

**STATE OF NEW YORK  
DEPARTMENT OF STATE**

**DETERMINATION**

*In the matter of requests that firearms instructor be designated as an eligible profession for the purchase, sale, and use of body armor.*

Date of designation: January 13, 2023

Legal framework

To purchase or take possession of body armor in New York State, an individual or entity must be engaged or employed in an eligible profession.<sup>1</sup> Pursuant to Executive Law section 144-a, the Department of State (Department) has created a process whereby individuals and entities may request that the profession in which they engage be added to the Department’s list of eligible professions.<sup>2</sup> The Department has received requests that “firearms instructor” be designated as an eligible profession. Designation of an eligible profession must be supported by a finding that the duties of the profession may expose an individual engaged in such profession to serious physical injury that may be prevented or mitigated by the wearing of body armor, or that the duties of the profession are necessary to facilitate the lawful purchase, sale, or use of body armor.<sup>3</sup> The Department may add a profession to the list of eligible professions requiring the use of body armor.<sup>4</sup>

Requests

This recommendation relates to two requests that are deemed consolidated pursuant to 19 NYCRR 905.5(c) insofar as they relate to the same profession for the purpose of reviewing and determining the eligibility of such professions. The first request was made by the principal of S30 Threat Solutions, LLC, a private entity that provides a range of threat mitigation training and consulting services that includes firearms instruction. That request seeks designation of the profession “firearms instructor” as an eligible profession. The first requestor is a retired police officer engaged in the profession of firearms instruction. While the first requestor indicates there is no professional licensure or certification required as a prerequisite to being engaged in the profession, in his 42 years of firearms training he does not recall any instances of non-certified instructors teaching on a firearms range. All firearms instructors with whom the first requestor has worked have been certified by one or more of the following organizations, each of which provides a verifiable certificate or instructor identification credential upon course completion:

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<sup>1</sup> New York Penal Law §270.21.

<sup>2</sup> See 19 NYCRR Chapter XIX, Part 905, generally.

<sup>3</sup> New York Executive Law § 144-a; 19 NYCRR §§ 905.3, 905.1(c), (f).

<sup>4</sup> 19 NYCRR §§ 905.2(a), 905.5(a).

- The United States Armed Forces, as military range instructors.
- A law enforcement agency, as police officer instructors.
- The National Rifle Association (NRA),<sup>5</sup> as NRA certified instructors.
- The United States Concealed Carry Association (USCCA),<sup>6</sup> as USCCA-certified instructors.

In addition, the first requestor indicates that many firearms instructors who are retired law enforcement officers complete an annual firearms qualification course in order to qualify for the legal protections associated with the Law Enforcement Officers' Safety Act (aka HR-218).<sup>7</sup> HR-218 permits an individual who is a qualified retired law enforcement officer and who is carrying the identification required by federal law to carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to express statutory limitations.<sup>8</sup>

The first requestor provided the following information about the specific duties associated with being a firearms instructor:

Most firearms ranges are set up with a line of shooters all facing down range where targets are sequentially set up in a corresponding line. Basic firearms training is conducted for inexperienced or first-time shooters with little or no experience. Advanced firearms training is conducted for more experienced or professional shooters (such as persons serving in the military and law enforcement, and security contractors). Instructors constantly reinforce firearm safety rules but new shooters are more prone to mistakes. Advanced shooters are less prone to mistakes, but advanced training involves more variables and has inherent risks. On the firearms range, the firearms instructor and range safety officer are the authority and overseers of all training conducted.

The first requestor provided the following list of typical basic firearms range instruction:

- Conducting hands-on familiarization of their firearm (inserting/removing magazine, checking firearm condition, racking the slide, or opening and closing the action).
- Practicing proper shooting grip and stance.
- Practicing loading/unloading (rendering hot or making safe) a live firearm and or magazines with live ammunition.
- Practicing presenting a loaded firearm (including drawing from holster) and re-holstering firearm.
- Practicing clearing stoppages/malfunctions of firearms.

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<sup>5</sup> <https://www.nrainstructors.org/>

<sup>6</sup> <https://www.usconcealedcarry.com/>

<sup>7</sup> 18 U.S.C. § 926C (Carrying of concealed firearms by qualified retired law enforcement officers).

<sup>8</sup> 18 U.S.C. § 926C(a).

- Practicing live fire (typically shooting targets that are down range).
- Practicing disassembly and cleaning of firearm.

The first requestor also provided the following list of more advanced range training, which includes all skills outlined above in basic training, plus:

- Practicing shooting from varied positions (such as standing, kneeling, and prone).
- Shooting from behind cover/barricades.
- Shooting multiple targets (called target transition).
- Shooting with one hand and/or the non-dominant hand.
- Moving while shooting.
- Transitioning between weapons (rifle, handgun),
- Shooting in low light conditions.

The first requestor provided further description of a range training session. The firearms instructor will walk along the back of the firing line to observe and provide instruction, and “will handle student weapons or verbally guide students through the shooting process while in close proximity to the student.” While safety protocols are always stressed, the following activities risk exposure to gunfire: draw process, stoppage clearing, live fire practice. The instructor will also walk down range to observe targets and, with safety protocols in place, there is still risk of accident or trainee non-compliance. For these reasons, and based on his own training and experience, the requestor states that the wearing of body armor is necessary for training safety.

The second request was made by the President of the not-for-profit corporation, Southern Adirondack Firearms Education and Training, Inc. That request seeks designation of the profession “duly authorized firearms instructor” as an eligible profession. The second request is narrower than the first in that the profession in which that requestor is engaged is teaching of a required firearm safety course to applicants seeking a New York State Pistol permit. The duties associated with this profession include working with students, many of whom are inexperienced with firearms, during a live-fire component where students handle and discharge live ammunition from firearms. According to the second requestor, this component of the training carries a high risk of accidental firearm discharges, which can put instructors at high risk of injury or death from gunfire. This request also asserts that possessing a certificate as a firearms instructor is a prerequisite to administering concealed carry firearms safety training courses.

Notice of these eligible profession requests was published on the Department’s website on August 12, 2022, whereby the public was invited to submit additional requests relating to these professions. No public comment has been provided.

### Findings of fact and analysis

As described by the requestors, the profession of firearms instructor involves instruction of students through use of firearms and live ammunition on a firearms range, where live ammunition is used to practice shooting at targets. The profession of firearms instructor is listed

in the 2018 federal Office of Management and Budget Standard Occupational Classification Manual, under code 33-9099 titled “Protective Service Workers, All Other.” Certification requirements for firearms instructor are required in certain instances—a duly authorized instructor as sought by the second requestor and defined under section 265.00(19) of the Penal Law being just one type of such certification. Penal Law § 265.00 defines “duly authorized instructor” as:

- (a) a duly commissioned officer of the United States army, navy, marine corps or coast guard, or of the national guard of the state of New York; or
- (b) a duly qualified adult citizen of the United States who has been granted a certificate as an instructor in small arms practice issued by the United States army, navy or marine corps, or by the adjutant general of this state, or by the national rifle association of America, a not-for-profit corporation duly organized under the laws of this state; (c) by a person duly qualified and designated by the department of environmental conservation under paragraph c of subdivision three of section 11-0713 of the environmental conservation law as its agent in the giving of instruction and the making of certifications of qualification in responsible hunting practices; or (d) a New York state 4-H certified shooting sports instructor.<sup>9</sup>

As of 1997, the granting of any firearm license in Westchester County requires completion of a firearm safety course taught by a duly authorized instructor.<sup>10</sup> A law enacted this year requires completion of a live firearms safety course by a duly authorized instructor to qualify for a concealed carry firearm license, statewide.<sup>11</sup>

As further examples, corrections officers, police officers, and peace officers are required to be trained by a certified firearms instructor,<sup>12</sup> whose qualifications are established by the Division of Criminal Justice Services (DCJS) regulations.<sup>13</sup> Among other showings, these regulations require a minimum of three years of firearm-carrying experience as a police officer, peace officer, or federal law enforcement officer for both firearms instructors or, in the instance of a special firearms instructor, a showing of satisfactory completion of an approved firearms instructor course via a written application and subsequent granting of certification at the discretion of the DCJS commissioner.<sup>14</sup>

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<sup>9</sup> Penal. L. § 265.00(19).

<sup>10</sup> Penal L. § 265.00(19), 400.00(1)(l), and 400.00(4-c).

<sup>11</sup> Penal L. § 400.00 (19). See N.Y.S. Division of Crim. Just. Servs. and Division of State Police, Minimum Standards for New York State Concealed Carry Firearm Safety Training (issued Aug. 23, 2022), available at [https://gunsafety.ny.gov/system/files/documents/2022/09/nysp\\_dcjsminimumstandards\\_firearmsafetytraining.pdf](https://gunsafety.ny.gov/system/files/documents/2022/09/nysp_dcjsminimumstandards_firearmsafetytraining.pdf).

<sup>12</sup> 9 NYCRR § 6018.3(d); 9 NYCRR § 6020.3(g); 9 NYCRR 6025.3(d).

<sup>13</sup> 9 NYCRR Part 6024.

<sup>14</sup> 9 NYCRR § 6024.2; 9 NYCRR § 6024.3.

Under the same Article, security guards are required to be trained by a certified armed security guard instructor.<sup>15</sup> This certification requires that the applicant “have a minimum of three years experience as a police officer, peace officer or security guard” and have carried a firearm for the minimum three years.<sup>16</sup> DCJS also establishes qualified firearms training course requirements for armored car guards.<sup>17</sup> Those courses must be taught by a “qualified firearms instructor,” which “means an individual who holds a certificate as a firearms instructor from an association or organization recognized by the division.”<sup>18</sup> Currently, that requirement is satisfied through existing security guard training courses.<sup>19</sup>

The duties of the profession of firearms instructor involve exposure to and instruction of the operation of firearms and the handling and discharge of live ammunition by students. For this reason, firearms instruction carries a high risk of accidental firearm discharges, which can put instructors at high risk of injury or death from gunfire. For the purposes of this determination, a firearms instructor shall mean individuals who meet the requirements of a duly authorized instructor as defined under the Penal Law, or one of the following certified firearms instructors as defined by DCJS: (1) a certified firearms instructor; (2) a certified special firearms instructor; and (3) a certified armed security guard instructor.

#### Determination

The information set forth above supports a determination by the Department that the profession of firearms instructor sometimes requires individuals engaged or employed in that profession to put themselves in dangerous situations that may expose them to serious physical injury, and that such serious physical injury may be prevented or mitigated by the wearing of body armor.

Based on the foregoing facts and the requirements of Executive Law §144-a and 19 NYCRR Part 905, the Department has designated the profession of firearms instructor as an eligible profession and adds such profession to the Department’s list of eligible professions.

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<sup>15</sup> 9 NYCRR § 6029.5.

<sup>16</sup> 9 NYCRR § 6029.5(1).

<sup>17</sup> Gen. Bus. L. § 89-sss(1).

<sup>18</sup> Gen. Bus. L. § 89-ppp(12). Training requirements currently align with DCJS firearms training for security guards, where those instructors are required to have three years’ experience as a police officer, peace officer, or security guard, or otherwise qualify as a duly authorized instructor under Penal Law §265.00(19). 9 NYCRR 6029.5(a)(1).

<sup>19</sup> See 9 NYCRR 6027.5(c); NYS Dep’t of State, Div. of Licensing Servs., Armored Car Guard Application, available at <https://dos.ny.gov/system/files/documents/2021/03/1351-f-a.pdf>.