

**STATE OF NEW YORK
DEPARTMENT OF STATE**

DETERMINATION

In the matter of requests that “journalist,” “broadcast journalist,” and “news crews” be designated as eligible professions 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.¹ 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.² The Department has received requests that “journalist,” “broadcast journalist,” and the professions that comprise a “news crew” employed by radio and television stations that are licensed by the Federal Communications Commission (FCC) be designated as eligible professions. Prior to adding a profession to the list of eligible professions, the Department must first determine whether 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.

Requests

This recommendation relates to multiple 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; that being persons employed by or connected with news media. Specifically, the New York News Publishers Association (Publishers Association) requested that the profession “journalist” (both those engaged in the profession as independent or freelance journalists and those employed in the profession as staff employees of news organizations) be designated as an eligible profession. In addition, the New York State Broadcasters Association, Inc. (Broadcasters Association) requested that the professions “broadcast journalist” and multiple professions that collectively make up “news crews” be designated as eligible professions.

The Publishers Association supplemented their request with a letter addressed to Governor Kathy Hochul dated June 21, 2022. The request was also supported by information submitted by a freelance journalist, and included a letter dated June 5, 2022, addressed to Governor Hochul regarding the underlying body armor legislation. The June 5 letter was signed by Peter Szekely, Advocacy Chair of the Deadline Club of the NYC Chapter of the Society of Professional

¹ New York Penal Law §270.21.

² See 19 NYCRR Chapter XIX, Part 905, generally.

Journalists, on behalf of several news organizations.³ Notice of the journalist eligible profession request was published on the Department’s website on July 13, 2022, whereby the public was invited to submit additional requests relating to these professions.

On August 29, 2022, the Publisher’s Association submitted a request that photojournalists be considered an eligible profession requiring the use of body armor. Notice of the photojournalist eligible profession request was published on the Department’s website on September 6, 2022. No additional information was received from the public regarding the requests received from the Publisher’s Association.

The Broadcasters Association submitted separate requests for broadcast journalist and each profession that comprises a news crew employed by radio and television stations that are licensed by the FCC (film and video editor; photographer; lighting technician; broadcast technician; audio and video technician; media and broadcast announcer and radio DJ; interpreter/translator; producer and director; television, video, and film camera operator; broadcast, sound, and lighting technician; news analyst, reporter, and journalist). The Broadcasters Association indicated that broadcast news crews include a number of different professions including reporters, announcers, engineers, technicians, camerapersons, audio technicians, video technicians, lighting technicians, security, electronic news gathering truck crews, satellite and microwave technicians, drivers and others not included in the specific categories listed. Notice of these eligible profession requests was published on the Department’s website on August 12, 2022. No additional information was received from the public regarding these requests.

Findings of fact and analysis

The requests use a variety of terms for the professions that collectively make up persons employed by or connected with news media. While the professions identified do not have specific licensing, registration, certification, or education requirements, they all fall within the meaning of the term “profession” in the Department’s body armor regulations. Under those regulations, a “profession” refers to any occupation or line of work referenced or included within a category identified in the Standard Occupational Classification Manual published by the federal Office of Management and Budget (SOC Manual), or as otherwise described in a federal, state, or local statute or regulation.⁴ The SOC Manual is organized into a tiered system with four levels, ranging from major groups to detailed occupations,⁵ and as instructed by the eligible profession request, the instant applicants selected SOC category names deemed by the applicant to best fit the profession subject to each request. The SOC category names selected by the applicants to cover the professions of “journalist” and “broadcast journalist and news crews” are:

- “News analysts, reporters and journalists”

³ Deadline Club, the New York City chapter of the Society of Professional Journalists; Society of Professional Journalists (SPJ); SPJ’s Long Island chapter, the Press Club of Long Island; SPJ Region 1 Coordinator Chris Vaccaro; New York News Publishers Association; New York Press Photographers Association; National Press Photographers Association; Radio Television Digital News Association; New York State Broadcasters Association, Inc.

⁴ 19 NYCRR 905.1(f).

⁵ https://www.bls.gov/soc/2018/soc_2018_manual.pdf, at page 1.

- “Radio and television announcers”
- “Broadcast, sound, and lighting technicians”
- “Broadcast technicians”
- “Lighting technicians”
- “Photographers”
- “Camera operators, television, video, and film”
- “Broadcast announcers and radio disc jockeys”
- “Producers and directors”
- “Interpreters and translators”
- “Audio and video technicians”
- “Film and video editors”
- “Media and communication equipment workers, all other”

The official duties of the professions associated with the SOC category names involve professions that are employed by or connected with news media. For example, the request submitted by the Broadcasters Association relating to interpreters and translators is described as relating only to interpreters and translators serving as an essential component of a live news crew, as opposed to interpreters or translators not working in connection with journalism. Accordingly, many of the SOC category names associated with the associated requests are, alone, insufficient to provide clarity as to the name of the professions for which an eligible profession determination was requested.

However, the New York State Civil Rights Law codifies “[s]pecial provisions relating to persons employed by, or connected with, news media,”⁶ which are relevant and instructive. That law, commonly referred to as the “Shield Law,” affords professional journalists and newscasters certain protections for confidential and nonconfidential news by providing an exemption from contempt, and specifically defines terms associated with professions relating to persons employed by or connected with news media. Under that law, “professional journalist” and “newscaster” are defined in subdivisions 6 and 7 of section 79-h of the New York State Civil Rights Law, respectively, as follows:

“Professional journalist” shall mean one who, for gain or livelihood, is engaged in gathering, preparing, collecting, writing, editing, filming, taping or photographing of news intended for a newspaper, magazine, news agency, press association or wire service or other professional medium or agency which has as one of its regular functions the processing and researching of news intended for dissemination to the public; such person shall be someone performing said function either as a regular employee or as one otherwise professionally affiliated for gain or livelihood with such medium of communication.⁷

⁶ New York Civil Rights Law § 79-h.

⁷ New York Civil Rights Law § 79-h(1)(6).

“Newscaster” shall mean a person who, for gain or livelihood, is engaged in analyzing, commenting on or broadcasting, news by radio or television transmission.⁸

As set forth above, the terms “professional journalist” and “newscaster” collectively include all the professions identified in the instant eligible profession requests for “journalist” and “broadcast journalist and news crew.” Specifically, a “newscaster” as defined in the Civil Rights Law includes the SOC category names “broadcast journalist” and “media and broadcast announcer and radio DJ” and the duties of and activities associated with such professions selected by the Broadcasters Association in its requests. A “professional journalist” as defined in the Civil Rights Law includes the SOC category names “news analysts, reporters and journalists,” “radio and television announcers,” “broadcast, sound, and lighting technicians,” “broadcast technicians,” “lighting technicians,” “photographers,” “camera operators, television, video, and film,” “broadcast announcers and radio disc jockeys,” “producers and directors,” “interpreters and translators,” “audio and video technicians,” “film and video editors,” “media and communication equipment workers, all other,” and the duties of and activities associated with such professions selected by the Publishers Association and the Broadcasters Association in their requests, because those duties and activities are encompassed within the gathering, preparing, collecting, writing, editing, filming, taping or photographing of news referenced by that statute. A “professional journalist” under the Civil Rights Law also includes both journalists engaged in the profession as independent or freelance journalists and those employed in the profession as staff employees of news organizations, to the extent that such individuals are “engaged in gathering, preparing, collecting, writing, editing, filming, taping or photographing of news intended for a newspaper, magazine, news agency, press association or wire service or other professional medium or agency which has as one of its regular functions the processing and researching of news intended for dissemination to the public.”

Collectively, the requests indicate that the official duties associated with “professional journalist” and “newscaster” involve reporting news from the front lines of wars, instances of civil unrest, and active crime scenes. The Publishers Association asserts, and the Department identifies no objective evidence to the contrary, that journalists are frequently required to be in situations involving violent and dangerous events, including riots, mass shootings, police calls involving dangerous individuals, and deployment from New York State to high conflict areas overseas. The Publishers Association further asserts, and the Department identifies no objective evidence to the contrary, that body armor is difficult to obtain overseas, and must frequently be purchased by New York State-based news organizations and New York State-based journalists and obtained at a location in the State of New York.

The Broadcasters Association asserts that the professions commonly referred to as “broadcast journalists and news crews,” which appear to fall squarely within the terms “professional journalist” or “newscaster,” are routinely deployed to cover civil disturbances, riots, and active crime scenes, and as such may be exposed to gunfire. The Broadcasters Association also indicates that such professions are employed by radio and television stations that are licensed by the FCC, that the FCC license requires stations to broadcast news in the public interest, and that live on-the-scene news coverage provided by broadcast announcers and the supporting news crews

⁸ New York Civil Rights Law § 79-h(1)(7).

is an important part of meeting this federal obligation. The Department identifies no objective evidence to the contrary.

The applicants assert that prior to the change in law, body armor was routinely utilized by people employed or engaged in the professions of “professional journalist” and “newscaster.” The Publishers Association request is supported by a named freelance journalist who traveled to Ukraine in 2014 and 2015, carried body armor both times and visited conflict areas with a Ukrainian patrol that were frequented by Russian-backed militants. A video showing Ukrainian soldiers wearing body armor, carrying firearms and other military ordinance, and showing ride-alongs of night patrols of some of the conflict zones was provided with the request.

According to the Publishers Association, video and still photographers say they routinely keep body armor and tactical helmets in their cars in case they suddenly encounter dangerous situations on the job. They assert they wore them almost every day to cover protests for racial justice in the summer of 2020 following the murder of George Floyd. The Publishers Association request was also supplemented with closeup photographs of armed and armored soldiers in the field in Mariupol, Ukraine, and several other photographs taken in Donetsk, Ukraine. The applicants assert, and the Department recognizes, that body armor is standard equipment used by members of these professions in carrying out the duties of such professions. In order to lawfully acquire body armor and deploy from New York State to areas of conflict such as Ukraine, “professional journalist” and “newscaster” would need to be designated as eligible professions.

Finally, in its request, the Publishers Association suggested that, in defining the term “journalist,” the Department consider the definition of “member of the press” that is codified in section 16-01 of Title 43 of the Rules of the City of New York:

A “member of the press” means an individual who gathers and reports the news, by publishing, broadcasting, or cablecasting articles, commentaries, books, photographs, video, film, or audio by electronic, print, or digital media such as radio, television, newspapers, magazines, wire, books, and the Internet, including but not limited to an employee of a newsgathering organization or a self-employed newspaper.

A “newsgathering organization” is defined in the Rules of the City of New York as “an organization or entity that gathers and reports the news by publishing, broadcasting, or cablecasting articles, commentaries, books, photographs, video, film, or audio by electronic, print, or digital media such as radio, television, newspapers, magazines, wire, books, and the Internet.”

The definition for a “member of the press” includes individuals who fall within the meaning of a “professional journalist” as defined in the New York State Civil Rights Law. However, the definition for a “member of the press” is also broader than the New York State Civil Rights Law definition. For example, the definition for a “member of the press” includes individuals who gather and report the news by publishing commentaries by digital media such as the internet. The requests received by the Department do not present any facts asserting or demonstrating that engaging in the publishing of commentaries by digital media such as the internet is a profession contingent upon the gathering of news from situations that may expose an individual engaged in

such profession to serious physical injury that may be prevented or mitigated by the wearing of body armor, such as the front lines of wars, instances of civil unrest, or active crime scenes. Accordingly, certain professions included within the broader definition of “member of the press” do not meet the criteria established by the Department of State’s regulations that will permit designation as eligible professions. Nevertheless, those professions included within subdivision 6 (“professional journalist”) and subdivision 7 (“newscaster”), of section 79-h of the New York State Civil Rights Law do more readily meet the required criteria.⁹

Members of the professions “professional journalist” and “newscaster” sometimes put their lives on the line to provide the news on which our democracy depends. Body armor is a necessary safety precaution for such professional journalists and newscasters not only when they leave New York State to go into war zones, but also for covering street demonstrations that may turn violent and active crime scenes involving guns. Further, the requests and supporting materials indicate that persons engaged in or employed as a “professional journalist” and “newscaster” perform duties that have exposed some individuals engaged in that profession to being shot.

Determination

The information set forth above supports a determination by the Department that the activities of the professions of “professional journalist” and “newscaster” sometimes require members of such professions 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 and the requirements of Executive Law §144-a and 19 NYCRR Part 905, the Department has designated the professions of “professional journalist” and “newscaster,” each as defined in section 79-h of the New York State Civil Rights Law, as eligible professions and adds such professions to the Department’s list of eligible professions.

⁹ As to whether the phrase “or other professional medium or agency which has as one of its regular functions the processing and researching of news intended for dissemination to the public” includes dissemination of information by digital means only, the Department cannot provide authoritative guidance on this interpretation but does note there is some authority supporting the proposition that the activities of “professional journalist” under this definition are not limited to print-only dissemination of news. *See Murray Energy Corp. v. Reorg Research, Inc.*, 152 A.D.3d 445 (1st Dep’t 2017) (adopting a broad interpretation of the “professional journalist” definition in favor of continuing the State’s strong protection of freedom of the press).