

NUCLEAR REGULATORY COMMISSION

[NRC-2011-0144]

Docket No. 70-7020

**Notice of Acceptance of Application for Special Nuclear Materials License
from Sensor Concepts and Applications, Inc., Opportunity to Request a Hearing,
and Order Imposing Procedures for Access to Sensitive Unclassified
Non-Safeguards Information for Contention Preparation**

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license application, opportunity to request a hearing and to petition for leave to intervene, and Commission order.

DATES: Requests for a hearing or Leave to Intervene must be filed by **[INSERT DATE: 60 DAYS FROM DATE OF PUBLICATION]**. Any potential party as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) 2.4 who believes access to sensitive unclassified non-safeguards information (SUNSI) is necessary to respond to this notice must request document access by **[INSERT DATE; 10 DAYS FROM DATE OF PUBLICATION]**.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID **NRC-2011-0144** in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site at www.Regulations.gov. Because your comments will not be edited to remove identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that you inform any party soliciting or aggregating comments received from other persons for submission to the NRC that the NRC will not edit their comments to remove identifying or contact information. Therefore, they should not include any information in their comments they do not want publicly disclosed.

You may submit comments by any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for documents filed under Docket ID **NRC-2011-0144**. Address questions about NRC dockets to Carol Gallagher at 301-492-3668, or via e-mail to Carol.Gallagher@nrc.gov.
- **Mail Comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.
- **Fax Comments to:** RADB at 301-492-3446.

You can access to publicly available documents related to this notice may be obtained by using the following methods:

- **NRC's Public Document Room (PDR):** The public may examine and obtain copies for a fee of publicly available documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available online in the NRC's Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public may gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

The public version of the Sensor Concepts and Applications, Inc's., (SCA) application is available electronically under ADAMS Accession Number ML102650097. The ADAMS Accession Number for the non-public version of the license application is ML102650199. The February 17, 2011, acceptance letter from the NRC's staff may be found under ADAMS Accession Number ML110450186.

FOR FURTHER INFORMATION CONTACT: Marilyn Diaz, Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Mailstop: EBB2-C40M, Rockville, Maryland 20852. Telephone: 301-492-3172; fax number: 301-492-3363; e-mail: Marilyn.Diaz@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has accepted for review an application for a new license for the possession and use of special nuclear material (SNM) for performance testing of new technologies under a project sponsored by the Domestic Nuclear Detection Office (DNDO) of the U.S. Department of Homeland Security (DHS). Sensor Concepts and Applications (SCA) requested the new license for a period of 10 years. This license application, if approved, would authorize SCA to possess and use special nuclear materials under 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material."

II. Discussion

In an application dated August 18, 2010, SCA Inc. requested a license to possess and use SNM to conduct tests of new technology of detection systems. The material will be used as test objects for concept demonstrations and characterization testing at the SCA facility.

Following an administrative review, the NRC requested that SCA revise the application to include elements essential to the review. SCA submitted a revised license application dated November 12, 2010, and supplemental information on February 14, 2011. As documented in a letter to SCA dated February 17, 2011, the NRC staff found the revised license application acceptable to begin a detailed technical review. The application has been docketed in Docket No. 70-7020.

If the NRC approves the license application, the approval will be documented in the issuance of a new NRC License. However, before approving the license application and issuing the license, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. These findings will be documented in a Safety Evaluation Report but because the licensed material will be used for research and development and testing contained within sealed sources, the application qualifies for a categorical exclusion, pursuant to 10 CFR 51.22(c)(14)(viii). Therefore, an environmental assessment or environmental impact statement will not be performed.

III. Opportunity to Request a Hearing

Requirements for submitting hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike, Room O1-F21, Rockville,

MD 20852 (or call the PDR at 1-800-397-4209 or 301-415-4737). NRC regulations are also accessible electronically from the NRC's Library at <http://www.nrc.gov/reading-rm/adams.html>.

IV. Petition for Leave to Intervene

Any person whose interest may be affected by this proceeding, and who desires to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner; and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: 1) the nature of the petitioner's right under the Atomic Energy Act of 1954, as amended (the Act), to be made a party to the proceeding; 2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and 3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding, and is material to the findings that the NRC must make to support the granting of a license in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner, and on which the petitioner intends to rely at the Hearing—together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a

genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the license application that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the license application fails to contain information on a relevant matter as required by law, the identification of each failure, and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC's regulations, policies, and procedures. The Licensing Board will set the time and place for any pre-hearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Petitions for leave to intervene must be submitted no later than 60 days from **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**. Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained, absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

A State, county, municipality, Federally recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by **[INSERT DATE: 60 DAYS FROM THE DATE OF PUBLICATION OF THIS FEDERAL REGISTER NOTICE]**. The petition must be filed in accordance with the filing instructions in Section IV of this document, and should meet the

requirements for petitions for leave to intervene set forth in this section, except that State and Federally recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a non-party, pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any pre-hearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by **[INSERT DATE: 60 DAYS FROM THE DATE OF PUBLICATION OF THIS FEDERAL REGISTER NOTICE]**.

V. Electronic Submissions (E-Filing)

All documents filed in NRC's adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and any document filed by interested Governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007.) The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet—or in some cases, to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to request: 1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and 2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the petitioner/requestor, or its counsel or representative, already holds an NRC-issued digital ID certificate.) Based on this information, the Secretary will establish an electronic docket for the hearing in this proceeding, if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's, "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software; and the NRC's Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a petitioner/requestor has obtained a digital ID certificate and a docket has been created, the petitioner/requestor can then submit a request for hearing or petition for Leave to

Intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC's guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its documents through the Electronic Information Exchange (EIE) system. To be timely, an electronic filing must be submitted to the E-Filing system, no later than 11:59 p.m., Eastern Standard Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a Hearing Request/Petition to Intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by calling 1-800-672-7640. The NRC Meta System Help Desk is available between 8:00 a.m. and 8:00 p.m. Eastern Standard Time, Monday through Friday, excluding Federal holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention:

Rulemakings and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 16th Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemakings and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at <http://ehd1.nrc.gov/EHD/>, unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home telephone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

- A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.
- B. Within 10 days after publication of this Notice of Acceptance of Application and Opportunity to Request a Hearing, any potential party who believes access to SUNSI is

necessary to respond to this notice may request such access. A “potential party” is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered, absent a showing of good cause for the late filing addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff; and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are Hearing.Docket@nrc.gov and OGCmailcenter@nrc.gov, respectively.¹ The request must include the following information:

- 1) A description of the licensing action with a citation to this *Federal Register* notice;
- 2) The name and address of the potential party and a description of the potential party’s particularized interest that could be harmed by the action identified in C.(1);
- 3) The identity of the individual or entity requesting access to SUNSI and the requester’s basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

¹ While a request for Hearing or Petition to Intervene in this proceeding must comply with the filing requirements of the NRC’s “E-Filing Rule,” the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

D. Based on an evaluation of the information submitted under paragraph C.(3), the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order² setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the Notice of Hearing or Opportunity for Hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC's staff, either after a determination on standing and need for access or after a determination on trustworthiness and

² Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge, if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

reliability, the NRC's staff shall immediately notify the requestor in writing, briefly stating the reason(s) for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff's determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff's determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff's determinations (whether granting or denying access) is governed by 10 CFR 2.311.³

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the

³ Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff's determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

IT IS SO ORDERED:

Dated at Rockville, Maryland this 30th day of June, 2011.

For the Commission.

/RA/

Andrew L. Bates,
Acting Secretary of the Commission.

ATTACHMENT 1: General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in this Proceeding

Day	Event/Activity
0	Publication of <i>Federal Register</i> Notice of Acceptance of Application and Opportunity to Request a Hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	The U.S. Nuclear Regulatory Commission's (NRC's) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (The NRC's staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If the NRC's staff makes the finding of need for SUNSI and likelihood of standing, the NRC's staff begins document processing (preparation of redactions or review of redacted documents).

Day	Event/Activity
25	If the NRC's staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; the NRC's staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If the NRC's staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for the NRC staff reply to motions to reverse the NRC staff determination(s).
40	(Receipt +30) If the NRC staff finds standing and need for SUNSI, deadline for the NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.

Day	Event/Activity
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervener reply to answers.
>A + 60	Decision on contention admission.