

**STATE OF NEW YORK
DEPARTMENT OF STATE**

DETERMINATION

In the matter of a request that “federal firearms dealer” be designated as an eligible profession for the purchase, sale, and use of body armor.

Date of designation: May 4, 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 a request that “federal firearms dealer” be designated as an eligible profession. 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, or whether the duties of the profession are necessary to facilitate the lawful purchase, sale, or use of body armor.

Request

The Department has received a request that the profession “federal firearms dealer” be designated as an eligible profession. Notice of this eligible profession request was published on the Department’s website on September 30, 2022, whereby the public was invited to submit additional requests relating to these professions. No other requests relating to this request have been received by the Department and no comments were received.

The requestor is an individual who is a firearms dealer and holds a federal firearms license. The individual engages in the sale of shotguns, rifles, and ammunition as a main part of their business.

Findings of fact and analysis

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. New York Penal Law section 265 defines a “dealer in firearms” as:

¹ New York Penal Law §270.21.

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

Any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of, any assault weapon, large capacity ammunition feeding device, pistol, revolver, or semiautomatic rifle.³

New York Penal Law requires state licensing of firearms dealers, which must be renewed every three years.⁴ Thus, a state license is required for firearms dealers who deal in the above classifications of firearms, including assault weapon, pistol, revolver, or semiautomatic rifle. This profession was designated as eligible on July 6, 2022.

The requestor deals in shotguns, rifles, and ammunition, only, and thus appears to not require a state license to conduct business as a firearms dealer of these types of firearms in New York State. A federal firearms license is still required, however. This will be the case for similarly situated firearms dealers. Under federal regulations, a firearms dealer that is “engaged in the business” is defined as:

Dealer in firearms other than a gunsmith or a pawnbroker. A person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such a term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms⁵

Federal regulations define a firearm broadly as:

Any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device; but the term shall not include an antique firearm. . . .⁶

This definition, thus, includes shotguns and rifles. A firearms dealer, under federal law, is required to obtain a federal firearms license (FFL).⁷ Thus, there exist instances where a firearms dealer in New York State may be required to obtain a federal license, but not a state license.

In order to carry out their duties as a federal firearms dealer, an individual may need to handle or demonstrate the use of firearms, which may expose the individual to live fire situations. As such, the profession of federal firearms dealer sometimes requires individuals to put themselves

³ Penal Law § 265.00(9).

⁴ Penal Law § 400.00(1-a) (“No person shall engage in the business of gunsmith or dealer in firearms unless licensed pursuant to this section.”); *see also* Penal Law § 265.00(10) (defines “licensing officer”) and Penal Law § 400.00(10).

⁵ 27 C.F.R. § 478.11.

⁶ 27 C.F.R. § 478.11.

⁷ 27 C.F.R. § 478.41.

in dangerous situations, which may expose an individual engaged in the 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 federal firearms dealer 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 federal firearms dealer as an eligible profession for the purchase, sale, and use of body armor and adds such profession to the Department's list of eligible professions.