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General Counsel

September 19, 2016

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U.S. Department of Energy
Office of Nuclear Energy
Mailstop NE-52
19901 Germantown Road
Germantown, MD 20874-1290

Sent via email: RFI-UraniumTransfers@hq.doe.gov

Re: Excess Uranium Management: Effects of DOE Transfers of Excess Uranium on Domestic Uranium Mining, Conversion, and Enrichment Industries (81 Fed. Reg. 46917)

Dear Ms. Herman:

The National Mining Association (NMA) appreciates the opportunity to submit comments on the Department of Energy's (DOE) request for information (RFI) on its management of excess uranium, specifically the effects of DOE transfers of excess uranium on the domestic uranium mining industry. 81 Fed. Reg. 46917 (July 19, 2016). NMA is the national trade association representing the producers of most of America's coal, metals, including uranium, industrial and agricultural minerals; the manufactures of mining and mineral processing machinery, equipment and supplies; and engineering, transportation, financial and other businesses that serve the mining industry. NMA's uranium recovery members include current conventional and/or in situ leach uranium recovery (ISR) licensees, as well as potential future conventional and/or ISR license applicants. These uranium mining members have been detrimentally impacted by DOE's past management of its excess uranium, and therefore, have a significant interest in this RFI.

As a preliminary matter, NMA endorses the comments of the Uranium Producers of America (UPA). The UPA comments provide specific information regarding current market conditions for domestic uranium production and include a study by TradeTech, a leading uranium market analyst, on the impact of previous DOE Uranium transfers. This information must be considered as DOE determines whether the transfer or disposition of any excess uranium will have "an adverse material impact" on the uranium mining industry pursuant to the USEC Privatization Act (P.L. 104-134). That act requires DOE to certify proposed transfers will not have "an adverse material impact on the domestic

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uranium mining, conversion, or enrichment industry.” To date, the term “adverse material impact” has not been defined and NMA agrees with UPA that this term is critical and that without a clear definition of the phrase’s meaning, the DOE has no yardstick to measure the effect of barter transactions on the uranium markets.

The need to define this term is reinforced by the outcome of the ConverDyn litigation. As a result, DOE can no longer continue the practice of balancing the benefits of its barter transfers to programs against the adverse impact of such transfers to the domestic fuel industry, a violation of Section 2297h-10(d). DOE has improperly asserted that “the meaning of the phrase is likely to depend in part on the factual context in which it is to be applied.” DOE’s reliance on its “driver” definition of material adverse impact was held to be arbitrary and capricious in the Court’s review of the 2014 Secretarial Determination. NMA supports the recommendations of the UPA as to how the Department should define adverse material impact.

As UPA’s explain in significant detail, the uranium industry is in dire straits and struggling to survive. Thus, any uranium transfers, until market conditions recover, will continue to have an adverse material impact on our industries. From government data such as data collected by DOE Energy Information Agency to market data from companies such as TradeTech, it is clear that the uranium industry is in a very precarious position. Just yesterday, the Wall Street Journal featured the bleak outlook for the uranium market in an article titled “Uranium Investments Grow Radioactive.”

DOE has failed in previous Secretarial Determinations to recognize the importance of the domestic uranium industry to our nation’s energy security and independence. Congress enacted Section 2297h-10(d) in order to ensure the disposition of the government’s excess uranium inventories would not adversely impact the domestic fuel industry. In past Determinations, DOE has valued the programs that benefit from its barter transactions more than the health of the domestic uranium producers. This action has been called into question by the Court, and DOE must now consider implementing an objective method by which to conduct its determinations. While it is unfortunate that the revenues from DOE’s barter transactions may not be available using such a test, DOE, like the domestic industry, must recognize the market realities in which domestic companies are struggling to survive. With the current uranium market conditions, including a spot price at \$24.75 (Trade Tech as of September 16, 2016), DOE should halt any additional transfers in 2016 and postpone all future transfers until the market price recovers. For future transfers and developing any new inventory management plans, NMA believes the DOE should adopt the UPA recommendations. NMA appreciate the opportunity to submit these comments.

Sincerely,

