NEW YORK
STATE OF
OPPORTUNITY.
Department
of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

December 17, 2015

Pamela Henderson, Deputy Director
Division Material Safety, State, Tribal,
and Rulemaking Programs
Office of Nuclear Material Safety
And Safeguards
U.S. Nuclear Regulatory Commission
T8-E18
Washington, D.C. 20555-0001

Dear Ms. Henderson:

Enclosed is a copy of the legally binding requirements for the physical protection of byproduct material. The legally binding requirements correspond to the following equivalent amendments to NRC's regulations.

Rats ID	Title	State Section
•	2013-1 Physical Protection of Byproduct Material	License Condition
•	2015-2 Changes to 10 CFR Parts 30, 37, 73 and 150	License Condition
•	2015-4 Misc. Corrections 10 CFR Parts 37 and 40	License Condition and Regulation

We believe that adoption of these legally binding requirements satisfies the compatibility and health and safety categories established in the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-200.

If you have any questions, please feel free to contact me or Robert Dansereau at 518-402-7550.

Sincerely,

Stephen M. Gavitt, Director
Bureau of Environmental Radiation Protection

Enclosures:

As stated

RATS ID 2013-1

Please note that License Condition 1 will appear only on licensees that authorize the possession of licensed material in a quantity in excess of the activity specified in 71.97(b)(3). (The requirement will be effective upon issuance of the license amendment.)

License Conditions:

1. The license shall comply with Section 71.97 of Title 10 Code of Federal Regulations, Part 71, Packaging and Transportation of Radioactive Material, January 1, 2016 version.

2. The licensee shall comply with the Title 10 Code of Federal Regulations, Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material," January 1, 2016 version, except as follows:

(a) Sections 37.1, 37.3, 37.7, 37.9, 37.11(a-b), 37.13, 37.105, 37.107, and 37.109 are excluded.

(b) Any reference to the Commission or NRC shall be deemed to be a reference to the New York State Department of Health, except:

(1) 37.5 Definitions: *Agreement State, Byproduct material, Commission, Fingerprint orders, Person,*

(2) 37.25(b),

(3) 37.27(a) and (c),

(4) 37.29(a),

(5) 37.71 referring to NRC's license verification system.

(c) License required reports of events or notifications in 37.41, 37.45, 37.57, 37.77(a)-(d), and 37.81, shall be reported to the Department by means specified in 10 NYCRR 16.1(c) instead of to the NRC.

(d) The licensee shall implement the requirements in 10 CFR 37 by xx/xx/xxxx [date to be set at 9 months from the effective date of the amendment] except that 37.21(c), as it applies to Reviewing Officials shall be implemented by xx/xx/xxxx [date to be set at 90 days from the effective date of the amendment], and reporting and notification requirements are effective immediately.

(e) The increased control license conditions shall remain in effect during the implementation period.

(f) The licensee shall notify the Department within 10 days of completing implementation of Part 37.

10 CFR 30.13

10 NYCRR 16.1(b)(2) "Inapplicability". Addresses the inapplicability of Part 16 for common carriers in NY. Please note that specific NRC regulations are not specified, therefore we do not need to amend that section to include Part 37. Also please note that we cannot regulate any federal entity therefore we do not have the authority to set requirements or exemptions for the US Post Office (it appears that this aspect should have been categorized as compatibility "NRC").

RATS ID 2015-2

The license conditions presented for the review of RATS ID 2013-1 address the amendments to Part 37 in RATS ID 2015-2 (above) because the January 1, 2016 version of Part 37 will be incorporated by reference.

RATS ID 2015-4 Miscellaneous Corrections.

Section 37.23(b)(2) is addressed by the license condition presented for the review of RATS ID 2013-1 (above), which references the January 1, 2016 version of Part 37..

The equivalent to 40.61(a)(2) is in 16.14 (i)(1) Records of transfer, or receipt of radioactive materials, which states:

Each licensee shall maintain accurate and complete written records for each transfer or receipt of radioactive materials including radioactive waste.

Although the wording is different from 40.61(a)(2), NYS DOH licensees are required to maintain these records for as long as the entity is a licensee, i.e., until the Department terminates the license.