

MAR 03 2015



STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
LANSING

RICK SNYDER
GOVERNOR

COL. KRISTE KIBBEY ETUE
DIRECTOR

MR PHILLIP HOFMEISTER
C/O MICHIGAN OPEN CARRY INC
P O BOX 16184
LANSING, MI 48901

RE: CR-104797-15, MOLES FIREARM STANDARDS

Dear MR HOFMEISTER:

The department has received your request for certain records and has processed it under the provisions of the Michigan Freedom of Information Act (FOIA), MCL 15.231 et seq.

The records you have requested have been:

Granted

Granted in Part and denied in part. Portions of your request are exempt from disclosure based on provisions set forth in the Act. (See comments on the back of this letter.) Under the FOIA, Section 10, you have the right to appeal to the head of this public body or to a judicial review of the denial.

Denied. (See comments on the back of this letter.) Under the FOIA, Section 10, you have the right to appeal to the head of this public body or to a judicial review of the denial.

The documents you requested are enclosed. Please pay the amount of \$2,36.

Please pay the amount of \$_____. Once we receive payment the documents will be mailed to you.

Checks or money orders should be made payable to the STATE OF MICHIGAN and mailed to P.O. Box 30266 Lansing, MI 48909. To ensure proper credit, please enclose a copy of this letter with your payment.

If you have questions concerning this matter, please feel free to contact our office at the address below, and enclose a copy of this correspondence.

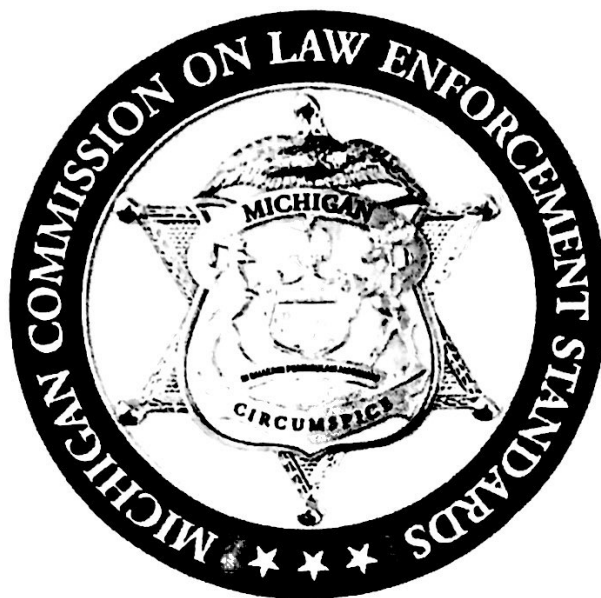
Sincerely,

A handwritten signature in cursive script that reads "Judy Fox".

Judy Fox

Assistant FOIA Coordinator
Michigan State Police

Michigan Commission on Law Enforcement Standards



Annual Firearms Standard for Active Duty Law Enforcement Officers

- Primary Duty Weapon -

Performance Standards and Course of Fire

2010

Active Duty Firearms Standard - Primary Duty Weapon - Module Specifications

The MCOLES designed the active duty firearms standard to be administered by an instructor with current expertise in law enforcement firearms training, including marksmanship and close-quarter-combat tactics and techniques. Completion of a recognized firearms instructor course, or similar course, is required.

The standard is written in terms of behavioral outcomes. At a minimum, the standard represents what is expected of active law enforcement officers in Michigan in the area of firearms competency of their primary duty weapon. In a practical sense, officer behavior will be affected by a variety of factors, including agency policies and procedures, as well as local "best practices." Accordingly, the MCOLES expects that local agencies and instructors will contribute relevant detail in the form of lesson plans as the standard is administered. It is recommended that agency administrators and command staff work closely with their local prosecutors before administering the standard.

The firearms standard for active duty law enforcement officers consists of two major components: knowledge and skills. The knowledge component consists of eight behaviorally based objectives, or *performance standards*. *The first five performance standards* are intended to enhance critical thinking and decision making in life threatening situations. The sixth and seventh performance standards address citizen carry issues (LEOSA and Michigan CCW laws), and the last performance standard designates a course of fire to assess physical proficiency. In law enforcement, a situation could go rapidly wrong if an officer has a high level of mechanical skill, but has no sound decision making capability. Similarly, proper decision making may be of no use if an officer does not possess the requisite firearms skills. The skills component consists of a four-stage course of fire, which is intended to assess for a baseline level of shooting proficiency.

There are no time frames associated with the educational component of the standard. Instead, agencies are urged to establish delivery methodologies and implementation strategies that best suit their individual needs and capabilities. In essence, the standard is intended to be a "blueprint" for success, rather than "yardstick" for failure. In other words, the overall intent of the standard is to set a minimum level of competency in order to enhance officer and citizen safety.

Performance Standards:

Upon completion of this module, the officer will be able to:

- ◆ Demonstrate an Understanding of the Use of Deadly Force.
- ◆ Properly Assess a Life Threatening Situation.
- ◆ Employ Sound Tactics During a Response to a Life Threatening Situation.
- ◆ Appropriately Discharge a Firearm in a Life Threatening Situation
- ◆ Comply With Departmental Policies in Situations Involving Deadly Force.
- ◆ Demonstrate an Understanding of the Law Enforcement Officer Safety Act of 2004.
- ◆ Demonstrate an Understanding of Michigan's Carry Concealed Laws.
- ◆ Demonstrate Proficiency on the MCOLES Course of Fire for Active Law Enforcement Officers.

Introduction

The intent of this particular performance standard is to establish a fundamental understanding of the definition of the "use of force," the legal issues surrounding the use of force, and the criteria by which officer behavior will be judged by the courts. To establish a common understanding of deadly force, officers are asked to explore the definition by considering official Michigan sources and court precedent, as established by the US Supreme Court.

Performance Standard #1

Demonstrate an Understanding of the Use of Deadly Force.

- a. Identifies the legal basis or authority for initial contacts with an individual, including:
 - (1) consensual encounters, with no authority to forcibly detain or arrest;
 - (2) encounters based on reasonable suspicion, with the authority to detain for investigative purposes;
 - (3) encounters based on probable cause, with the authority to arrest; and
 - (4) sudden life-threatening encounters, when probable cause is immediate, and authority to use deadly force in self-defense, or in the defense of another, is objectively reasonable.

- b. Defines deadly force, as contained in:
 - (1) MCOLES Subject Control Continuum;
 - (2) Michigan A.G. Opinion No. 5068 (1976);
 - (3) departmental policies and procedures; and
 - (4) relevant case law.

- c. Recognizes the legal standards, as found in court interpretations and case decisions, regarding the reasonable use of force, including:
 - (1) *Tennessee v. Garner*, 471 U.S. 1 (1985);
 - (a) life threatening escape;
 - (b) life threatening felony;
 - (c) some warning where feasible; and
 - (d) necessary to prevent escape; and
 - (2) *Graham v. Connor*, 490 U.S. 386 (1989);
 - (a) objectively reasonable standard;
 - (b) balancing individual's interests against countervailing governmental interest;
 - (c) totality of circumstances; and
 - (d) reasonable officer on the scene perception; and
 - (3) *Butler v. City of Detroit*, 149 Mich.App 708 (1986);
 - (a) the authority, as a law enforcement officer, to use deadly force.

Commentary

Officer involved shootings will be judged with regard to the totality of circumstances. Officers may approach citizens in public places at anytime, but if any action is taken by the officers they must have legal authority. Officers must know when they have legal authority and when they do not. Paragraph "a" addresses the underlying legality of police/citizen encounters, and highlights an officer's authority during these various encounters.

Demonstrate an Understanding of the Use of Deadly Force (continued).

Paragraph “b” addresses the definition of the use of deadly force. Officers are asked to familiarize themselves with the MCOLES Continuum and their departmental policies and procedures.

Paragraph “c” addresses how the courts will judge officer behavior when using force, including in officer involved shootings. The *Garner* and *Connor* cases set the standards for the use of deadly force against fleeing felons and the use of “objectively reasonable” force respectively. In general, an officer’s actions will be judged by an objectively reasonable standard by the courts.

Introduction

Behavior in a training environment, such as a basic training academy, is largely pre-determined and scripted. Behavior on the street, however, is affected by a variety of factors, including, fear, anger, stress, officer experience, agency policy, and so on. The intent of this performance standard is to explore the factors that affect officer decision making in a variety of situations, both life threatening and non-life threatening.

Performance Standard #2

Properly Assess a Life Threatening Situation.

- a. Considers that decision-making on the street may be affected by the:
 - (1) nature and extent of the officer's training;
 - (2) individual judgment on the part of the officer, based on experience;
 - (3) totality of circumstances surrounding the incident;
 - (4) underlying attitudes and beliefs of the individual officer;
 - (5) community expectations; and
 - (6) legalities, such as case law and departmental policies and procedures.

- b. Considers how the following may influence the outcome of a life-threatening situation by understanding:
 - (1) reasonable and unreasonable fear;
 - (2) anger and anger management;
 - (3) potential lack of control of the situation;
 - (4) physiological effects of life threatening stress;
 - (5) the ability to make quick decisions; and
 - (6) continuing education and training.

- c. Decides to use deadly force by properly and accurately evaluating:
 - (1) the nature and seriousness of the situation;
 - (2) whether the use of deadly force is justified, based on:
 - (a) totality of circumstances;
 - (b) legal standards;
 - (c) reasonableness;
 - (3) the ability to place an effective shot;
 - (4) the rapidly evolving time frame;
 - (5) subject's behavior (red flags or danger signs), including furtive movements;
 - (6) the backdrop; and
 - (7) officer safety and the safety of others.

Commentary

Paragraph "a" addresses decision making factors that are affected by outside influences. Some factors are constant and can be controlled (e.g., officer's training and experience) and some factors are ever-changing and unpredictable (e.g., totality of circumstances). Underlying attitudes, survival mindset, training, experience, and legalities are factors the officer brings into every situation.

Properly Assess a Life Threatening Situation (continued).

Paragraph “b” narrows the focus of this performance standard to functioning in life threatening situations, highlighting the effects of stress and emotion on human performance (e.g., communication, perception, motor skills, decision making, etc.).

Paragraph “c” narrows the focus even further and addresses the decision to use deadly force in rapidly evolving and fast moving situations. This section highlights the importance of situational awareness, sound tactics, and the continuous assessment of the situation.

The research shows that carelessness and complacency may affect the outcome of officer involved shootings. The research also shows that “mistake of fact” shootings occur approximately 25% of the time. Similarly, the national research demonstrates the importance of recognizing and appropriately reacting to danger signs or “red flags” in a situation, including subject behavior. Not appropriately reacting to red flags in a timely manner, allowing the situation to escalate, may negatively affect the outcome of life threatening situations, including officer involved shootings. This particular performance standard is intended to address these issues.

Introduction

The research shows that poor positioning, poor use of cover, and rushing-in without a plan may negatively affect the outcome of officer involved shootings. This particular performance standard is intended to address sound tactics that not only make the situation safer for the officer, but may help "slow" the rapidly evolving nature of the situation.

Performance Standard #3

Employ Sound Tactics During a Response to a Life Threatening Situation.

- a. Utilizes officer safety techniques when encountering a life threatening situation, such as:
 - (1) concealment, which refers to not being seen by a suspect, but offering little physical protection in a shooting, including:
 - (a) bushes;
 - (b) car doors;
 - (c) small trees; and
 - (d) shadows;
 - (2) cover, which refers to physical protection from hostile fire, including:
 - (a) engine block;
 - (b) cement curbs;
 - (c) large trees;
 - (d) concrete utility poles; and
 - (e) various barricades;
 - (3) low profile, used when cover and concealment are not available;
 - (4) tactical positioning;
 - (5) avoiding a crossfire;
 - (6) the tactical use of artificial lighting (flashlight, weapon-mounted light, etc.); and
 - (7) the tactical use of environmental lighting or background lighting.
- b. Tactically changes cover or concealment when needed, and is able to reload under fire, dictated by the rapidly changing nature of the circumstances.
- c. Understands how sound officer safety tactics (e.g., tactical positioning, using cover and concealment, clear and tactical communication, etc.) can not only enhance officer safety, but improve the ability to adequately assess the situation.

Commentary

Officer safety is an essential component of any law enforcement training. What may be missing from skills training, however, is the concept that making proper officer safety decisions can also *slow* a rapidly evolving situation, which may allow for improved decision making at the scene. For instance, appropriate positioning and tactics on a felony traffic stop not only provides a level of officer safety, but also slows the situation itself to a manageable level and causes the situation to unfold one step at a time (e.g., one subject at a time exits the vehicle, is directed to step back toward the officers and is taken into custody, next subject is directed to exit vehicle, etc.). By performing as trained, the officers may improve their ability to read the intentions of the subject(s). The idea is to emphasize what officers can do to gain and maintain a reasonable advantage *before* and *during* a hostile encounter with a suspect.

Introduction

This particular performance standard addresses those situations where an officer decides to discharge a firearm at an individual. The conditions under which such a decision is made are addressed, as well as alternatives to shooting.

Performance Standard #4

Appropriately Discharge a Firearm in a Life Threatening Situation.

- a. Discharges firearm under the following conditions:
 - (1) in self-defense when the officer has reason to believe he is in imminent danger of death or great bodily harm;
 - (2) in defense of another when the officer has reason to believe there is imminent danger of death or great bodily harm;
 - (3) to stop certain fleeing felons from escaping (after warning if feasible); and
 - (4) on other occasions allowed by departmental policy (e.g., shoots injured animal).
- b. Does not discharge firearm under certain conditions, including:
 - (1) mere suspicion that a fleeing subject committed a life-threatening felony; and
 - (2) during misdemeanor offenses or non-life threatening felonies.
- c. Assesses whether alternatives to shooting are appropriate by considering the following factors:
 - (1) the background (e.g., people, traffic, etc.);
 - (2) lighting;
 - (3) the potential for ricochets; and
 - (4) the suspect's actions and reactions to commands.

Commentary

The decision to actually use deadly force is the most important decision an officer may make in the performance of their duty and this decision must stand up to legal challenges and tactical reviews. Paragraph "a" delineates the circumstances that would justify the use of deadly force.

National research indicates that as many as 75% of "mistake of fact" shootings occur in low light or reduced light. The Michigan subject-matter-experts indicated that low lighting and decision making are essential considerations in any firearms standard. This particular performance standard is intended to address these issues.

Introduction

Officers should periodically review their agency's policy and procedures regarding the use of force and the use of deadly force. This performance standard gives agency administrators an opportunity to review the meaning of their policy with their line officers. The use of a sample scenario is an excellent way to administer this performance standard.

Performance Standard #5

Comply With Departmental Policies in Situations Involving Deadly Force.

- a. Using a table-top scenario, actively participates in a discussion of the department's use of force policy and how it affects decision-making in critical situations.
- b. Recognizes that a formal post-incident review may consist of:
 - (1) departmental debriefings;
 - (2) policy reviews;
 - (3) civil or citizen review panels; and
 - (4) criminal reviews.
- c. Articulates and documents the facts of an officer-involved-shooting, including:
 - (1) lawful authority;
 - (2) officer's state of mind;
 - (3) facts and circumstances surrounding the incident; and
 - (4) the justification for the use of deadly force.
- d. Considers the provisions of the department's internal investigation policies and procedures and how they may relate to a use of deadly force situation.
- e. Reviews MCL 15.391 – 15.395; Disclosures by Law Enforcement Officers Act. Also, *Garrity v New Jersey*, 385 US 93 (1967).

Commentary

This particular performance standard requires that each officer actively participate in a discussion of their department's use of force policy and how it affects decision-making in emergency situations. A written scenario, or a "table-top" scenario, should be used to generate a discussion. Refer to the MCOLES *Facilitator Guide* for example scenarios, but perhaps an authentic situation handled by an individual agency would bring more meaning to the discussion. The focus should highlight how the department's use of force policy affects decision-making in critical situations. The discussion should address the nature of the department's internal investigation procedures. Moreover, paragraph "c" may be particularly important. For an individual officer, articulation and documentation helps structure thinking and permanently records the incident from the officer's perspective.

Introduction

The Law Enforcement Officer Safety Act (LEOSA) was signed into law in 2004 by President Bush. This standard addresses the key provisions of this federal law and alerts incumbent officers about encountering individuals carrying "218" CCW cards.

Performance Standard #6

Demonstrate an Understanding of the Law Enforcement Officer Safety Act of 2004.

- a. Describes the key provisions of Federal Law 18 USC 926 B&C (LEOSA) as:
 - (1) allowing interstate carrying of a concealed firearm with proper identification and qualification;
 - (2) recognizing that states, including Michigan, may have laws that restrict the carrying of concealed weapons in certain areas; and
 - (3) intended to enhance homeland security.

- b. Identifies the requirements of the act for active and retired officers:
 - (1) active law enforcement officers must meet the following provisions:
 - (a) possess full police powers within their jurisdiction;
 - (b) be authorized to carry by their department;
 - (c) not be subject to any disciplinary action by the department;
 - (d) meet agency's firearm standards, which requires officer to qualify regularly;
 - (e) be free from the influence of alcohol or illicit drugs; and
 - (f) not be prohibited by Federal law to carry a firearm.
 - (2) retired law enforcement officers must meet the following provisions:
 - (a) been retired in good standing from agency (no mental instability);
 - (b) had full police powers before retirement;
 - (c) was regularly employed for 15 years or more or retired due to a service-related disability;
 - (d) has rights to the agency's retirement plan;
 - (e) during the most recent 12-month period, has met the state's standard for training and qualification for active law enforcement officers; and
 - (f) must possess:
 - 1. photo ID and be certified by the agency, or
 - 2. photo ID issued by the agency; and
 - 3. certification issued by the state.

- c. Evaluates potential problem areas, including:
 - (1) the retired officer's "mindset" in transitioning from officer to civilian;
 - (2) an active officer's authority outside his or her jurisdiction being that of a civilian;
 - (3) following the local laws in the state in which the individual is carrying concealed; and
 - (4) potential civil and criminal penalties for negligent or unreasonable behavior.

- d. Recognizes that LEOSA does not confer any arrest authority for either active law enforcement officers or retired law enforcement officers.

Michigan Commission on Law Enforcement Standards

Demonstrate an Understanding of the Law Enforcement Officer Safety Act of 2004 (continued).

Commentary

It is important to remember that LEOSA does not confer any law enforcement powers on the authorized individual carrying a card pursuant to 18 USC 926 B&C. Retired officers only have the powers of any citizen even though they may be carrying concealed. Similarly, incumbent officers have only the powers of a citizen when they are acting outside their jurisdiction, independent of their authority to carry concealed.

Introduction

This particular performance standard addresses Michigan's carry concealed law and the ability of individuals to carry concealed in certain areas. Some retirees may take advantage of the Michigan CCW law rather than the federal law (HR 218). Incumbent officers must be aware of the provisions of this law.

Performance Standard #7

Demonstrate an Understanding of Michigan's Carry Concealed Laws.

- a. Identifies the appropriate Michigan statutes regarding carry concealed, including:
 - (1) carrying concealed weapons, in general (MCL 750.227);
 - (2) definitions regarding carrying pistols (MCL 28.421);
 - (3) carry-concealed pistol permits (MCL 28.425b);
 - (4) citizen encounters with law enforcement (MCL 28.425f); and
 - (5) unlawful possession of concealed pistol.

- b. Recognizes the responsibilities of citizens who hold a permit to carry the permit when possessing a firearm (MCL 28.425f), including:
 - (1) the need to carry the permit whenever the weapon is carried concealed;
 - (2) the duty to immediately display the permit;
 - (3) the penalty for not carrying the permit; and
 - (4) how law enforcement may verify the validity of the permit.

- c. Recognizes the responsibilities of civilian permit holders on traffic stops, including:
 - (1) the duty to immediately disclose; and
 - (2) the responsibilities of passengers carrying concealed.

- d. Considers the responsibility of citizens not to carry concealed in certain "pistol free zones" unless exempt (MCL 28.425o); including:
 - (1) school or school property;
 - (2) child care center or day care center;
 - (3) a sports arena or stadium;
 - (4) a bar or tavern;
 - (5) property owned by a church, synagogue, mosque, or temple;
 - (6) an entertainment facility with a seating capacity of 2,500 or more;
 - (7) a hospital; and
 - (8) a dormitory or classroom of a community college, college, or university.

Demonstrate an Understanding of Michigan's Carry Concealed Law (continued).

- e. Recognizes the authority of a civilian to use deadly force:
 - (1) uses deadly force to prevent imminent death or imminent great bodily harm;
 - (2) recognizes statutory limitations (MCL 780.971-974); and
 - (3) acts reasonably, depending on the nature of the situation.

- f. Considers the right of certain organizations to prohibit permit-holders from possessing a firearm, for example:
 - (1) employers; and
 - (2) law enforcement agencies.

Commentary

In 2006, Michigan enacted a series of statutes that address the "duty to retreat" by civilians. MCL 780.971 through 780.974 must be reviewed for a complete understanding of the provisions of the CCW law.

Introduction

This particular performance standard involves shooting the active-duty firearms course of fire for the demonstration of skills proficiency.

Performance Standard #8

Demonstrate Proficiency on the MCOLES Course of Fire for Active Law Enforcement Officers.

- a. Demonstrates competency with the MCOLES active-duty firearms course of fire.
- b. Demonstrates compliance with departmental range safety rules:
 - (1) obeys all commands immediately;
 - (2) points the weapon down range when loading or unloading;
 - (3) places finger in the trigger guard only when intending to pull the trigger;
 - (4) handles weapon on the range only at the direction of the instructor;
 - (5) secures firearm properly before scoring the target; and
 - (6) observes "cease fire" command.

Commentary

Michigan subject-matter-experts created a list of concepts they believed should be incorporated into an active-duty firearms standard. This list was supported by the national research of actual officer-involved-shootings, is consistent with progressive firearms training nationwide, and is intended to help prepare officers to survive life threatening encounters. Many of these training concepts are incorporated into this minimum standard, which includes multiple targets, multiple distances, use of cover, close range shooting, mandatory combat reload, appropriate handling of stoppages, shooting from different cover positions, shooting with the support hand only, discussions on deadly force issues, and decision making.

The course of fire is on the following page.

ACTIVE DUTY FIREARMS STANDARD - COURSE OF FIRE

2-YARD STAGE (One Target, 6 Rounds)					
Distance	Time	Target	Rounds	Position	Desired Competency
2 Yards	3 Seconds per target exposure	TCQ-95 or similar target with combat scoring area dimensions equal to a TCQ-95 (1 target)	6	Exposure 1: From the holster, draw and fire 2 rounds. Exposure 2: From the holster, draw and fire 2 rounds. Exposure 3: From the holster, draw and fire 2 rounds.	All 6 rounds within the combat scoring area.

3-YARD STAGE (Two Targets, 6 Rounds)					
Distance	Time	Target	Rounds	Position	Desired Competency
3 Yards	4 Seconds per target exposure	TCQ-95 or similar target with combat scoring area dimensions equal to a TCQ-95 (2 targets, approx. 3 feet apart)	6	Exposure 1: From the holster, draw and fire 1 round at each target. Exposure 2: From the ready position, fire 1 round at each target. Exposure 3: With the handgun in the <u>support hand only</u> , fire 1 round at each target.	All 6 rounds within the combat scoring area.

4 / 7-YARD STAGE (Two Targets, 10 Rounds)					
Distance	Time	Target	Rounds	Position	Desired Competency
4 Yards (one target) and 7 Yards (one target)	4 Seconds per 2 shot target exposure 6 Seconds per 4 shot target exposure	TCQ-95 or similar target with combat scoring area dimensions equal to a TCQ-95 (2 targets)	10	Shooter chooses different cover position on each exposure. Exposure 1: From the holster, fire 1 round at each target (4 sec). Exposure 2: From the ready position, fire 2 rounds at each target (6 sec). Exposure 3: From the ready position, fire 2 rounds at each target (6 sec).	All 10 rounds within the combat scoring area.

10-YARD STAGE (One Target, 3 Rounds)					
Distance	Time	Target	Rounds	Position	Desired Competency
10 Yards	60 Seconds	TCQ-95 or similar target (1 target)	3	Slow, sighted fire, emphasizing precision bullet placement (marksmanship).	All 3 rounds within the combat scoring area.

Active Duty Firearms Standard - Course of Fire (continued)

Commentary

At least one combat reload (from behind cover if practicable) is required during the course of fire. Each agency has full discretion in determining when this combat reload will occur in the course of fire.

Additional time is allowed for shooters to appropriately handle weapon failure and/or stoppages. In other words, shooters shall not be penalized for going over the allotted time if they had to reload or clear a stoppage during the exposure. The objective is for the shooter to make the weapon functional again (from behind cover if practicable) and re-engage the deadly threat.

Shooters shall scan for additional threats and maintain a position of advantage after every exposure. Although range safety must be maintained (i.e., weapon must remain pointed in a safe direction), realistic "360 degree" visual scanning is recommended.

Utilizing close-quarter-combat shooting tactics and techniques during the 2-yard and 3-yard stages of fire are recommended.

Although this component of the standard is intended to assess firearms proficiency with the primary duty weapon, MCOLES recommends that officers are trained and assessed in all weapons they carry on duty.