MEMORANDUM

(AMENDMENT BALLOT)

TO: Technical Committee on Fire Service Occupational Safety and Health

FROM: Ken Holland, Staff Liaison

DATE: June 18, 2012


At the June 2012 Technical Session, held June 13-14, 2012, NFPA 1582 was amended by the acceptance of the following:

Amendment: 1582-1

In accordance with Section 4.7 of the Regulations Governing Committee Projects, the committee must now be balloted on the Association meeting action. Should the ballot not pass, the wording of that portion of the Report affected by the amendment would return to the text of the previous edition, if any. If there is no previous edition text, the text is simply deleted.

Please review this item, complete the attached ballot, and return it to NFPA as soon as possible, but no later than June 28, 2012. If you disagree or abstain on an amendment please indicate your reason(s) for doing so.

The transcripts from the Annual 2012 Association Technical Meeting (June 13 and June 14) will be available within two weeks at: http://www.nfpa.org/itemDetail.asp?categoryID=1424&itemID=33784

Note: Please remember that the return of ballots and attendance at Committee Meetings is required in accordance with Section 3.1.3.1 of the Regulations Governing Committee Projects.
Amendment: Accept Proposal 1582-13 and Accept Comment 1582-5

☐ Agree If you agree with this amendment, the recommendation will be to accept Proposal 1582–13 and Comment 1582-5 to modify the medical condition category of monocular vision from an automatic exclusion (Category A) to a medical condition that is, possibly an exclusionary item (Category B) and other associated modifications. See the text modifications shown in attached Proposal 1582-13 and Comment 1582-5.

☐ Do Not Agree* If you do not agree with this amendment, the recommendation is to return to the previous edition text.

☐ Abstain*

*Please give reasons for voting “Do Not Agree” or “Abstain”:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Signature: __________________________

Name - Please Print: __________________________

Date: __________________________

Please return as soon as possible, but no later than Thursday, June 28, 2012 to:

Yvonne Smith, Administrator, Technical Projects
National Fire Protection Association
1 Batterymarch Park
Quincy, MA 02169
FAX: 617-984-7056
EMAIL: ysmith@nfpa.org
Proposal 1582-13 Accept

1582-13 Log #5  Final Action: Reject (6.4.1(3), 6.4.2(4), A.6.4.1(3), 9.12.3.1(2), and A.9.12.3.1(2))

Submitter: Jason Arthur Scott Arvizu, United States Forest Service - Los Padres National Forest

Recommendation: Revise text to read as follows:

6.4.1*(A) Monocular vision

6.4.2*(B) Monocular vision

5.1 Monocular vision candidates with monocular vision are not allowed to per DOT/CDL regulations.

A.6.4.2(4) Monocular vision was a category A condition in previous editions because the DOT would not issue a CDL to monocular drivers. It is now a category B condition since candidates with monocular vision are allowed to drive commercial vehicles as long as they qualify for a vision exemption from their licensing authority or the DOT. A candidate should possess a commercial drivers license (CDL) without restrictions that would prohibit them from fulfilling essential job task 10. A candidate who does not possess a CDL and are otherwise qualified should be qualified contingent upon being able to obtain a CDL.

9.12.3(1)* Monocular vision, stereopsis without fusional capacity, inadequate depth perception, or loss of peripheral vision (greater than 110 degrees on confrontation) might compromise the member’s ability to safely perform essential job task 10. If a candidate possesses a commercial drivers license (CDL) that qualifies them to drive emergency vehicles without restrictions, prohibiting them from performing essential job task 10, then that candidate should be qualified as having demonstrated their ability to compensate for their monocular condition. If a candidate does not possess a CDL, they should obtain a learners permit. The evaluating physician should consider that new candidates must be given the opportunity to obtain a CDL. Candidates who will be able to obtain a CDL learners permit or submit a copy of an evaluation of their ability to compensate from an optometrist or ophthalmologist to the evaluating physician. The same vision evaluation that is performed for the licensing authority’s exemption program should suffice.

Candidates who are cleared by an optometrist or ophthalmologist should be qualified pending final testing by the proper licensing authority. Most persons with monocular vision, after a 6-month accommodation period, are able to function well. There is some loss of depth perception, or loss of peripheral vision (greater than 110 degrees on confrontation) might compromise the member’s ability to safely perform essential job task 10. If a candidate possesses a commercial drivers license (CDL) that qualifies them to drive emergency vehicles without restrictions, prohibiting them from performing essential job task 10, then that candidate should be qualified as having demonstrated their ability to compensate for their monocular condition. If a candidate does not possess a CDL, they should obtain a learners permit. The evaluating physician should consider that new candidates must be given the opportunity to obtain a CDL. Candidates who will be able to obtain a CDL learners permit or submit a copy of an evaluation of their ability to compensate from an optometrist or ophthalmologist to the evaluating physician. The same vision evaluation that is performed for the licensing authority’s exemption program should suffice.

A.9.12.3.1(2) Most persons with monocular vision, after a 6-month accommodation period, are able to function well. There is some loss of depth perception and peripheral vision. The loss of depth perception has not been shown to be of a type that will affect a member’s ability to safely perform essential fire-fighting tasks. Some very specialized tasks can be difficult to safely perform, and the fire service physician should consider the depth of field deficiency of the individual and consider the depth of field requirements of the member’s job in order to reach an individual determination. It should be noted that the FAA will award all classes of pilot’s licenses to monocular pilots. The loss of peripheral vision is compensated for by increased scanning and head movements. There are studies that show some detriment of driving function in the driving lab. As of the writing of this section, the DOT does not allow monocular vision to hold a commercial driver’s license. In view of this and the increased dependence on visual cues when driving emergency vehicles, monocular fire fighters should be restricted from driving fire apparatus and other emergency vehicles. The majority of state licensing authorities have established vision exemption programs for monocular drivers seeking a CDL. If the candidate’s state does not have an exemption program established, they will be able to apply for a Federal exemption through the DOT.

Substantiation: Dear Fire Service Occupational Safety and Health Technical Committee,

The role of the National Fire Protection Association, to establish standards that protect the public and provide for the safety of firefighters, is a difficult task when attempting to balance the needs of fire agencies and the legal boundaries of employment law. The proposal process for amending NFPA standards is a vital tool in maintaining that balance by offering insight for those affected by their standards. The vision standards in NFPA 1582 are no exception. Recent developments in policies and laws, which some of the vision standards are based upon, have been added to the current standard. The standard for monocular firefighters, 6.4.3(3), is based on outdated Department of Transportation (DOT) regulations that restrict persons who have monocular vision from obtaining a commercial drivers license (CDL). The only justification the NFPA makes for restricting monocular candidates from being qualified as monocular is stated in A.9.12.3(1) (2), claiming they cannot perform an essential job task 10 (operating fire apparatus or other vehicles in an emergency mode with emergency lights and sirens). The NFPA substantiates this in A.9.12.3.1(2) by stating the DOT does not allow monocular persons to hold a CDL.

Since that time, the DOT has taken progressive steps to eliminate its blanket exclusion of monocular drivers and established a Federal vision exemption program on the foundation of individual assessment (Exhibit “A” - 49 CFR § 391.41(b)(10)). The Equal Employment Opportunity Commission (EEOC) was one of the strongest supporters for the Federal vision exemption program. In a statement submitted to the DOT advocating an exemption program, the EEOC stated:

“...the Commission’s longstanding opposition to blanket exclusions that exclude individuals with disabilities from employment opportunities. The ADA emphasizes that employment decisions must be based on individual assessments of a person’s ability to safely perform the job’s essential functions” (Exhibit “D” - Letter from EEOC)

Although the letter was written by the EEOC for the American Diabetes Association, the EEOC even cited monocular vision as a condition that must not be included in blanket exclusions that automatically disqualify firefighters. Other states have developed exam programs for monocular persons with disabilities for endocrine and metabolic disorders, which was developed in conjunction with the American Diabetes Association. The EEOC at one point became involved with the development and reiterated the need for the NFPA to establish standards that did not step outside of the legal boundaries of the American with Disabilities Act:

“...the Commission’s longstanding opposition to blanket exclusions that exclude individuals with disabilities from employment opportunities. The ADA emphasizes that employment decisions must be based on individual assessments of a person’s ability to safely perform the job’s essential functions” (Exhibit “D” - Letter from EEOC)

In light of the advancements made in individual assessment policy by the DOT, the NFPA uses to justify its current vision standard for monocular candidates, it stands to reason that the current standard must be changed to reflect these new policies. Otherwise, the NFPA is imposing liability upon them and the fire agencies they establish standards for by maintaining standards that are deemed illegal under Title I of the American with Disabilities Act. For example, California’s Department of Motor Vehicles (DMV) assesses applicants with stable vision conditions, such as being monocular, by requiring an examination from an optometrist or ophthalmologist who completes a report of vision examination (Exhibit “E” - DL2). This is submitted in addition to the standard Medical Examination Report (Exhibit “F” - DL51). Upon approval of the DL2, a learner’s permit is granted. When the driver is ready to take his final driving assessment, the DMV proctors a supplemental driving performance evaluation (SDPE) to confirm that the driver compensates for his vision condition. If the candidate passes the SDPE by adequately demonstrating compensation, they are issued a license with only two restrictions. The first is “No passengers when driving commercially or transporting material requiring placards/marking per Vehicle Code 27903”. This restriction should not be a constraint for a candidate unless, for example, the candidate is required to drive a vehicle that carries hazardous materials such as a fuel truck, which must have placards. Even then, the decision to disqualify candidates based on their inability to legally drive vehicles with a placard requirement should be made by the hiring agency as long as they cannot be reasonably accommodated. The second restriction is “May not drive in interstate commerce”. This restriction is not applicable to the fire service. (Exhibit “G” - Physical and Mental Disabilities Guidelines 5.11-5.12)

In light of the advancements made in individual assessment policy by the DOT, the NFPA uses to justify its current vision standard for monocular candidates, it stands to reason that the current standard must be changed to reflect these new policies. Otherwise, the NFPA is imposing liability upon them and the fire agencies they establish standards for by maintaining standards that are deemed illegal under Title I of the American with Disabilities Act. One example of a case for individual assessment of monocular firefighter candidates was brought forth in United States of America v. City of Pontiac. In that case, the City of Pontiac was denied an appointment with the City of Pontiac because he was brought forth in United States of America v. City of Pontiac. In that case, the City of Pontiac was denied an appointment with the City of Pontiac because he was denied employment opportunities pursuant to blanket categorical exclusions under the FMCSRs. Individualized assessment of qualifications is one of the hallmarks of the American’s with Disabilities Act (ADA). Indeed, the ADA purposefully include ensuring that qualified individuals with disabilities are not denied equal employment opportunity by virtue of exclusionary qualification standards.” (Exhibit “B” - Federal Register 51593)

One of the strongest supporters for the Federal vision exemption program was the American Diabetes Association. The EEOC at one point became involved with the development and reiterated the need for the NFPA to establish standards that did not step outside of the legal boundaries of the American with Disabilities Act.

Proposal 1582-13 Accept

Revision #1

6.4 Monocular Vision

A.6.4.1*(B) Monocular vision

Candidates with monocular vision are not allowed to per DOT/CDL regulations.

A.6.4.2(4) Monocular vision was a category A condition in previous editions because the DOT would not issue a CDL to monocular drivers. It is now a category B condition since candidates with monocular vision are allowed to drive commercial vehicles as long as they qualify for a vision exemption from their licensing authority or the DOT. A candidate should possess a commercial drivers license (CDL) without restrictions that would prohibit them from fulfilling essential job task 10. A candidate who does not possess a CDL and are otherwise qualified should be qualified contingent upon being able to obtain a CDL.

9.12.3(1)* Monocular vision, stereopsis without fusional capacity, inadequate depth perception, or loss of peripheral vision (greater than 110 degrees on confrontation) might compromise the member’s ability to safely perform essential job task 10. If a candidate possesses a commercial drivers license (CDL) that qualifies them to drive emergency vehicles without restrictions, prohibiting them from performing essential job task 10, then that candidate should be qualified as having demonstrated their ability to compensate for their monocular condition. If a candidate does not possess a CDL, they should obtain a learners permit. The evaluating physician should consider that new candidates must be given the opportunity to obtain a CDL. Candidates who will be able to obtain a CDL learners permit or submit a copy of an evaluation of their ability to compensate from an optometrist or ophthalmologist to the evaluating physician. The same vision evaluation that is performed for the licensing authority’s exemption program should suffice.

Candidates who are cleared by an optometrist or ophthalmologist should be qualified pending final testing by the proper licensing authority.
As explained in the above substantiation, this explanatory material in Annex A is no longer valid. With the deletion of 6.4.1 (3) and the addition of 6.4.2 (4) the explanatory material in Annex A should be added as follows:

A 6.4.2(4) Monocular vision was a category A condition in previous editions because the DOT would not issue a CDL to monocular drivers. It is now a category B condition since candidates with monocular vision are allowed to drive commercial vehicles as long as they qualify for a vision exemption from their licensing authority or the DOT. Candidates who possess a commercial drivers license (CDL) without restrictions that would prohibit them from fulfilling essential job task 10. Candidates who do not possess a CDL and are otherwise qualified should be qualified contingent upon being able to obtain a CDL.

Revision #3

9.12.3.1(2)* Monocular vision, stereopsis without fusional capacity, inadequate depth perception, or loss of peripheral vision (greater than 110 degrees on confrontation) might compromise the member’s ability to safely perform essential job task 10. Candidates that possess a commercial drivers license (CDL) that qualifies them to drive emergency vehicles without restrictions prohibiting them from performing essential job task 10, should be qualified as having demonstrated their ability to compensate for their monocular condition. If a candidate does not possess a CDL, they should obtain a learners permit. The evaluating physician should consider that new candidates must be given the opportunity to obtain a CDL. Candidates who will be able to obtain a CDL learners permit shall submit a copy of an evaluation of their ability to compensate from an optometrist or ophthalmologist to the evaluating physician. The same vision evaluation that is performed for the licensing authority’s exemption program should suffice. Candidates who are cleared by an optometrist or ophthalmologist should be qualified pending final testing by the proper licensing authority.

This addition to the physician evaluation section should make it clear that the evaluation of a monocular candidate must be done in conjunction with the proper licensing authority and evaluating optometrist or ophthalmologist. It also takes into account new candidates who will be given conditional job offers pending medical evaluation who do not hold a CDL. To avoid disqualifying candidates because they simply have not had an opportunity to obtain a CDL, the ability to obtain a learners permit should be qualifying if candidates would otherwise medically qualify if they held a CDL at the time of their evaluation. The majority of departments do not require candidates to obtain a CDL until well after they have started working for the agency. This gives the agency the chance to train candidates to be proficient drivers and evaluate their abilities. If an agency does not require candidates to hold a CDL until later in their employment, then disqualifying them because they do not hold a CDL at the time of his evaluation would be unjustifiable. The agency must offer reasonable accommodation for candidates to obtain the CDL, like all other candidates, to prove they are capable of compensating for their vision condition.

Revision #4

A 9.12.3.1.2 Most persons with monocular vision, after a 6-month accommodation period, are able to function well. There is some loss of depth perception and peripheral vision. The loss of depth perception has not been shown to be of a type that will affect a member’s ability to safely perform essential fire-fighting tasks. Some very specialized tasks can be difficult to safely perform, and the fire service physician should consider the depth of field deficiency of the individual and consider the depth of field requirements of the member’s job in order to reach an individual determination. It should be noted that the FAA will award all classes of pilot’s licenses to monocular pilots. The loss of peripheral vision is compensated for by increased scanning and head movements. There are studies that show some detriment of driving performance with the use of visual prosthesis. The DOT does not allow monocular persons to hold a commercial driver’s license. In view of this and the increased dependence on visual cues when driving emergency vehicles, monocular fire fighters should be restricted from driving fire apparatus and other emergency vehicles. The majority of state licensing authorities have established vision exemption programs for monocular drivers seeking a CDL. If the candidate’s state does not have an exemption program established, they will be able to apply for a Federal exemption through the DOT.

The revision to explanatory material in Annex A reflects the changes made in A 9.12.3.1(2). It also deletes the explanatory material that is no longer valid. The content that has not been altered is factual. It accurately reflects how although being monocular impacts depth perception and peripheral vision, it is compensated for with rehabilitation to where the candidate is very likely able to function well and safely perform all 13 essential job tasks. It also makes it clear that even if the licensing authority whose jurisdiction covers the candidate’s fire agency does not have an established vision exemption program they have the opportunity to apply for the Federal exemption program.

Although the basis for why there is a need to change the monocular vision standard is very simple, the manner of how the new standard should be written is slightly more complicated. The end result for this proposal needs to be a standard that facilitates the balance of responsibilities the NFPA maintains. I will be happy to offer more supporting evidence and research throughout the revision process. It would be my pleasure to testify before a meeting of the technical committee at any time throughout the process. I may also be reached for questions, comments, and further research at the contact information listed on the letterhead. Thank you for taking the time to consider this proposal and good luck with the other endeavors being taken upon by the NFPA.

Sincerely,
Jason A.S. Arvizu
Note: Supporting material is available for review at NFPA Headquarters.

Committee Meeting Action: Reject
Committee Statement: See Committee Action on 1582-97 (Log #CP89) with regards to A 6.4.1(3).

Number Eligible to Vote: 33
Ballot Results: Affirmative: 28 Abstain: 1
Ballot Not Returned: 4 Bennett, L., Nelson, E., Wann, T., Winters, J.

Explanation of Abstention:
FOLEY, S.: See my Explanation of Abstention on Proposal 1582-1 (Log #CP2).

Comment 1582-5 Accept

1582-5 Log #12 Final Action: Reject (A 6.4.1(3))

Submitter: Jason Arthur Scott Arvizu, United States Forest Service - Los Padres National Forest

Comment on Proposal No: 1582-97

Recommendation: Delete text to read as follows:

A 6.4.1(3) A DOT/CDL exemption can be applied for after passing a special test that demonstrates the candidate’s ability to compensate for monocular vision specifically excludes driving vehicles with passengers and does not apply to emergency response driving.

Substantiation: 1582-97 (Log #CP89) was created by the Technical Committee in response to Proposal 1582-13 (Log #5). It is not a valid resolution for several reasons. The major reason is the Technical Committee’s misunderstanding of the restriction from carrying passengers. A restriction on a passenger endorsement does not mean the driver is unable to drive with other passengers. A passenger endorsement is specifically for: “Any vehicle (bus, farm labor vehicle, general public paratransit vehicle, etc.) designed, used, or maintained to carry more than 10 passengers including the driver, for hire or profit, or is used by any nonprofit organization or group.” (Exhibit “A” Commercial Drivers Handbook p.1)

Therefore, the restriction limiting monocular firefighters from “transporting passengers” does not apply to firefighting or emergency vehicle operations. First, because there are few, if any, fire apparatus that have more than 10 passengers. Second, even if there were, fire agencies as a government entity do not meet any of the organization or group specifications.

The other issue is the lack of recognition for the supplemental driving performance evaluation (SPDE), which the Technical Committee refers to as a “special test”. This “special test” is a proven process used by the Department of Transportation (DOT), the state driving authorities under their jurisdiction, and even the Federal Aviation Administration. It is designed to give candidates the chance to prove they compensate for their condition. The proctors of the test also understand the requirements of driving associated with the fire service, including emergency vehicle operations. It also accounts for demonstrated ability to avoid the potential legal liability that comes with blanket exclusions that have proven to be discriminatory. The NFPA would be well served to apply the same proven policy for demonstrated ability. Failure to do so would leave the NFPA with an archaic policy not in line with their objective of being a progressive organization.

The Technical Committee is also assuming monocular firefighters have not and will not be able to receive an exemption. The DOT does, in fact, issue Class B Commercial Drivers Licenses (CDL) to monocular firefighters after passing the SPDE. If the NFPA sets the CDL demonstrated ability exemptions do not apply to firefighters, it leaves them vulnerable to scrutiny. The medical and legal community has long supported demonstrated ability practices and the NFPA should be brought into alignment with those principles.

The recent edition of NFPA 1582 Section A 9.12.3.1(2) even states that a firefighter’s ability to perform essential tasks, specifically with vision, should be determined by the evaluating physician. The exclusion the NFPA makes for monocular firefighters goes against that policy within the same paragraph. It makes a blanket exclusion based on a misunderstanding of DOT policy. Because the NFPA currently does not allow for objective evaluation for monocular firefighters, it’s standard has conflicting principles.
On one hand, the standard states that physicians are able to make the
determination, based on their profession opinion and individual assessment, if
a candidate is able to perform the essential functions. On the other, the NFPA
does not allow for individual assessment because they claim the DOT does not
allow for individual assessment. Then, when presented with proof that DOT
does, and even encourages individual assessment, the NFPA still makes that
claim that it does not apply to firefighters with #CP89. As show above, that
claim is unfounded as well.
The only rebuttal from the NFPA to revision proposal 1582-13 (Log #5) is
1582-97 (Log #CP89). Since no other claims were raised in regards to the rest
of the proposal, it can only be assumed that the Technical Standards Committee
had no other valid arguments. If so, then this response to 1582-97 should prove
the original proposal of 1582-13 is valid and subsequently be enacted for the
next edition of NFPA 1582.

Committee Meeting Action: Reject
Committee Statement: The committee believes that this statement accurately
reflects the committees opinion that a candidate with monocular vision should
not be driving an emergency response vehicle.
Number Eligible to Vote: 31
Ballot Results: Affirmative: 25
Ballot Not Returned: 6 Barillo, D., Bogucki, S., Finkelman, M., Laton, M.,
Samo, D., Wann, T.