

FIREARMS INSTRUCTOR'S MANUAL REVIEW

A Review of the Firearms Instructor's Manual presented by the Florida Department of Agriculture and Consumer Services, Division of Licensing as conducted by the Florida Association of Security Companies

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I EXECUTIVE SUMMARY

We review here the Firearms Instructor's Manual of January 2014, published and incorporated into rule on May 27, 2014. We present our observations and trust the Department will give them fair consideration in future iterations of the Manual.

The manual appears to be part instructional manual, part reference material, and part rule. In its role as an instructional manual, the material presented may not be ideally balanced to minimize threats to the welfare of the public. Where it serves as a reference manual, it may offer more than it should. Particularly where it presents rule or is to be incorporated into rule, it attempts too much. Well-meaning instructional guidelines are not well suited as provisions of rule and may exceed rulemaking authority. In some cases policy statements are made that may exceed rulemaking authority or are better made through proper rulemaking. Not including appropriate attributions for source material may be unethical and leave the Department open to difficult questions about why those materials were included.

We offer numerous recommendations to be considered for this manual and for the next. We also offer recommendations for longer-term consideration in future manuals.

II BACKGROUND AND INTRODUCTION

Florida regulates Private Investigators and Security Officers under § 493 Fla. Stat. in order to protect the welfare of the public.¹ Sections of that statute require certain licensure to carry a firearm² while in the performance of regulated duties. Other sections identify training requirements to obtain³ and retain⁴ such licensure. In addition to being charged with developing "minimum training criteria" for Class 'G' licensure by rule,⁵ the Department of Agriculture and Consumer Services ("Department") has the authority to make rules necessary to administer § 493 Fla. Stat.⁶ Rulemaking is subject to constraints included in § 493 Fla. Stat.⁷ and § 120 Fla. Stat., the Administrative Procedures Act.

The Department has exercised its rulemaking authority and promulgated rules identifying training requirements to obtain and retain referenced licensure.⁸ Those training requirements are expressed in the Firearms Instructor's Training Manual ("Manual"), most recently revised in January of 2014.⁹ This Manual was published and incorporated into rule, on May 21, 2014.¹⁰

We understand the most recent version of the Manual to be the product of a project begun by the Department more than a year ago. The Department then recognized the previous manual was obsolete and sought to revise it to be more up to date. We also understand the January 2014 version of the Manual to be an operating draft. That is, though incorporated into rule and in effect at present, this version is not anticipated to be a final version.

While we recognize the Manual was revised by a team of Department personnel and firearms instructors appropriately licensed under § 493 Fla. Stat., we conduct our review from the perspective of agency owners and operators. Among other interests, agency owners and operators have an interest in ensuring the training standards reflected in the Manual do not create additional regulatory burdens beyond those specifically authorized by the provisions of § 493 Fla. Stat.,¹¹ do not

¹ § 493.6100 Fla. Stat. explains why the Legislature has assumed this authority and reads, "The Legislature recognizes that the private security, investigative, and recovery industries are rapidly expanding fields that require regulation to ensure that the interests of the public will be adequately served and protected. The Legislature recognizes that untrained persons, unlicensed persons or businesses, or persons who are not of good moral character engaged in the private security, investigative, and recovery industries are a threat to the welfare of the public if placed in positions of trust. Regulation of licensed and unlicensed persons and businesses engaged in these fields is therefore deemed necessary."

² § 493.6115(2) Fla. Stat. reads in material part, "Only Class "C," Class "CC," Class "D," Class "M," Class "MA," or Class "MB" licensees are permitted to bear a firearm and any such licensee who bears a firearm shall also have a Class "G" license."

³ § 493.6105(5) Fla. Stat. reads in material part, "... an applicant for a Class "G" license must satisfy minimum training criteria for firearms established by rule of the department, which training criteria includes, but is not limited to, 28 hours of range and classroom training taught and administered by a Class "K" licensee; however, no more than 8 hours of such training shall consist of range training."

⁴ § 493.6113(1) Fla. Stat. reads in material part, "A license granted under the provisions of this chapter shall be renewed biennially by the department." § 493.6113(1) Fla. Stat. later reads in material part, "Each Class "G" licensee shall additionally submit proof that he or she has received during each year of the license period a minimum of 4 hours of firearms recertification training taught by a Class "K" licensee and has complied with such other health and training requirements that the department shall adopt by rule."

⁵ See § 493.6105(5) Fla. Stat.

⁶ § 493.6103 Fla. Stat. reads in material part, "The [Department] shall adopt rules necessary to administer this chapter."

⁷ § 493.6103 Fla. Stat. reads in material part, "No rule shall be adopted that unreasonably restricts competition or the availability of services requiring licensure pursuant to this chapter or that unnecessarily increases the cost of such services without a corresponding or equivalent public benefit."

⁸ See Fla. Admin. Code R. 5N-1.134.

⁹ Firearms Instructor's Training Manual, FDACS P-01850, revised 01/14.

¹⁰ <http://www.flrules.org/gateway/ruleno.asp?id=5N-1.134&Section=0> as of December 15, 2014.

¹¹ See § 120.536(1) Fla. Stat. which reads, "A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute."

impose unnecessary costs,¹² and do not unreasonably restrict competition or availability of services.¹³ Additionally, as agency owners and operators may be held liable for the actions of those in their employ, they have an important interest in ensuring the training standards reflected in the Manual support their interests in mitigating any such exposure sufficiently. Though it is arguable whether the standards published by the Department represent the minimum to ensure the public is sufficiently protected¹⁴ and that agency owners and operators are not prohibited from imposing greater standards to mitigate any exposure they may perceive, agency owners and operators retain ultimate responsibility for any such liability. The Department, its personnel, and the firearms instructors who developed the training standards have no such exposure. As such, agency owners and operators, collectively, should have an important voice in establishing training standards, and certainly so in what genuinely constitutes "minimum" training standards.

We review here the Manual of January 2014, published and incorporated into rule on May 27, 2014. We also received a later draft version of the Manual in November 2014 that has not been published as of this writing. This draft ("Draft Manual") was represented to be a working version of the next iteration of the Manual. While most of our focus here is on the Manual, as actually published in rule at the time of this review, the Draft Manual is referenced from time to time. We present our observations here and trust the Department will give them fair consideration in future iterations of the Manual.

III OBSERVATIONS AND FINDINGS

For ease of reference, we grouped our observations into six sections. In the first section, titled "Philosophical Paradigm," we present what we believe should be the overarching philosophy of the Manual. In the second section, titled "Content Focus," we propose the material presented in the Manual may better serve the goals of minimizing threats to the welfare of the public and mitigating liability exposures if balanced a bit differently. In the third section, titled "Information Economy," we submit a great deal of information or detail is presented in the Manual that might better be economized through appeals to standards published by outside recognized bodies. In the fourth section, titled "Florida's Administrative Procedures Act," we caution, without presenting a legal opinion, that certain provisions of the Manual might exceed the rulemaking authority of the Department. In the fifth section, titled "Sourcing and Citations," we suggest facts and fact claims made in the Manual be sourced or cited according to some recognized academic standard. In the last section, titled "Other Observations," we present observations that do not fit neatly into the other categories but still warrant consideration.

1: Philosophical Paradigm

§ 493.6105(5) Fla. Stat. requires that "an applicant for a Class 'G' license must satisfy minimum training criteria for firearms established by rule of the department." The term 'minimum training criteria' is not specifically defined, though the plain language of the clause appears to leave it to rule as may be established by the Department. Given the constraints of § 493.6103 Fla. Stat. and § 120 Fla. Stat. we believe it appropriate for the Department to interpret the term 'minimum training criteria' very conservatively and limit the training it requires to the absolute minimum necessary to minimize any reasonable threat to the welfare of the public by a Class 'G' licensee carrying a firearm while on duty.

We are aware of several topics proposed for inclusion in the Manual during its development (e.g. low light shooting, off hand shooting, combat action drills, etc.) that ultimately were rejected (though they appear again in the Draft Manual¹⁵ as optional training topics to fill any time that may remain after annual recertification¹⁶). While excellent arguments may be offered as to why anyone who carries a firearm should receive this type of training, many of these ideas exceed the conceptual scope of

¹² See § 120.54(1)(d) Fla. Stat. which reads, "In adopting rules, all agencies must, among the alternative approaches to any regulatory objective and to the extent allowed by law, choose the alternative that does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives."

¹³ See § 493.6103 Fla. Stat.

¹⁴ Consider § 493.6100 Fla. Stat.

¹⁵ Draft Firearms Instructor's Training Manual; p3-4

¹⁶ See § 493.6113(1) Fla. Stat.

"minimum training criteria." For example, we do not believe the Manual should be expected to support a program in precision marksmanship to create a competitive shooter, combat shooting to create a gunfighter, or the finer points in criminal or civil law to create an expert in the use of force. Rather, we believe the nature of the Manual should be limited only to that necessary to support an instructor in providing a program sufficient to assess basic safety and competency with a firearm, the minimum necessary to minimize any reasonable threat to the welfare of the public.¹⁷ Anything beyond that rightfully should be reserved to the Class 'G' licensee or his employing agency.

While we appreciate the Department's restraint in limiting the Manual only to basic material, we encourage the Department to consider using the Manual as a forum to encourage further, ongoing training and learning. That is, the tone of the Manual should be such that ongoing training and learning is encouraged and promoted, perhaps even with suggestions as to additional topics or even resources for such training. Or, more correctly, the tone of the Manual should urge the instructor to encourage and promote such ongoing training and learning.

2: Content Focus

Balance of Material

The Manual is 174 pages in length. Page space is devoted to the seven sections of the Manual as follows:

Section	Title	Pages	Percentage
Intro	Forward	2	1.15%
I	Legal Aspects of the Use of Firearms	78	44.83%
II	Operational Firearms Safety	7	4.02%
III	Firearms Mechanical Training	23	13.22%
IV	Firearms Qualification	31	17.82%
V	Annual Firearms Qualification and Requalification Training	3	1.72%
VI	Annual Shotgun Requalification	14	8.05%
VII	Appendices	16	9.20%
		<u>174</u>	

If we discount the introduction, section title pages, sections solely on qualification, and the appendices to consider only the 105 pages of instructional material that remain:

Section	Title	Pages	Percentage
I	Legal Aspects of the Use of Firearms	77	73.33%
II	Operational Firearms Safety	6	5.71%
III	Firearms Mechanical Training	22	20.95%
		<u>105</u>	

While we do not believe the number of pages devoted to one topic over another is a conclusive metric for the relative importance of any of those topics, it may be indicative. This suggests 73.33% of the material is devoted to legal issues while 26.67% is devoted to safety and functioning.

Where § 493.6105(5) Fla. Stat. mandates 28 hours of range and classroom training as part of initial qualification,¹⁸ the Manual calls for that time to be used as follows:¹⁹

Section	Title	Hours	Percentage
I	Legal Aspects of the Use of Firearms	12	42.86%
II	Operational Firearms Safety	4	14.29%

¹⁷ See § 493.6100 Fla. Stat.

¹⁸ § 493.6105(5) Fla. Stat. reads in material part, "... an applicant for a Class "G" license must satisfy minimum training criteria for firearms established by rule of the department, which training criteria includes, but is not limited to, 28 hours of range and classroom training taught and administered by a Class "K" licensee; however, no more than 8 hours of such training shall consist of range training."

¹⁹ Firearms Instructor's Training Manual; p159-166

III	Firearms Mechanical Training	3	10.71%
IV	Firearms Qualification	8	28.57%
Exam		<u>1</u>	3.57%
		28	

Discounting the qualification and considering only the classroom or instructional time:²⁰

Section	Title	Hours	Percentage
I	Legal Aspects of the Use of Firearms	12	60.00%
II	Operational Firearms Safety	4	20.00%
III	Firearms Mechanical Training	3	15.00%
Exam		<u>1</u>	5.00%
		20	

Though we noted above that we do not believe the number of pages devoted to one topic over another is a conclusive metric for the relative importance of any of those topics, the amount of time devoted to one topic over another surely is. In concert, these two tables suggest the area the Department believes to be of greatest import is the "legal aspects of the use of firearms," devoting 73% of page space and 60% of time to that topic alone. "Operational firearms safety" and "firearms mechanical training" compose only 27% of space or 35% of time.

We recognize the carrying or use of a firearm, whether as a duty weapon, as a personal defense weapon, or for other lawful purposes, is a grave responsibility and one our society does not take lightly. We believe it is the responsibility of the Class 'G' licensee to know and understand his legal rights and obligations with regard to the carrying or use of his firearm while on duty. As such, we support the significantly greater emphasis in the Manual on "legal aspects of the use of firearms" in general. Indeed, as far as concerns about threats to the welfare of the public or our liability concerns go, we believe it is much more important that a security officer understand legal constraints around the carrying and use of a firearm than particular nomenclature or details about mechanical functions.²¹

However, the Manual devotes page space to subtopics in the section titled "Legal Aspects of the Use of Firearms" as follows:

Title	Pages	Percentage ²²
§ 493 Fla. Stat. <i>Private Investigative, Private Security, and Repossession Services</i>	8	10.39%
§ 775 Fla. Stat. <i>Definitions; General Penalties; Registration of Criminals</i>	7	9.09%
§ 776 Fla. Stat. <i>Justifiable Use of Force</i>	2	2.60%
§ 790 Fla. Stat. <i>Weapons and Firearms</i>	48	62.34%
Civil and Criminal Liability	12	15.58%

The sections on statutes contain excerpts from the referenced statutes.²³ The section on civil and criminal liability contains explanations of related concepts and twelve case studies. We understand the sections on statutes have been removed from the Draft Manual with the expectation the Department will publish those as annual supplements instead.²⁴ The annual

²⁰ We do not suggest here that no instruction occurs during the qualification. We discount this time only to arrive at some figure to represent "pure" instructional time for use in assessing how topics are balanced overall.

²¹ We are not aware of any instance where the public or any agency was at greater risk because a security officer did not know the "proper" name of this or that part, for example.

²² This count does not show the one cover page for this section, which amounts to 1.28% of the page count.

²³ We presume these excerpts are those believed by the Department to be most important in this context.

²⁴ This concept seems to be supported by § 493.6115(11) Fla. Stat., which reads, "The [Department] may establish rules to require periodic classroom training for firearms instructors to provide updated information relative to curriculum or other training requirements provided by statute or rule."

supplements will include the most current versions of the referenced statutes, thus alleviating any concerns that the Manual may become obsolete as soon as any given statute may be revised. In that the Manual contains no instruction on the provisions of Fla. Admin. Code R. 5N-1.130, which clarifies § 493.6115 Fla. Stat., we trust that will be provided with the annual supplements.

Though the pages are expected to be removed, the Manual calls for time to be allocated to these subtopics during the 28-hour initial qualification as follows:

Title	Hours	Percentage
§ 493 Fla. Stat. <i>Private Investigative, Private Security, and Repossession Services</i>	5	41.67%
§ 775 Fla. Stat. <i>Definitions; General Penalties; Registration of Criminals</i>	1	8.33%
§ 776 Fla. Stat. <i>Justifiable Use of Force</i>	1	8.33%
§ 790 Fla. Stat. <i>Weapons and Firearms</i>	2	16.67%
Civil and Criminal Liability	3	25.00%

If how time is allocated is indeed an indication of what is more or less important, one might reasonably conclude the Department believes an understanding of § 493 Fla. Stat. is significantly more important than an understanding of § 776 Fla. Stat. or § 790 Fla. Stat. We believe this is the reverse of what it should be. If the overall intent is to minimize any threat to the welfare of the public,²⁵ we believe an understanding of when force may be justified to be of much greater importance. For example, an improper application of force, indeed of deadly force, is a much greater threat to the welfare of the public and causes a much greater liability exposure to any Class 'G' licensee or employing agency, as far as the carrying or use of firearms goes, than an expired Class 'G' license,²⁶ a Class 'G' license left at home,²⁷ or a Class 'G' licensee not completing recertification training in a timely manner.²⁸ Indeed, the Manual seems to agree with this notion in its forward, reading,

*"Security officers and private investigators that carry firearms while performing duties that are regulated by law bear a tremendous responsibility. They must not only be technically proficient in the use of the firearm they are carrying; they must also be intimately familiar with the rights and responsibilities that apply in connection with the carrying and use of a firearm by a licensed professional. Perhaps even most importantly, they must have [sic] thorough understanding of the restrictions concerning the use of a firearm in lawful self-defense."*²⁹ [emphasis added]

As noted above, the Manual contains twelve case studies. We believe case studies to be excellent teaching tools and support their use. The case studies in the Manual appear effective in that they present interesting scenarios and thought-provoking talking points for discussion. However, where the Manual contains only twelve case studies, and suggests the instructor "use as many examples as time will allow,"³⁰ we believe scenarios should be emphasized throughout. If the greatest threat to the welfare of the public lies in an improper application of force, we believe it paramount that any instruction on carrying a firearm for duty use should be heavily balanced in favor of critical thinking in "shoot, don't shoot" scenarios. That is, case studies around "shoot, don't shoot" scenarios should have a much greater emphasis than to "use as many examples as time will allow" in the last part of a section that comprises only three of the twenty total instructional hours (15%) in the course.

²⁵ § 493.6100 Fla. Stat.

²⁶ § 493.6118(g) Fla. Stat.

²⁷ § 493.6118(q) Fla. Stat.

²⁸ § 493.6118(u) Fla. Stat.

²⁹ Firearms Instructor's Training Manual; p2

³⁰ Firearms Instructor's Training Manual; p75

We propose the material in the Manual be rebalanced to place a heavy emphasis on justifiable use of force through "shoot, don't shoot" instruction and scenarios, where the greatest threat to the welfare of the public lies. The remaining material, which is also important, may be presented in that context or as supplemental to it. The Draft Manual attempts some such rebalancing, but that appears to be in favor of more time to be spent on "operational firearms safety," "firearms mechanical training," range commands, and practical exercises instead of justifiable use of force.³¹

3: Information Economy

As noted in the previous section, the instructional portion of the Manual (discounting the introduction, section title pages, sections solely on qualification, and the appendices) is 105 pages in length with page space devoted to the three sections therein as follows:

Section	Title	Pages	Percentage
I	Legal Aspects of the Use of Firearms	77	73.33%
II	Operational Firearms Safety	6	5.71%
III	Firearms Mechanical Training	22	20.95%
		<u>105</u>	

The substance of the material currently contained within the 28 pages of the "Operational Firearms Safety" and "Firearms Mechanical Training" sections likely is well known among those significantly experienced with firearms. § 493.6105(6) Fla. Stat. imposes requirements suggesting an instructor already should have some certification as proof of significant experience with firearms as a prerequisite to being an instructor.³² Thus, an instructor already should be very familiar with this material, such that a detailed presentation of it in the Manual may not be necessary. Additionally, the substance of the material currently contained within the "Operational Firearms Safety" and "Firearms Mechanical Training" sections is well documented or illustrated in other reputable sources. These sources, in that they specialize in firearms and related training, very likely maintain and represent the most current thinking in those areas. Rather than use page space in the Manual to cover these topics, we suggest the Department identify a select few reputable outside resources³³ and offer those as options for instructor references. This would economize page space in the Manual and ensure the material actually being presented is the most up to date. Another consideration is that whenever a "standard practice" is changed in any way, the Manual would be rendered obsolete, but referring to outside sources for this material, which largely is academic in this context, saves the Department from the burden of keeping itself up to date on current thinking with regard to firearms functioning and safety and ensures the material remains constantly fresh and relevant.³⁴

Ensuring the material presented is fresh and relevant, or in line with current thinking, is more than a matter of economy of space or procedural convenience. It is absolutely essential to minimize liability exposures to the Class 'G' licensee, the employing agency, and the instructor. Surely, the public expects those licensed in its name to carry firearms in the course of their duties also to have been trained according to the most up to date standards and methods, or at the very least not to have

³¹ Draft Firearms Instructor's Training Manual; p3-4

³² § 493.6105(6) Fla. Stat. requires,

In addition to the requirements under subsection (3), an applicant for a Class "K" license must:

(a) Submit one of the following:

1. The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms certification.

2. The National Rifle Association Private Security Firearm Instructor Certificate.

3. A firearms instructor certificate issued by a federal law enforcement agency.

(b) Pay the fee for and pass an examination administered by the department which shall be based upon, but is not necessarily limited to, a firearms instruction manual provided by the department.

³³ For example, the National Rifle Association ("NRA") publishes a voluminous amount of material, including training material, about the operation of firearms and the safe handling of firearms.

³⁴ Putting something into the Manual, in that it eventually becomes incorporated into rule, has the proverbial effect of writing it in stone. Once in the Manual, it cannot be changed except through rulemaking. Material that may change from time to time, faster or more fluidly than rulemaking may allow, should not be included. As a governing concept, we do not believe anything should be included in the manual except that which must be written in stone. Any other desired material should be referenced in some other way.

been trained according to standards the experts elsewhere in the field consider to be obsolete. Any time the firearm use of a Class 'G' licensee is called into question and he relies on a claim that his actions were consistent with his training, as provided by the Department via the Manual, which is incorporated into rule, and it is determined the standards in that training are out of date, the credibility of the Department rightfully may be called into question as well.

While it may seem a courtesy to Class 'K' licensees to provide this material in the Manual and save them the burden of obtaining it through those other resources, we believe the interest in ensuring the material remains current and relevant to outweigh any concerns about such inconvenience.

4: Florida's Administrative Procedures Act

Where the Manual is incorporated into rule, it must comport with the law on rulemaking. Rulemaking is subject to constraints included in § 493 Fla. Stat.³⁵ and § 120 Fla. Stat., the Administrative Procedures Act. The Department has the authority to make rule "necessary to administer" § 493 Fla. Stat.³⁶ However, the Department "may adopt only rules that implement or interpret the specific powers and duties granted by [§ 493 Fla. Stat.]. [The Department does not] have authority to adopt a rule only because it is reasonably related to the purpose of [§ 493 Fla. Stat.] and is not arbitrary and capricious or is within [the Department's] class of powers and duties, nor [does the Department] have the authority to implement statutory provisions setting forth general legislative intent or policy."³⁷ We encourage the Department to consider very carefully the provisions of the Manual and how they compare to these constraints.

Consider the following examples:

Excessive Detail

Overall, we note an incredible level of granular detail presented in the sections on "Operational Firearms Safety" and "Firearms Mechanical Training," covering everything from nomenclature³⁸ to holster selection and care,³⁹ to proper cleaning tools and how much oil to apply.⁴⁰ Though much of this appears to be standard firearms care, its presence in the Manual suggests it is incorporated into rule. Though the Department is granted rulemaking authority under § 493.6103 Fla. Stat.,⁴¹ we do not believe this level of detail is "necessary to administer" § 493 Fla. Stat.⁴² As such, this may exceed the rulemaking authority of the Department, contrary to the provisions of § 120.536 Fla. Stat.^{43,44}

³⁵ § 493.6103 Fla. Stat. reads, "The [Department] shall adopt rules necessary to administer this chapter. However, no rule shall be adopted that unreasonably restricts competition or the availability of services requiring licensure pursuant to this chapter or that unnecessarily increases the cost of such services without a corresponding or equivalent public benefit."

³⁶ § 493.6103 Fla. Stat. reads in material part, "The [Department] shall adopt rules necessary to administer this chapter."

³⁷ § 120.536 Fla. Stat.

³⁸ Firearms Instructor's Training Manual; p90, 98

³⁹ Firearms Instructor's Training Manual; pp85-87

⁴⁰ Firearms Instructor's Training Manual; pp92-93, 108

⁴¹ § 493.6103 Fla. Stat. reads in material part, "The [Department] shall adopt rules necessary to administer this chapter."

⁴² § 493.6103 Fla. Stat. reads in material part, "The [Department] shall adopt rules **necessary to administer this chapter.**" [emphasis added]

⁴³ § 120.536 Fla. Stat. reads, "A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute."

⁴⁴ We previously argued that much of this material be omitted from the Manual itself as a matter of economy.

Warning Shots

We suggest considering carefully where the Manual reads,

"IT IS THE POLICY OF THE DIVISION OF LICENSING THAT THE DISCHARGE OF THE FIREARM FOR WARNING PURPOSES IS NOT JUSTIFIABLE UNDER ANY CIRCUMSTANCE.

"LICENSEES DISCHARGING THEIR FIREARMS WHILE ON DUTY IN VIOLATION OF THE LAWS OF THE STATE AND THE POLICIES OF THE DIVISION WILL BE DISCIPLINED PURSUANT TO THE DIVISION'S DISCIPLINARY GUIDELINES IN RULE 5N-1.113, F.A.C."⁴⁵

Though the Department is granted rulemaking authority under § 493.6103 Fla. Stat.,⁴⁶ the actual use of a firearm, other than for training purposes, is not addressed in any of the provisions of § 493 Fla. Stat. except one which imposes reporting requirements for any such use.⁴⁷ As such, we do not believe any rule on how a firearm may be used while on duty is "necessary to administer" § 493 Fla. Stat.⁴⁸ This may exceed the rulemaking authority of the Department, contrary to the provisions of § 120.536 Fla. Stat.⁴⁹ Additionally, the actual use of a firearm to fire a "warning shot" likely falls under provisions of § 776 Fla. Stat. or § 790 Fla. Stat., neither of which are within the Department's purview for rulemaking. This policy statement does not appear in the Draft Manual.

Duty Holsters

We suggest considering carefully where the Manual reads, "Duty holsters are required to have a snap that will remain securely fastened until it is necessary to draw the handgun."⁵⁰ Considering the variety of quality holsters available on the market today, imposing a requirement that a duty holster "have a snap" may be arbitrary and capricious. Though the Department is granted rulemaking authority under § 493.6103 Fla. Stat.,⁵¹ we do not believe this type of specificity is "necessary to administer" § 493 Fla. Stat.⁵² As such, this may exceed the rulemaking authority of the Department, contrary to the provisions of § 120.536 Fla. Stat.⁵³ Additionally, to the extent that fewer and fewer holsters, particularly for semi-automatic pistols, are being made with a snap closure, this requirement may increase costs to the Class 'G' licensee who provides his own duty gear or to his employing agency if they issue duty gear to him, contrary to the limitation on the Department's rulemaking authority in § 493.6103 Fla. Stat.⁵⁴

Range Protocols and Commands

We suggest considering carefully where the Manual presents range protocols such as safety and commands.⁵⁵ Though these protocols appear to make sense on their face, their presence in the Manual suggests they are

⁴⁵ Firearms Instructor's Training Manual; p20, 73

⁴⁶ § 493.6103 Fla. Stat. reads in material part, "The [Department] shall adopt rules necessary to administer this chapter."

⁴⁷ See § 493.6115(9) Fla. Stat.

⁴⁸ § 493.6103 Fla. Stat. reads in material part, "The [Department] shall adopt rules **necessary to administer this chapter.**" [emphasis added]

⁴⁹ See § 120.536 Fla. Stat.

⁵⁰ Firearms Instructor's Training Manual; p86

⁵¹ § 493.6103 Fla. Stat. reads in material part, "The [Department] shall adopt rules necessary to administer this chapter."

⁵² § 493.6103 Fla. Stat. reads in material part, "The [Department] shall adopt rules **necessary to administer this chapter.**" [emphasis added]

⁵³ See § 120.536 Fla. Stat.

⁵⁴ § 120.536 Fla. Stat. reads in material part, "no rule shall be adopted that unreasonably restricts competition or the availability of services requiring licensure pursuant to this chapter or that unnecessarily increases the cost of such services without a corresponding or equivalent public benefit."

⁵⁵ Firearms Instructor's Training Manual; p129-133

incorporated into rule. However, ranges often are operated by various parties, public or private. They often have their own protocols and, for legitimate reasons related to mitigating their own liability exposures, require all users to follow them. Though the Department is granted rulemaking authority under § 493.6103 Fla. Stat.,⁵⁶ we do not believe this type of specificity is "necessary to administer" § 493 Fla. Stat.⁵⁷ As such, this may exceed the rulemaking authority of the Department, contrary to the provisions of § 120.536 Fla. Stat.⁵⁸ Additionally, to the extent that the Class 'K' and Class 'G' licensee (or Class 'G' license applicant) may be prohibited by a given range from using any protocols other than their own or prohibited from using that range at all if they insist on using the protocols in the Manual, this may restrict the availability of services unreasonably, contrary to the apparent limitation on the Department's rulemaking authority in § 493.6103 Fla. Stat.⁵⁹

Instructor to Student Ratios

We suggest considering carefully where the Manual imposes an instructor to student ratio of 1:6.⁶⁰ While arguments may be made for greater or lesser such ratios, the decision about what ratio to adopt rightfully belongs to the range being used or the instructor. The duty to care rests solely on them, as does all exposure in the event of any mishap or loss. Though the Department is granted rulemaking authority under § 493.6103 Fla. Stat.,⁶¹ we do not believe this level of detail is "necessary to administer" § 493 Fla. Stat.⁶² As such, this may exceed the rulemaking authority of the Department, contrary to the provisions of § 120.536 Fla. Stat.⁶³

Movement while Shooting

We suggest considering carefully where the Manual requires shooting and reloading from behind a barricade, reading,

"On command, move to cover, smooth draw, assume the TWO HAND HIGH POINT position and fire (3) rounds in first target, (3) rounds in second target, reload, fire (3) rounds in first target, (3) in second target in 45 seconds. Reload, continue to cover target.

"On command, holster weapon. (Position behind cover will be optional to shooter - kneeling or standing.)"⁶⁴

As described, this implies movement and manipulation of a loaded firearm from the firing line to behind a barricade and back to the firing line again. While arguments may be made about the wisdom and safety concerns of incorporating movement into a basic firearms qualification course, movement on a live range may be subject to more restrictive range protocols and may even be prohibited. Though the Department is granted rulemaking authority under § 493.6103 Fla. Stat.,⁶⁵ we believe movement with a firearm is an advanced skill beyond the concept

⁵⁶ § 493.6103 Fla. Stat. reads in material part, "The [Department] shall adopt rules necessary to administer this chapter."

⁵⁷ § 493.6103 Fla. Stat. reads in material part, "The [Department] shall adopt rules **necessary to administer this chapter.**" [emphasis added]

⁵⁸ See § 120.536 Fla. Stat.

⁵⁹ § 120.536 Fla. Stat. reads in material part, "no rule shall be adopted that unreasonably restricts competition or the availability of services requiring licensure pursuant to this chapter or that unnecessarily increases the cost of such services without a corresponding or equivalent public benefit."

⁶⁰ Firearms Instructor's Training Manual; p134

⁶¹ § 493.6103 Fla. Stat. reads in material part, "The [Department] shall adopt rules necessary to administer this chapter."

⁶² § 493.6103 Fla. Stat. reads in material part, "The [Department] shall adopt rules **necessary to administer this chapter.**" [emphasis added]

⁶³ See § 120.536 Fla. Stat.

⁶⁴ Firearms Instructor's Training Manual; p136

⁶⁵ § 493.6103 Fla. Stat. reads in material part, "The [Department] shall adopt rules necessary to administer this chapter."

of "minimum training criteria"⁶⁶ and not "necessary to administer" § 493 Fla. Stat.⁶⁷ As such, this may exceed the rulemaking authority of the Department, contrary to the provisions of § 120.536 Fla. Stat.⁶⁸ Additionally, to the extent that the Class 'K' and Class 'G' licensee (or Class 'G' license applicant) may be prohibited by a given range from engaging in such movement, this may restrict the availability of services unreasonably, contrary to the apparent limitation on the Department's rulemaking authority in § 493.6103 Fla. Stat.⁶⁹

It is not our role to offer a legal opinion on any of the provisions of the Manual. The examples provided here are examples only, and are not exhaustive. However, to avoid any confusion, we encourage the Department to consider very carefully and critically any provisions where it posits a policy, position, or a requirement to ensure it correctly falls within the Department's rulemaking authority. Additionally, wherever a policy or position is stated, or whenever a requirement is imposed, we encourage the Department to identify very clearly its authority to make such a policy or position statement or impose such a requirement.

5: Sourcing and Citations

We noticed several fact claims or opinions made in various places within the Manual that we believe deserve attribution through some sort of source citation. "Ethics, copyright laws, and courtesy to readers require authors to identify the sources of direct quotations or paraphrases and of any facts or opinions not generally known or easily checked."⁷⁰ Additionally, we noticed several terms or references that may warrant definition or further explanation that may be provided through an appropriate footnote or other such citation. Effective citation minimizes confusion for the reader and can support the Department's position should any of the fact claims, opinions, terms, or references be called into question later.

Consider the following examples:

The insert references to the "Police Reference Notebook" and the "Police Firearms Instructor's Manual" on page 1 cites sources as published in 1970 and 1968, respectively. We suggest these be updated and referenced in a proper bibliography, with appropriate citations where material from them is used. Additionally, the "additional materials" referenced as used from the Federal Bureau of Investigation and the Lively Law Enforcement Academy also should be referenced in a proper bibliography, with appropriate citations where material from them is used.⁷¹

The sections listed in the table immediately below include opinions, often presented as fact claims, about safety rules,⁷² the proper wearing and storage of a firearm,⁷³ safety rules for firing a handgun,⁷⁴ safety standards,⁷⁵ operational standards,⁷⁶ how to select and care for a holster,⁷⁷ advantages or disadvantages of different types of

⁶⁶ See § 493.6105(5) Fla. Stat

⁶⁷ § 493.6103 Fla. Stat. reads in material part, "The [Department] shall adopt rules **necessary to administer this chapter.**" [emphasis added]

⁶⁸ See § 120.536 Fla. Stat.

⁶⁹ § 120.536 Fla. Stat. reads in material part, "no rule shall be adopted that unreasonably restricts competition or the availability of services requiring licensure pursuant to this chapter or that unnecessarily increases the cost of such services without a corresponding or equivalent public benefit."

⁷⁰ *The Chicago Manual of Style*; p655

⁷¹ Firearms Instructor's Training Manual; p1

⁷² Firearms Instructor's Training Manual; pp82-83, 152

⁷³ Firearms Instructor's Training Manual; pp83-84, 85

⁷⁴ Firearms Instructor's Training Manual; p84

⁷⁵ Firearms Instructor's Training Manual; p85

⁷⁶ Firearms Instructor's Training Manual; p85

⁷⁷ Firearms Instructor's Training Manual; p86

holsters,⁷⁸ the advantages of one type of firearm over another,⁷⁹ and so on. These opinion statements should include appropriate citations to identify source material.

Page	Section
82-87	Operational Firearms Safety
88-108	Firearms Mechanical Training
109-110	Firearms Division Advantages and Disadvantages of Revolvers vs Semi-Automatic Pistols

Several illustrations are used in the Manual, depicting firearms and nomenclature,⁸⁰ shooting stances,⁸¹ or proper grip and draw.⁸² These artistic works should include appropriate citations to identify source material.

Specific targets are identified for use in qualification.⁸³ Unless these are indeed standard and common target identifiers, they should be identified in detail, perhaps through a footnote or endnote. It also may be useful to identify where the Class 'K' licensee may obtain these targets for use.

The various stages of the courses of fire prescribed in the Manual include "Objective" and "Procedure" clauses to identify what skill is being assessed at each stage. We support this sort of detail. However, we believe the Department should identify, with academic rigor, how that stage was developed and how it was determined that stage allows for fair assessment of the skill being demonstrated. If the stage was not developed by the Department, some appropriate citation should be provided to identify the source from which the Department obtained the stage and its assessment criteria.

It is not our role to offer a scholarly review of the Manual. The examples provided here are examples only, and are not exhaustive. However, we believe "whether quoting, paraphrasing, or using others' ideas to advance [its] own arguments, [the Department] should give explicit credit to the source of those words or ideas."⁸⁴ We encourage the Department to review the fact claims or opinions presented within the Manual and ensure they are appropriately cited.

6: Other Observations

Appendix A is a summary of the "Curriculum and Training Schedule." We suggest this be reviewed closely to confirm its provisions match those of the text of the Manual.

Appendix B includes a "Sample Lesson Plan for Administration of Firearms Training." Given that the Manual is incorporated into rule, it is not clear if this "sample lesson plan" is indeed a sample or if it is required for use by rule. We suggest language be included, or made very clear, to indicate which applies.

Appendix C includes "Record-Keeping Requirements for Class 'K' Firearm Instructors."⁸⁵ The language of this appendix suggests its contents constitute rule. Fla. Admin. Code R. 5N-1.140 already includes rules for "Security Officer, Recovery Agent and Private Investigative Intern School Curriculum; Examinations; Retention of Records." While Fla. Admin. Code R.

⁷⁸ Firearms Instructor's Training Manual; p87

⁷⁹ Firearms Instructor's Training Manual; p109-110

⁸⁰ References omitted.

⁸¹ References omitted.

⁸² References omitted.

⁸³ Firearms Instructor's Training Manual; p112

⁸⁴ *The Chicago Manual of Style*; p620

⁸⁵ Firearms Instructor's Training Manual; p169

5N-1.140 does not address record keeping in this context, that it is in actual rule and not in a document supplemental to the rule (as the Manual is), suggests these sorts of provisions should be promulgated through rule and not merely attached as an appendix to the Manual. That is, they should be presented through proper rulemaking and not snuck in through the backdoor via an appendix in a supplemental document. The public should be able to find such a rule easily in the Florida Administrative Code and not have to hunt for it in supplemental documents.

Appendix C also requires the Class 'K' licensee to obtain and store the social security number of each of his students.⁸⁶ Given the sensitivity of social security numbers, increasing threats of identity theft, and the Department's revelations about its investigations into the improper practices of certain Class 'K' licensees and their thousands of improperly issued Class 'G' licenses across the state, we urge the Department to consider some alternative to this requirement if legally possible. For example, a student who objects to providing his social security number should be provided an opportunity to provide some other unique identifier.

Another provision of Appendix C requires the Class 'K' licensee to maintain "originals of all tests taken by the student, ..." and that "each student's records shall be separately collated and bound within the file."⁸⁷ In this day and age of computers and inexpensive storage and backups, we urge the Department to consider protocols for digital storage of this information as an option for the Class 'K' licensee.

Appendix C also includes a reference to the requirements of Fla. Admin. Code R. 5N-1.140(5),⁸⁸ but, as referenced above, this is part of a rule that applies to "Security Officer, Recovery Agent and Private Investigative Intern School Curriculum; Examinations; Retention of Records." As current law does not require the Class 'K' licensee to be affiliated with a licensed school, arguments may be made that raise legitimate questions about how this rule applies to him or what obligations he has under it. This further supports the notion, also already referenced above, that the Department should establish these provisions through proper rulemaking.

Appendix D references "Firearms Waivers" and identifies "Division Waiver Policy."⁸⁹ That the Manual is incorporated into rule suggests these sorts of provisions are rule as well. A firearm waiver policy, though, is a substantive notion. We believe these sorts of provisions should be promulgated through rule and not merely attached as an appendix to the Manual. That is, they should be presented through proper rulemaking and not snuck in through the backdoor via an appendix in a supplemental document. The public should be able to find such a rule easily in the Florida Administrative Code and not have to hunt for it in supplemental documents.

We note that Appendix D cites § 493.6115(6) Fla. Stat. and then later identifies the types of firearms for which the Department may grant a waiver.⁹⁰ The referenced section of statute is incorrectly quoted.⁹¹ Among those types of firearms listed as waivable are the 0.40 caliber and 0.45ACP. These types of firearms are permissible, as a matter of statute,⁹² and should not require a waiver from the Department. We suspect these are errors carried over from previous versions of the Manual, before those types of firearms were incorporated into statute and did require a waiver, and urge the Department to revise these references.

⁸⁶ Firearms Instructor's Training Manual; p169

⁸⁷ Firearms Instructor's Training Manual; p169

⁸⁸ Firearms Instructor's Training Manual; p169

⁸⁹ Firearms Instructor's Training Manual; p170

⁹⁰ Firearms Instructor's Training Manual; p170

⁹¹ § 493.6115(6) Fla. Stat. properly reads in material part, "In addition to any other firearm approved by the [Department], a licensee who has been issued a Class "G" license may carry a .38 caliber revolver; or a .380 caliber or 9 millimeter semiautomatic pistol; or a .357 caliber revolver with .38 caliber ammunition only; or a .40 caliber handgun; or a .45 ACP handgun while performing duties authorized under this chapter."

⁹² See § 493.6115(6) Fla. Stat.

A provision of Appendix D says "waivers will only be issued on the basis of **Specific Need** based on duty assignment."⁹³ However, the term 'specific need' is not defined nor is any guidance given as to how it might be determined or what criteria might apply [emphasis in the original]. We encourage the Department to develop and publish such a definition, guidance, and criteria.

Appendix D includes provisions on how to apply for a waiver and maintenance of a Department issued "waiver card."⁹⁴ We noted these provisions only allow one route to obtain a waiver, per individual and on a case-by-case basis. Appendix D contains no other provision. For example, it contains no provision through which an employing agency may obtain waivers for an entire class of Class 'G' licensees, such as those who may be scheduled on a given type of site. While we suspect this may not be a common route to apply for a waiver, we encourage the Department to develop and publish such provisions rather than have to reject such an application outright or develop new provisions for such an application anew, out of whole cloth, and without the process of rulemaking.

Appendix E contains "Division of Licensing Contact Information."⁹⁵ To the extent that this information changes from time to time, we suggest the Department publish this information elsewhere and not in the Manual, which is incorporated into rule.

IV CONCLUSIONS AND RECOMMENDATIONS

The Manual appears to be part instructional manual, part reference material, and part rule. In its role as an instructional manual, the material presented may not be ideally balanced to minimize threats to the welfare of the public. Where it serves as a reference manual, it may offer more than it should. Particularly where it presents rule or is to be incorporated into rule, it attempts too much. Well-meaning instructional guidelines are not well suited as provisions of rule and may exceed rulemaking authority. In some cases policy statements are made that may exceed rulemaking authority or are better made through proper rulemaking. Not including appropriate attributions for source material may be unethical and leave the Department open to difficult questions about why those materials were included.

Summarizing the recommendations we made throughout our review:

Limit the requirements presented in the Manual only to that necessary to support an instructor in providing a program sufficient to assess basic safety and competency with a firearm, the minimum necessary to minimize any reasonable threat to the welfare of the public.⁹⁶

Use the Manual as a forum to encourage further, ongoing training and learning, perhaps even with suggestions as to additional topics or even resources for such training. Or, more correctly, revise the tone of the Manual to urge the instructor to encourage and promote such ongoing training and learning.

Rebalance the material in the Manual to place a heavy emphasis on justifiable use of force through "shoot, don't shoot" instruction and scenarios, where the greatest threat to the welfare of the public lies, and less on the provisions of § 493 Fla. Stat. We support the effort at rebalancing the hours to be spent on key topics as presented in the Draft Manual, particularly the reduction in time to be spent on § 493 Fla. Stat. However, the Draft Manual still does not show a heavy emphasis on justifiable use of force.

Include material, perhaps in the section on "Legal Aspects of the Use of Firearms" or in the supplements to that section, on the provisions of Fla. Admin. Code R. 5N-1.130, which clarifies § 493.6115 Fla. Stat.

⁹³ Firearms Instructor's Training Manual; p170

⁹⁴ Firearms Instructor's Training Manual; p170-172

⁹⁵ Firearms Instructor's Training Manual; p173

⁹⁶ See § 493.6100 Fla. Stat.

Rather than use page space in the Manual to cover common topics that are well documented or illustrated in other reputable sources, identify a select few reputable outside resources⁹⁷ and offer those as options for instructor references.

Consider very carefully the provisions of the Manual and how they compare to the constraints of rulemaking.

Review the fact claims or opinions presented within the Manual and ensure they are appropriately cited. We noticed a lot of fact claims or opinions in the Draft Manual (not cited here). These should be reviewed closely and appropriately cited.

Review "Appendix A" closely to confirm its provisions match those of the text of the Manual.

Do not use the Manual as a vehicle to sneak new rule in through the backdoor (e.g. record keeping requirements for Class 'K' licensees or waivers). Rather, where a desired provision is outside the proper domain of a manual of this sort, subject it to the normal rulemaking process.

Consider provisions for the electronic storage of student records.

Consider provisions to ensure the security of student information (i.e. personal identifying information) maintained by Class 'K' licensed instructors.

Consider rule that holds the Class 'K' licensed instructor to the same record-keeping requirements as a Class 'DS' licensed school, or a statute or rule that requires the Class 'K' licensed instructor to be formally associated with a Class 'DS' licensed school.

Along with the recommendations made throughout our review, we suggest the Department also consider the following:

For reasons noted in our review, the Manual should include a proper bibliography, footnote or endnote citations where appropriate, and an index.

Those elements of the Manual that are rule and those that merely are references, suggestions, or samples should be clearly identified and distinguished from one another. Where the Class 'K' licensee would be required to comport with those elements that are rule, the suggestions or samples should be identified clearly as optional. Not only should the Class 'K' licensee be able to tell easily which is which, but also should any agent of any regulatory authority so as to hold the Class 'K' licensee only to those standards which actually do apply and none other.

Where conflicts may arise between the course of fire or range commands in the Manual and what may be allowed on a range by its own policies, we suggest identifying where and what latitude the Class 'K' licensee may have in varying from what is called for in the Manual and how he should go about doing so. For example, the Manual should identify 1) what variances the Class 'K' licensee may make on his own authority and whether or how those should be documented, 2) what variances he may not make on his own authority and a process he may use to request a waiver, and 3) what provisions are not subject to any variance at all.

To ensure the Manual remains relevant and up to date in all respects, we encourage that it be reviewed on a regular basis no greater than every five to seven years. The review process should include key stakeholders such as representatives from the Department to include legal counsel, select Class 'K' licensees, select Class 'G' licensees, agency owners or managers, a customer or end user of the services of a security or private investigative agency that uses Class 'G' licensed officers or investigators, et cetera. This process should be open and consistent with the spirit of the "Sunshine Law" (i.e. properly noticed and recorded public meetings). Note that, where we have been told the sections on "Legal Aspects of the Use of Firearms" have been removed from the Draft Manual, to be included in

⁹⁷ For example, the National Rifle Association ("NRA") publishes a voluminous amount of material, including training material, about the operation of firearms and the safe handling of firearms.

annual supplements, those may or may not be subject to the review process suggested here, depending on how that process is structured.

Also, particularly in the Draft Manual, we noted grammatical and formatting errors (not cited here). We recommend the Manual be professionally edited or reviewed. Also, some of the photos did not appear to be accurate representations of the text near them (not cited here). We suggest these be reviewed to ensure they are placed correctly and that specific references to them be included in the text (e.g. "See image 'x'"). We noticed some of the photos depict what may not be safe handling of the represented firearm (not cited here). We suggest these be scrutinized carefully to ensure they only depict proper handling of firearms.

We suggest the recommendations we have listed thus far be incorporated into the immediate next iteration of the Manual, the one under consideration as of this writing. However, our review indicated additional opportunities for improvement we recommend for consideration in upcoming iterations, ideally as soon as the one that comes from the review we recommend to happen no greater than five to seven years after the immediate next iteration of the Manual is fully adopted.

In that the Manual attempts too much (i.e. part instructional manual, part reference material, and part rule), we suggest the next iteration be grossly simplified. That is, we recommend the next iteration contain only that which is required to minimize the threat to the public,⁹⁸ and no more. This may see the Manual presented in a format similar to that of the current curriculum for the training required for a Class 'D' License, as an outline only. The Class 'K' licensee should have acceptable credentials and sufficient experience to present the material indicated in that outline. As already suggested, the Department also may include sample material or references to material from outside sources to supplement the outline. As the outline would be the only instructional element regulated by rule, any materials about nomenclature, operation and safety, et cetera would be left to the Class 'K' licensee, provided they are largely consistent with the sample material or the material referenced from outside sources.

To the extent that elements of the prescribed courses of fire may be prohibited or limited on certain ranges, we suggest the Department develop alternate courses of fire. We already have recommended the Department identify a process for variances from the prescribed course of fire. Here, though, we suggest also developing alternate courses. For example, the Department may develop a course for use on outdoor ranges and a course for use on indoor ranges, or a course where the shooter may draw from the holster and a course for use on ranges where drawing from the holster is prohibited. Additionally, the Department should recognize that not all Class 'G' licensees carry their firearms in a holster or as part of a duty rig. Class 'C' or 'CC' licensees, for example, may carry their firearm in some very different manner (e.g. inside the waistband holster, ankle holster, shoulder holster, pocket holster, etc.). Unless a method of carry for them is required by statute, the Department should develop a course of fire, or allow variances to the courses of fire, to allow for these types of carry.

To ensure basic skills are presented, even on ranges where certain of those skills (e.g. drawing from a holster) are prohibited, we suggest the Department also include an element in the outline that requires an assessment of those skills before firing live rounds. That is, the instructor would assess the student's ability to draw and reholster safely, to load and reload safely, proper stance, dry fire, et cetera, all before firing a single live round. We support the concept in the Draft Manual of including three hours in the 28 hour initial qualification course and one hour in the requalification course for "practical exercises."

The current process allows for only two objective assessment components, the exam and the qualification score. As we are recommending the inclusion of an assessment for basic skills prior to live fire, we recommend the Department also develop standards or a tool for that assessment. The standards or tool may be developed by the Department or incorporated from some other resource, but should be developed with academic rigor either way. Such an assessment, given that it is more subjective than the exam or qualification score, should also take into consideration the needs of different students. That is, rather than being an assessment for score, to determine passing or non-passing of the course, for example, except where the most basic skills are not retained, the assessment may be used as a tool to identify what skills need to be reinforced. Of course, this suggests the course outline be

⁹⁸ See § 493.6100 Fla. Stat.

structured so the presentation of these skills and the assessment happen earlier in the instructional time and allow time for remedial instruction prior to live fire.

The Manual offers no guidance to Class 'K' licensees about how to ensure access to their courses, including time on the range, for those with disabilities. While some with disabilities may not be able to perform the requirements of the curriculum for Class 'G' licensure at all, others may be able to do so with accommodation. In that the curriculum and the course of fire are regulated by the Department,⁹⁹ the Class 'K' licensee is very limited in what accommodations he may offer on his own. Nonetheless, the Class 'K' licensee remains exposed to claims of discrimination should he not offer any such accommodation.¹⁰⁰ It is appropriate for the Department to offer guidance on how a Class 'K' licensee might determine whether a prospective student with disabilities is able to perform the curriculum for Class 'G' licensure or what accommodations might be offered. As already suggested above, the next Manual may include an assessment of skills prior to live fire. We recommend including specific guidance for how to assess those with common disabilities, alternate courses of fire, and a process for variances from courses of fire.

A statutory framework that calls for minimizing the threat to the welfare of the public¹⁰¹ through licensure,¹⁰² and establishing minimum training criteria to obtain that licensure,¹⁰³ imposes requirements on a manual of this sort that are not common in a generic firearms instructor's manual. Indeed, a great deal more is required of the Class 'G' licensee than just demonstration of proficiency in safe handling and shooting of a firearm. The Class 'G' licensee also must demonstrate actionable knowledge about various statutes and rules. Because he is to be licensed by the Department, the Class 'G' licensee, arguably, may be expected to demonstrate proficiency in safe handling and shooting of a firearm and actionable knowledge about various statutes and rules at a level beyond that of the average person. The Class 'K' licensee must be able to impart these skills and knowledge effectively. To support his experience, he must have resource material well-aligned with the goals of the statutory framework. Material from outside sources, though credible, are not necessarily designed to support this sort of alignment. To ensure alignment with the goals of the statutory framework, we recommend the Department adopt a longer term goal of developing its own credentialing process for Class 'K' licensees.¹⁰⁴ That is, rather than accept the credentials of other entities as a prerequisite to Class 'K' licensure,¹⁰⁵ we recommend the Department develop its own "train the trainer" program for Class 'K' license applicants. Only upon completion of such a program would one be able to obtain a Class 'K' license.

V REFERENCES

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⁹⁹ See § 493.6105(5) Fla. Stat. and Fla. Admin. Code R. 5N-1.134

¹⁰⁰ See, for example, http://www.ada.gov/ada_title_III.htm as of March 18, 2015

¹⁰¹ See § 493.6100 Fla. Stat.

¹⁰² See § 493.6115(2) Fla. Stat., § 493.6105(5) Fla. Stat., and § 493.6113(1) Fla. Stat.

¹⁰³ See § 493.6105(5) Fla. Stat. and § 493.6113(1) Fla. Stat.

¹⁰⁴ This will require changes in statute and may require new or revised rule.

¹⁰⁵ See § 493.6105(6) Fla. Stat.