

**STATE OF NEW YORK
DEPARTMENT OF STATE**

DETERMINATION

In the matter of a request that nuclear security officer 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.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 “nuclear security officer” 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.³ The Department may add a profession to the list of eligible professions requiring the use of body armor.⁴

Request

Constellation Energy Generation, Inc., is an owner and operator of six nuclear power plants nationwide—including James A. Fitzpatrick Nuclear Power Plant in Oswego, New York—and has requested the designation of nuclear security officer as an eligible profession. The profession of nuclear security officer is regulated by the federal government, which is a jurisdictional distinction from the state-licensed profession of security guard. While the profession of security guard is listed as an eligible profession as of July 6, 2022, that determination was specific to state-regulated security guards, only.⁵ Because the profession of nuclear security officer is regulated by the federal government, this request requires separate consideration. Notice of this eligible profession request 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. No other requests relating to this request has been received by the Department.

¹ New York Penal Law §270.21.

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

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

⁴ 19 NYCRR §§ 905.2(a), 905.5(a).

⁵ 9 N.Y.C.R.R. 6029.1(f); Gen. Bus. L. § 89-f (“Provided, however, that a security guard who is otherwise subject to regulation with respect to registration and training by the federal government in the performance of their duties . . . shall not be subject to the provisions of this article.”).

Findings of fact and analysis

Under the regulations of the U.S. Nuclear Regulatory Commission (NRC), facilities licensed by the NRC must adopt a “physical protection system” to safeguard nuclear material, which includes extensive security force contingencies.⁶ NRC regulations establish extensive requirements for security personnel under 10 C.F.R. Part 73, titled “Physical Protection of Plants and Materials,” and the Part’s correlating Appendix B, titled “General Criteria for Security Personnel,” which states:

Security personnel who are responsible for the protection of special nuclear material on site or in transit and for the protection of the facility or shipment vehicle against radiological sabotage should, like other elements of the physical security system, be required to meet minimum criteria to ensure that they will effectively perform their assigned security-related job duties.

These regulations establish criteria for security personnel who are responsible for “the protection of special nuclear material on site or in transit and for the protection of the facility or shipment vehicle against radiological sabotage.”⁷ Categorically, separate training requirements are established for security personnel assigned to NRC-licensed nuclear power reactor facilities, which are established in Appendix B, Section VI. All other security personnel assigned to NRC-licensees must comply with Appendix B, Sections I-V. Overall, Appendix B “establish[es] requirements for the selection, training, equipping, testing, and qualification of individuals who will be responsible for protecting special nuclear materials, nuclear facilities, and nuclear shipments.”⁸ This includes weapons training, including handguns, shotguns, and semiautomatic rifles (and for Section VI compliance, also enhanced weapons),⁹ and the provision of personal equipment, including, specifically, body armor.¹⁰ Additional criteria for security personnel under all sections of Appendix B include: mental and physical fitness (including visual and hearing); continual training; performance drills; security knowledge, skills, and abilities, including the use of deadly force; weapons training; and requalification procedures.¹¹

Further, the purpose and scope of the regulations explicitly identify the following threats that must be planned for in an NRC-licensee’s physical protection system against radiological sabotage, which is defined as “[a] determined violent external assault . . . through one entry point [or] multiple entry points . . . with [w]ell-trained (including military training and skills) and dedicated individuals, willing to kill or be killed” and “[s]uitable weapons, including handheld automatic weapons, equipped with silencers and having effective long range accuracy.”¹² The

⁶ 10 C.F.R. § 73.20.

⁷ 10 C.F.R. Part 73, Appendix B, Introduction, available at <https://www.nrc.gov/reading-rm/doc-collections/cfr/part073/full-text.html#part073-0055>.

⁸ 10 C.F.R. Part 73, Appendix B, Introduction.

⁹ 10 C.F.R. Part 73, Appendix B, Sections IV, VI(F)(4).

¹⁰ 10 C.F.R. Part 73, Appendix B, Sections V(5)(c), (VI)(G)(2)(b)(2).

¹¹ 10 C.F.R. Part 73, Appendix B, generally.

¹² 10 C.F.R. § 73.1(a)(1)(i)(A), (C).

purpose and scope of the regulations concerning “[t]heft or diversion of formula quantities of strategic special nuclear material” repeat these same provisions.¹³ Further, the request states that “[n]uclear security officers are employed to perform this function and are trained in the use of deadly force to protect their own lives or the lives of others.”

Presented before the Department is an instance where the profession of nuclear security officer, which is a commonly used term to reference all nuclear security personnel regulated by 10 C.F.R. Part 73, Appendix B, specifically requires the individual to be trained to respond to and use deadly force, trained in the use of firearms, and equipped with body armor. As such, the profession of nuclear security officer may expose an individual engaged in such profession to serious physical injury that may be prevented or mitigated by the wearing of body armor.

Determination

The information set forth above supports a determination by the Department that the profession of nuclear security officer 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 nuclear security officer as an eligible profession and adds such profession to the Department’s list of eligible professions.

¹³ 10 C.F.R. § 73.1(a)(2)(i)(A), (C).