

**STATE OF NEW YORK  
DEPARTMENT OF STATE**

**DETERMINATION**

*In the matter of the designation of firefighter, emergency medical technician, and paramedic as eligible professions for the purchase, sale, and use of body armor.*

Date of designation: July 6, 2022

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 established criteria for eligible professions requiring the use of body armor, as such term is defined in subdivision 2 of section 270.20 of the Penal Law. 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.<sup>2</sup> The Department may add a profession to the list of eligible professions requiring the use of body armor.<sup>3</sup>

Findings of fact and analysis

The law implementing restrictions on the use of body armor in New York State provides the eligible profession framework for lawful use of body armor,<sup>4</sup> which is codified in part in section 270.21 of the Penal Law. Under that law, police officers are included as an eligible profession, and eligible professions shall include those in which the duties may expose the individual to serious physical injury that may be prevented or mitigated by the wearing of body armor. A police officer is one of several professions included within the term “first responder,” which has both a common, everyday meaning and which is a legally defined term in the federal Omnibus Crime Control and Safe Streets Act of 1968.<sup>5</sup> Federal law defines the term “first responder” as follows:

The term “first responder” includes a firefighter, law enforcement officer, paramedic, emergency medical technician, or other individual (including an employee of a legally organized and recognized volunteer organization, whether

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

<sup>2</sup> New York Executive Law § 144-a; 19 NYCRR §§ 905.3, 905.1(c), (f).

<sup>3</sup> 19 NYCRR §§ 905.2(a), 905.5(a).

<sup>4</sup> L.2022, ch.210, as amended by L.2022, ch.371, §§ 11-13.

<sup>5</sup> Public Law 90-351.

compensated or not), who, in the course of his or her professional duties, responds to fire, medical, hazardous material, or other similar emergencies.<sup>6</sup>

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.<sup>7</sup> A “first responder” is not in and of itself a single profession, but rather a term used to include several professions, members of which respond to emergencies pursuant to designated governmental authority. The SOC Manual identifies the professions of “firefighter,” “emergency medical technician,” “paramedic,” and “ambulance driver and attendant, except emergency medical technician” as follows:

- Firefighter – one who controls and extinguishes fires or responds to emergency situations where life, property, or the environment is at risk. Duties may include fire prevention, emergency medical service, hazardous material response, search and rescue, and disaster assistance.<sup>8</sup>
- Emergency medical technician - one who assess injuries and illnesses and administers basic emergency medical care, and who may transport injured or sick persons to medical facilities.<sup>9</sup>
- Paramedic – one who administers basic or advanced emergency medical care and assesses injuries and illnesses, and who may administer medication intravenously, use equipment such as EKGs, or who may administer advanced life support to sick or injured individuals.<sup>10</sup>
- Ambulance driver and attendant, except emergency medical technician – one who drives an ambulance or assists an ambulance driver in transporting sick, injured, or convalescent persons, and who may (in the course of doing so) assist in lifting patients.<sup>11</sup>

#### Emergency medical technician, paramedic, ambulance driver and attendant

Article 30 of the New York State Public Health Law, which relates to emergency medical services, provides instructive definitions relating to the provision of first responder emergency medical services.

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<sup>6</sup> 34 U.S.C. § 10705(1). This is defined in the context of the law relating to the Comprehensive Opioid Abuse Grant Program, but the definition is instructive in the context of this determination.

<sup>7</sup> 19 NYCRR 905.1(f).

<sup>8</sup> SOC code 33-2011.

<sup>9</sup> SOC code 29-2042.

<sup>10</sup> SOC code 29-2043.

<sup>11</sup> SOC code 53-3011, parenthetical added by author.

“Emergency medical service” means initial emergency medical assistance including, but not limited to, the treatment of trauma, burns, respiratory, circulatory and obstetrical emergencies.<sup>12</sup>

“Ambulance service” means an individual, partnership, association, corporation, municipality or any legal or public entity or subdivision thereof engaged in providing emergency medical care and the transportation of sick or injured persons by motor vehicle, aircraft or other forms of transportation to, from, or between general hospitals or other health care facilities”<sup>13</sup>

“Emergency medical technician” means an individual who meets the minimum requirements established by regulations pursuant to section three thousand two of this article and who is responsible for administration or supervision of initial emergency medical care and transportation of sick or injured persons.<sup>14</sup>

“Certified first responder” means an individual who meets the minimum requirements established by regulations pursuant to section three thousand two of this article and who is responsible for administration of initial life-saving care of sick and injured persons.<sup>15</sup>

The New York State Department of Health (DOH) provides information about the professions of emergency medical technicians (EMTs) and paramedics: EMTs conduct basic, non-invasive interventions to help save lives and reduce harm at emergency sites, and have the skills needed to transport patients safely; to be licensed as an EMT one must take an accredited course; paramedics are the most skilled emergency responders; to become a certified paramedic, one must successfully complete a nationally accredited paramedic program at the certificate or associate’s degree level.<sup>16</sup>

For purposes of this determination: the profession of “emergency medical technician” is that referenced by the SOC Manual, and as further defined by section 3001 of the New York State Public Health Law; the profession of “ambulance driver and attendant” is that referenced by the SOC Manual and who are certified first responders providing “ambulance service” as defined by section 3001 of the New York State Public Health Law; and the profession of “paramedic” is that referenced by the SOC Manual, who is certified pursuant to DOH regulations.

### Firefighter

“Firefighter” is a term contextually referenced throughout several New York State statutes, but for which there is no universal state-law statutory definition. Federal law relating to fire prevention and control, popularly known as the Federal Fire Prevention and Control Act of 1974

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<sup>12</sup> New York Public Health Law § 3001(1).

<sup>13</sup> New York Public Health Law § 3001(2).

<sup>14</sup> New York Public Health Law § 3001(6).

<sup>15</sup> New York Public Health Law § 3001(5); 10 NYCRR § 800.3(n).

<sup>16</sup> <https://www.health.ny.gov/professionals/ems/>

(Federal Fire Prevention and Control Act),<sup>17</sup> has several definitions that collectively define the profession of a firefighter:

“Fire service” means any organization in any State consisting of personnel, apparatus, and equipment which has as its purpose protecting property and maintaining the safety and welfare of the public from the dangers of fire, including a private fire-fighting brigade. The personnel of any such organization may be paid employees or unpaid volunteers or any combination thereof. The location of any such organization and its responsibility for extinguishment and suppression of fires may include, but need not be limited to, a Federal installation, a State, city, town, borough, parish, county, Indian tribe, fire district, fire protection district, rural fire district, or other special district. The terms “fire prevention”, “firefighting”, and “fire control” relate to activities conducted by a fire service.<sup>18</sup>

The Federal Fire Prevention and Control Act also has provisions providing for administration of an assistance program by the Federal Emergency Management Agency (FEMA), in which the term “firefighting personnel” is defined:

The term “firefighting personnel” means individuals, including volunteers, who are firefighters, officers of fire departments, or emergency medical service personnel of fire departments.<sup>19</sup>

The Firefighter Assistance section of the Federal Fire Prevention and Control Act also defines “career fire department,”<sup>20</sup> “combination fire department,”<sup>21</sup> and “volunteer fire department.”<sup>22</sup>

For purposes of this determination, the profession of “firefighter” is that referenced by the SOC Manual, and as further defined as “firefighting personnel” engaged in the “fire service” under the Federal Fire Prevention and Control Act. For purposes of this determination, “fire department” shall mean “career fire department,” “combination fire department,” and “volunteer fire department,” as such terms are defined in the Federal Fire Prevention and Control Act.

### Duties of the professions

Persons engaged or employed in the professions of firefighter, emergency medical technician, paramedic, and ambulance driver and attendant collectively provide emergency first responder services. By definition, the duties of those professions require individuals engaged or

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<sup>17</sup> Public Law 93-498, codified at 15 U.S.C. Title 15, Chapter 49 (Fire Prevention and Control).

<sup>18</sup> 15 U.S.C. § 2203(5).

<sup>19</sup> 15 U.S.C. § 2229(a)(5).

<sup>20</sup> 15 U.S.C. § 2229(a)(3) (the term “career fire department” means a fire department that has an all-paid force of firefighting personnel other than paid-on-call firefighters).

<sup>21</sup> 15 U.S.C. § 2229(a)(4) (the term “combination fire department” means a fire department that has – (A) paid firefighting personnel; and (B) volunteer firefighting personnel).

<sup>22</sup> 15 U.S.C. § 2229(a)(9) (the term “volunteer fire department” means a fire department that has an all-volunteer force of firefighting personnel).

employed in such professions to respond to fire, medical, hazardous material, or other similar emergencies.<sup>23</sup> A variety of emergencies to which a member of these first responder professions responds may include ones where gunfire has or may be occurring, including but not limited to active shooter or other terrorist events and civil unrest, thereby exposing any such first responder to serious physical injury that may be mitigated or prevented by the wearing of body armor. This finding is supported by many reported incidents involving members of these first responder professions being exposed to gunfire. The website for the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) has a Fire Fighter Fatality Investigation and Prevention Program (FFFIPP) that includes Line of Duty Death Reports, some of which include reports of incidents involving firefighters being exposed to gunfire, such as:

- Fire Fighter FACE Report No. 2002-11, Career Lieutenant Killed and Fire Fighter Injured By Gunfire While Responding To Medical Assistance Call.<sup>24</sup>
- Fire Fighter Fatality Investigation Report F2018-11, involving two firefighters being exposed to gunfire after running toward what sounded like explosions.<sup>25</sup>
- NIOSH FFFIP (Fire Fighter Fatality Investigation and Prevention Program) Report – Career Fire Fighter Killed and Volunteer Fire Fighter Seriously Wounded When Shot during a Civilian Welfare Check.<sup>26</sup>
- Career Firefighter Killed, a Police Officer and a Civilian Wounded When They Were Shot During EMS Incident – Wisconsin.<sup>27</sup>

Other reported incidents involving firefighters include the following:

- Several examples of active shooter incidents for which firefighters were present described in an article titled, “Nine Questions You Should Ask”, by John H. Oates, Fire Chief, East Hartford, CT, dated January 10, 2013, published on The National Fallen Firefighters Foundation website.<sup>28</sup>
- As described in a news article reporting that firefighters in Charlotte, North Carolina, will be outfitted with bulletproof vests in response to a growing number of situations involving active shooters and civil unrest, four specific instances from around the country involving firefighters exposed to gunfire, two of which involved firefighters who responded to structure fires being targeted by gunfire, each of which resulted in firefighters being killed by gunfire.<sup>29</sup>

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<sup>23</sup> 34 U.S.C. § 10705(1). This is defined in the context of the law relating to the Comprehensive Opioid Abuse Grant Program, but the definition is instructive in the context of this determination.

<sup>24</sup> <https://www.cdc.gov/niosh/fire/pdfs/face200411.pdf>

<sup>25</sup> <https://www.cdc.gov/niosh/fire/reports/face201811.html>

<sup>26</sup> <https://www.cdc.gov/niosh/fire/pdfs/face201606.pdf>

<sup>27</sup> <https://www.cdc.gov/niosh/fire/pdfs/face201913.pdf>

<sup>28</sup> <https://www.firehero.org/2013/01/10/nine-questions-ask/>

<sup>29</sup> “NC Firefighters Will Soon Have Ballistic Gear,” by Bruce Henderson of the Charlotte Observer, dated July 27, 2018. <https://www.firehouse.com/safety-health/news/21015305/charlotte-nc-firefighters-being-outfitted-with-ballistic-bulletproof-vests>

### Determination

The information set forth above supports a determination by the Department that the professions of firefighter, emergency medical technician, paramedic, and ambulance driver and attendant, as defined herein, sometimes requires individuals engaged or employed in those professions to put themselves in dangerous situations that may expose members of those professions 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 professions of firefighter, emergency medical technician, paramedic, and ambulance driver and attendant as eligible professions and has added such professions to the Department's list of eligible professions.