

**STATE OF NEW YORK
DEPARTMENT OF STATE**

DETERMINATION

In the matter of the designation of “firearms dealer” as an eligible profession 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.¹ 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.² The Department may add a profession to the list of eligible professions requiring the use of body armor.³

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,⁴ which is codified in part in section 270.21 of the Penal Law. Under that law, 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 “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. N.Y. Penal Law section 265 defines a “dealer in firearms” as:

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.⁵

¹ New York Penal Law § 270.21.

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

³ 19 NYCRR §§ 905.2(a), 905.5(a).

⁴ L.2022, ch.210, as amended by L.2022, ch.371, §§ 11–13.

⁵ Pen. L. § 265.00(9).

N.Y. Penal Law further requires the licensing of firearms dealers, which must be renewed every three years.⁶

In order to carry out their duties as a 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 firearms dealer sometimes requires individuals 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.

Determination

The information set forth above supports a determination by the Department that the profession of 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 New York State-licensed firearms dealer as an eligible profession and adds such profession to the Department's list of eligible professions.

⁶ Pen. L. § 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* 265.00(10) (defines "licensing officer"); Pen. L. § 400.00(10).