in which this Order adversely affects its interest and shall address the criteria set forth in 10 CFR 2.309, "Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions."

If NuScale, or a person whose interest is adversely affected, requests a hearing, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), NuScale may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the order on the grounds that the order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified above in Section III shall be final 20 days from the date of this Order without, further order or proceedings.

If the agency approves an extension of time for requesting a hearing, the provisions, as specified above in Section III, shall be final when the extension expires, if a hearing request has not been received.

AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland, this 2nd day of June 2010.

For The Nuclear Regulatory Commission,

/RA/

Michael R. Johnson, Director
Office of New Reactors