

STATEMENT OF CONSIDERATIONS

REQUEST BY 3M COMPANY FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN INVENTION RIGHTS UNDER DOE COOPERATIVE AGREEMENT NO. DE-EE0003837, W(A)-2011-057, CH-1633

The Petitioner, 3M Company (3M) was awarded this cooperative agreement for the performance of work entitled, "Polymeric Multilayer Infrared Reflecting Film Development". The purpose of the agreement is to develop a polymeric multilayer infrared reflecting film that is essentially clear and colorless in the visible portion of the electromagnetic spectra (visible light transmission of about 89%) while reflecting 90-95% of the infrared energy in the 850 nm to 1830 nm specified spectra. The film will have a nominal thickness of 3 mils, be polymeric in nature (contains no metals, metal oxides, or other material types) and be essentially clear in appearance. This waiver is only for inventions of 3M made under this cooperative agreement.

The total estimated cost of the cooperative agreement is \$3,575,657 with 3M cost sharing \$1,609,064 or 45%. DOE is providing \$1,966,611 or 55%. The period of performance is from July 12, 2010 through July 11, 2012.

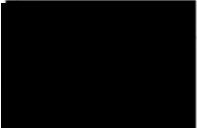
In its response to questions 5 and 6 of the attached waiver petition, 3M has described its technical competence in the field of optical films, film manufacturing technology, multi-layer film constructions, and commercialization of products based on these technologies. 3M states that it has based many products on this technology, including signage from 3M Traffic Safety Systems Division; display products from 3M Optical; and, solar and window film products from 3M Renewable Energy Division. Several United States patents of 3M's are listed to substantiate this expertise. 3M states it is also a recognized leader in accelerated weathering testing, and representative patents and publications are listed in support of this technical expertise as well. Further, 3M states it is one of the world's largest manufacturers of several product lines that incorporate mono-layer and multilayer film constructions. 3M has demonstrated its expertise in the field of multilayer films.

In its response to question 10 of the attached waiver petition, 3M states that grant of the waiver will have a minimal effect on limiting competition. Competitors of 3M already sell a variety of window films, and thus other known solutions are available to competitors to compete with an inventive solution conceived under this program. 3M further states that even if a preferred position were to result from the waiver, it would be a culmination of 3M's substantial investment in this technology area as well as the work performed under this contract. The government investment that would occur as a result of this effort is modest given 3M's current investments. Therefore, grant of the waiver should have a positive effect on competition and market concentration.

The subject contract will be modified to add the Patent Rights--Waiver clause in conformance with 10 CFR 784.12, wherein 3M has agreed to the provisions of 35 U.S.C §§ 202, 203, and 204. This waiver clause will also include a paragraph entitled U.S. Competitiveness, in which 3M agrees to substantial U.S. manufacture of subject inventions (attached hereto). Additionally, 3M agrees not to transfer subject inventions to any other entity unless that other entity agrees to these same requirements.

Considering the foregoing, it is believed that granting the waiver will provide the Petitioner with the necessary incentive to invest resources in the commercialization of the results of the agreement in a fashion which will make the agreement's benefits available to the public in the shortest practicable time. In addition, it would appear that grant of the above requested waiver

would not result in an adverse effect on competition nor result in excessive market concentration. Therefore, in view of the objectives and considerations set forth in 10 CFR 784, all of which have been considered, it is recommended that the requested waiver, as set forth above, be granted.



Mark P. Dvorscak
Assistant Chief Counsel
Office of Intellectual Property Law

Date: *October 21, 2011*

Based on the foregoing Statement of Considerations and the representations in the attached waiver petition, it is determined that the United States and the general public will best be served by a waiver of rights of the scope described above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of this agreement, where through such modification or extension, the purpose, scope, or cost of the agreement is substantially altered.

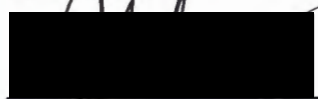
CONCURRENCE



Energy Efficiency and Renewable Energy
Building Technologies Program
Emerging Technologies

Date: *10/1/12*

APPROVAL:



John F. Lucas
Assistant General Counsel
for Technology Transfer and
Intellectual Property

Date: *10/2/2012*

(t) U. S. COMPETITIVENESS The Contractor agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of the DOE that it is not commercially feasible to do so. In the event the DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., recoupment of the Government's investment, etc. The Contractor agrees that it will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in the waived invention is suspended until approved in writing by the DOE.