

Texas State Association of Fire and Emergency Districts

**TWC Civil Rights Division Review of Initial Tests under
Texas Government Code Chapter 419, Subchapter F**

August 27, 2012

Texas Workforce Commission Civil Rights Division

101 East 15th Street Room 144T

Austin, Texas 78778

Jonathan Babiak, Director

(512) 463-4432

Important Notice: The content of this presentation is not intended to represent and should not be interpreted as a written interpretation or opinion of any portion of Texas Labor Code Chapter 21 by the Texas Workforce Commission Civil Rights Division to be relied upon as a defense to a claim or charge of an unlawful employment practice.

Bill: SB 382

Legislative Session: 77(R)

Last Action: 06/15/2001 *Effective on 9/1/01*

**Caption
Version:** Enrolled

Caption Text: Relating to the powers and duties of the Texas Commission on Fire Protection and to certain authority of the Commission on Human Rights with regard to fire departments.

Author: Gallegos

Sponsor: Ehrhardt

Subjects: Fire Fighters & Police--General (I0370)
FIRE SAFETY & PREVENTION (S0273)
FIRE PROTECTION, TEXAS COMMISSION ON (V0035)

**Senate
Committee:** Intergovernmental Relations

**House
Committee:** Urban Affairs

**Senate
Conferees:** Appointed (05/16/2001) Gallegos (Chair) | Cain | Carona | Van de Putte |
Whitmire
Discharged (05/26/2001)

**House
Conferees:** Appointed (05/17/2001) Ehrhardt (Chair) | Bailey | Burnam | Carter |
Thompson

Actions: (descending date order)

	Description	Comment	Date ▼	Time	Journal Page
E	Effective on 9/1/01		06/15/2001		
E	Signed by the Governor		06/15/2001		4520
H	Signed in the House		05/28/2001		5211
S	Signed in the Senate		05/28/2001		4488
H	Amended	2-Dukes	05/11/2001		3146
S	Considered in public hearing		04/17/2001		
S	Scheduled for public hearing on		04/17/2001		
S	Filed		01/24/2001		
S	Received by the Secretary of the Senate		01/24/2001		



ADOPTED

MAY 10 2001

Sharon Carter
Chief Clerk
House of Representatives

FLOOR AMENDMENT NO. 2

BY TJK

1 Amend C.S. ^{SB} No. ³⁸² by adding the following appropriately
2 numbered SECTIONS and renumbering subsequent SECTIONS of the bill
3 accordingly:

4 SECTION __. Chapter 419, Government Code, is amended by adding
5 Subchapter F to read as follows:

6 SUBCHAPTER F. REVIEW OF FIRE DEPARTMENT TESTS

7 Sec. 419.101. APPLICABILITY. This subchapter applies to the
8 initial tests administered by a fire department used to measure the
9 ability of a person to perform the essential functions of a job.

10 Sec. 419.102. REVIEW OF TESTS. (a) The commission, in
11 cooperation with the Commission on Human Rights, shall review the
12 administration of tests by fire departments to determine whether
13 the tests are administered in a manner that complies with Chapter
14 21, Labor Code.

15 (b) The commission shall by rule establish an objective
16 system to determine how to select the departments the commission
17 will review and when the commission will review a certain
18 department.

19 Sec. 419.103. DISCRIMINATION PROHIBITED; DISPARATE IMPACT.

20 (a) A test may not be administered in a manner that discriminates
21 on the basis of race or color. A test may not be administered in
22 a manner that discriminates on the basis of disability, religion,
23 sex, national origin, or age unless the discrimination is a result
24 of a bona fide occupational qualification.

25 (b) In determining whether the administration of a test

1 complies with Chapter 21, Labor Code, the commission shall
2 ascertain whether the test has had a disparate impact on any group
3 defined by race, color, disability, religion, sex, national origin,
4 or age. If the disparate impact on a group is the result of a bona
5 fide occupational qualification, the fire department has complied
6 with that chapter.

7 Sec. 419.104. VIOLATION; RECOMMENDATIONS OF COMMISSION. (a)
8 If the commission determines that the administration of a test by
9 a fire department does not comply with Chapter 21, Labor Code, the
10 commission shall recommend appropriate changes for the
11 administration of the test.

12 (b) The department shall consider a recommendation made under
13 Subsection (a) and shall revise the administration of its tests to
14 comply with this chapter.

15 Sec. 419.105. AUTHORITY TO ADMINISTER TEST. This subchapter
16 does not affect the authority of a fire department to administer,
17 devise, or conduct a test or to require a certain level of
18 performance on a test as a prerequisite to employment or continued
19 employment.

LIST OF HOUSE AMENDMENTS CONSIDERED TODAY

SB382-Third Reading

<u>AMENDMENT#</u>	<u>AUTHOR</u>	<u>DESCRIPTION</u>	<u>ACTION</u>
1	Williams	Amendment	Adopted
2	Dukes	Amendment	Adopted



ADOPTED

MAY 11 2001

Sharon Carter
Chief Clerk
House of Representatives

3rd READING

FLOOR AMENDMENT NO. 2

BY Dukes

1 Amend S.B. No. 382, on third reading, in Subchapter F, Chapter
2 419, Government Code, as added to the bill by Floor Amendment No.
3 2 by Dukes, as follows:

4 (1) Strike proposed Subsection (a), Section 419.102,
5 Government Code, and substitute the following:

6 (a) The commission shall authorize the Commission on Human
7 Rights to review the administration of tests by fire departments to
8 determine whether the tests are administered in a manner that
9 complies with Chapter 21, Labor Code.

10 (2) Strike proposed Subsection (b), Section 419.102,
11 Government Code, and substitute the following:

12 (b) The Commission on Human Rights shall by rule establish an
13 objective system to determine how to select the departments the
14 Commission on Human Rights will review and when the Commission on
15 Human Rights will review a certain department.

16 (3) In proposed Subsection (b), Section 419.103, Government
17 Code, strike "commission" and substitute "Commission on Human
18 Rights".

19 (4) Strike the heading to proposed Section 419.104, Government
20 Code, and substitute the following:

21 Sec. 419.104. VIOLATION; RECOMMENDATIONS OF COMMISSION ON
22 HUMAN RIGHTS.

23 (5) In proposed Subsection (a), Section 419.104, Government
24 Code, strike "commission determines" and substitute "Commission on
25 Human Rights determines".

1 (6) In proposed Subsection (a), Section 419.104, Government
2 Code, strike "commission shall" and substitute "Commission on Human
3 Rights shall".

Senate Bill 382

- 1-1 AN ACT
- 1-2 relating to the powers and duties of the Texas Commission on Fire
- 1-3 Protection and to certain authority of the Commission on Human
- 1-4 Rights with regard to fire departments.
- 1-5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
- 1-6 SECTION 1. Section 419.021, Government Code, is amended to...
- 3-7 SECTION 2. Subsection (c), Section 419.032, Government Code,...
- 4-1 SECTION 3. Section 419.040, Government Code, is amended to...
- 5-4 SECTION 4. Section 419.041, Government Code, is amended to...
- 7-8 SECTION 5. Section 419.042, Government Code, is amended to...
- 7-25 SECTION 6. Subchapter B, Chapter 419, Government Code, is...
- 8-12 SECTION 7. Subchapter B, Chapter 419, Government Code, is...
- 9-2 SECTION 8. Subchapter B, Chapter 419, Government Code, is...
- 9-16 SECTION 9. Subchapter B, Chapter 419, Government Code, is...
- 10-12 SECTION 10. Subchapter B, Chapter 419, Government Code, is...
- 10-23 SECTION 11. Chapter 419, Government Code, is amended by
- 10-24 adding Subchapter F to read as follows:
- 11-1 SUBCHAPTER F. REVIEW OF FIRE DEPARTMENT TESTS
- 11-2 Sec. 419.101. APPLICABILITY. This subchapter applies to
- 11-3 the initial tests administered by a fire department used to measure
- 11-4 the ability of a person to perform the essential functions of a
- 11-5 job.
- 11-6 Sec. 419.102. REVIEW OF TESTS. (a) The commission shall
- 11-7 authorize the Commission on Human Rights to review the
- 11-8 administration of tests by fire departments to determine whether
- 11-9 the tests are administered in a manner that complies with Chapter
- 11-10 21, Labor Code.
- 11-11 (b) The Commission on Human Rights shall by rule establish
- 11-12 an objective system to determine how to select the departments the
- 11-13 Commission on Human Rights will review and when the Commission on
- 11-14 Human Rights will review a certain department.

11-15 Sec. 419.103. DISCRIMINATION PROHIBITED; DISPARATE IMPACT.

11-16 (a) A test may not be administered in a manner that discriminates
11-17 on the basis of race or color. A test may not be administered in a
11-18 manner that discriminates on the basis of disability, religion,
11-19 sex, national origin, or age unless the discrimination is a result
11-20 of a bona fide occupational qualification.

11-21 (b) In determining whether the administration of a test
11-22 complies with Chapter 21, Labor Code, the Commission on Human
11-23 Rights shall ascertain whether the test has had a disparate impact
11-24 on any group defined by race, color, disability, religion, sex,
11-25 national origin, or age. If the disparate impact on a group is the
11-26 result of a bona fide occupational qualification, the fire
12-1 department has complied with that chapter.

12-2 Sec. 419.104. VIOLATION; RECOMMENDATIONS OF COMMISSION ON
12-3 HUMAN RIGHTS. (a) If the Commission on Human Rights determines
12-4 that the administration of a test by a fire department does not
12-5 comply with Chapter 21, Labor Code, the Commission on Human Rights
12-6 shall recommend appropriate changes for the administration of the
12-7 test.

12-8 (b) The department shall consider a recommendation made
12-9 under Subsection (a) and shall revise the administration of its
12-10 tests to comply with this chapter.

12-11 Sec. 419.105. AUTHORITY TO ADMINISTER TEST. This subchapter
12-12 does not affect the authority of a fire department to administer,
12-13 devise, or conduct a test or to require a certain level of
12-14 performance on a test as a prerequisite to employment or continued
12-15 employment.

12-16 SECTION 12. This Act takes effect September 1, 2001.

President of the Senate Speaker of the House

I hereby certify that S.B. No. 382 passed the Senate on May 1, 2001, by the following vote: Yeas 30, Nays 0, one present not voting; and that the Senate concurred in House amendments on May 26, 2001, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 382 passed the House, with amendments, on May 11, 2001, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

GOVERNMENT CODE

TITLE 4. EXECUTIVE BRANCH

SUBTITLE B. LAW ENFORCEMENT AND PUBLIC PROTECTION

CHAPTER 419. TEXAS COMMISSION ON FIRE PROTECTION

SUBCHAPTER A. GENERAL PROVISIONS

SUBCHAPTER B. REGULATING AND ASSISTING FIRE FIGHTERS AND FIRE
DEPARTMENTS

Sec. 419.021. DEFINITIONS. In this subchapter:

(1) "Aircraft rescue and fire protection personnel" means permanent, full-time local governmental employees who, as a permanent duty assignment, fight aircraft fires at airports, stand by for potential crash landings, and perform aircraft crash rescue.

(2) "Fire department" means a department of a local government that is staffed by permanent, full-time employees of the local government and that is organized to prevent or suppress fires.

(3) "Fire protection personnel" means:

(A) permanent, full-time law enforcement officers designated as fire and arson investigators by an appropriate local authority;

(B) aircraft rescue and fire protection personnel; or

(C) permanent, full-time fire department employees who are not secretaries, stenographers, clerks, budget analysts, or similar support staff persons or other administrative employees and who are assigned duties in one or more of the following categories:

(i) fire suppression;

(ii) fire inspection;

(iii) fire and arson investigation;

- (iv) marine fire fighting;
- (v) aircraft rescue and fire fighting;
- (vi) fire training;
- (vii) fire education;
- (viii) fire administration; and
- (ix) any other position necessarily or customarily related to fire prevention or suppression.

(4) "Local government" means a municipality, a county, a special-purpose district or authority, or any other political subdivision of the state.

(5) "Marine fire protection personnel" means permanent, full-time local governmental employees who work aboard a fireboat and fight fires that occur on or adjacent to a waterway, waterfront, channel, or turning basin.

(6) "Protective clothing" means garments, including turnout coats, bunker coats, bunker pants, boots, gloves, trousers, helmets, and protective hoods, worn by fire protection personnel in the course of performing fire-fighting operations, including wildland fire suppression.

(7) "Structure fire protection personnel" means permanent, full-time local government employees who engage in fire-fighting activities involving structures and may perform other emergency activities typically associated with fire-fighting duties such as rescue, emergency medical response, confined space rescue, hazardous materials response, and wildland fire-fighting.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.40(a), eff. Sept. 1, 1989. Redesignated from Sec. 416.001 and amended by Acts 1991, 72nd Leg., ch. 628, Sec. 2, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 912, Sec. 4, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1172, Sec. 2.01, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1241, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER D. VOLUNTEER FIRE FIGHTERS AND FIRE DEPARTMENTS

SUBCHAPTER E. PAID FIRE FIGHTERS AND FIRE DEPARTMENTS NOT CONNECTED WITH A LOCAL GOVERNMENT

SUBCHAPTER F. REVIEW OF FIRE DEPARTMENT TESTS

Sec. 419.101. **APPLICABILITY.** This subchapter applies to the initial tests administered by a fire department used to measure the ability of a person to perform the essential functions of a job.

Added by Acts 2001, 77th Leg., ch. 1241, Sec. 11, eff. Sept. 1, 2001.

Sec. 419.102. **REVIEW OF TESTS.** (a) The commission shall authorize the Commission on Human Rights to review the administration of tests by fire departments to determine whether the tests are administered in a manner that complies with Chapter 21, Labor Code.

(b) The Commission on Human Rights shall by rule establish an objective system to determine how to select the departments the Commission on Human Rights will review and when the Commission on Human Rights will review a certain department.

Added by Acts 2001, 77th Leg., ch. 1241, Sec. 11, eff. Sept. 1, 2001.

Sec. 419.103. **DISCRIMINATION PROHIBITED; DISPARATE IMPACT.** (a) A test may not be administered in a manner that discriminates on the basis of race or color. A test may not be administered in a manner that discriminates on the basis of disability, religion, sex, national origin, or age unless the discrimination is a result of a bona fide occupational qualification.

(b) In determining whether the administration of a test complies with Chapter 21, Labor Code, the Commission on Human Rights shall ascertain whether the test has had a disparate impact on any group defined by race, color, disability, religion, sex, national origin, or age. If

the disparate impact on a group is the result of a bona fide occupational qualification, the fire department has complied with that chapter.

Added by Acts 2001, 77th Leg., ch. 1241, Sec. 11, eff. Sept. 1, 2001.

Sec. 419.104. VIOLATION; RECOMMENDATIONS OF COMMISSION ON HUMAN RIGHTS. (a) If the Commission on Human Rights determines that the administration of a test by a fire department does not comply with Chapter 21, Labor Code, the Commission on Human Rights shall recommend appropriate changes for the administration of the test.

(b) The department shall consider a recommendation made under Subsection (a) and shall revise the administration of its tests to comply with this chapter.

Added by Acts 2001, 77th Leg., ch. 1241, Sec. 11, eff. Sept. 1, 2001.

Sec. 419.105. AUTHORITY TO ADMINISTER TEST. This subchapter does not affect the authority of a fire department to administer, devise, or conduct a test or to require a certain level of performance on a test as a prerequisite to employment or continued employment.

Added by Acts 2001, 77th Leg., ch. 1241, Sec. 11, eff. Sept. 1, 2001.

LABOR CODE

TITLE 2. PROTECTION OF LABORERS

SUBTITLE A. EMPLOYMENT DISCRIMINATION

CHAPTER 21. EMPLOYMENT DISCRIMINATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 21.001. PURPOSES.

...

Sec. 21.0015. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION.

The powers and duties exercised by the Commission on Human Rights under this chapter are transferred to the Texas Workforce Commission civil rights division. A reference in this chapter to the "commission" means the Texas Workforce Commission civil rights division.

Added by Acts 2003, 78th Leg., ch. 302, Sec. 1.

Sec. 21.002. DEFINITIONS. In this chapter:

(1) "Auxiliary aids and services"...

(2) "Bona fide occupational qualification" means a qualification:

(A) reasonably related to the satisfactory performance of the duties of a job; and

(B) for which a factual basis exists for the belief that no person of an excluded group would be able to satisfactorily perform the duties of the job with safety or efficiency.

(3) Repealed by Acts 2003, 78th Leg., ch. 302, Sec. 4(2).

(4) "Complainant" means...

(5) "Demonstrates" means meets the burdens of production and persuasion.

(6) "Disability" means...

(7) "Employee" means an individual employed by an employer, including an individual subject to the civil service laws of this state or a political subdivision of this state, except that the term does not include an individual elected to public office in this state or a political subdivision of this state.

(8) "Employer" means:

(A) a person who is engaged in an industry affecting commerce and who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year;

(B) an agent of a person described by Paragraph (A);

(C) an individual elected to public office in this state or a political subdivision of this state; or

(D) a county, municipality, state agency, or state instrumentality, regardless of the number of individuals employed.

(9) "Employment agency" means...

(10) "Labor organization" means...

(11) "Local commission" means...

(11-a) "Major life activity" includes...

(12) "Political subdivision" means a county or municipality.

(12-a) "Regarded as having such an impairment" means...

(13) "Respondent" means...

(14) "State agency" means...

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.02(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 834, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 872, Sec. 10, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 302, Sec. 4(a).

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 337, Sec. 1, eff. September 1, 2009.

SUBCHAPTER B. UNLAWFUL EMPLOYMENT PRACTICES

Sec. 21.051. DISCRIMINATION BY EMPLOYER. An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

(2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. APPLICATION; EXCEPTIONS

Sec. 21.101. AGE DISCRIMINATION LIMITED TO INDIVIDUALS OF CERTAIN AGE. Except as provided by Section 21.054, the provisions of this chapter referring to discrimination because of age or on the basis of age apply only to discrimination against an individual 40 years of age or older.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.102. BONA FIDE EMPLOYEE BENEFIT PLAN; PRODUCTION MEASUREMENT SYSTEM. (a) Except as provided by Subsections (b) and (c), an employer does not commit an unlawful employment practice by applying different standards of compensation or different terms, conditions, or privileges of employment under:

(1) a bona fide seniority system, merit system, or an employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade this chapter; or

(2) a system that measures earnings by quantity or quality of production.

(b) An employee benefit plan may not excuse a failure to hire on the basis of age. A seniority system or employee benefit plan may not require or permit involuntary retirement on the basis of age except as permitted by Section 21.103.

(c) This section does not apply to standards of compensation or terms, conditions, or privileges of employment that are discriminatory on the basis of race, color, disability, religion, sex, national origin, or age.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.103. **COMPULSORY RETIREMENT PERMITTED FOR CERTAIN EMPLOYEES.** This chapter does not prohibit the compulsory retirement of an employee who is:

- (1) at least 65 years of age;
- (2) employed in a bona fide executive or high policy-making position for the two years preceding retirement; and
- (3) entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan or a combination of plans of the employee's employer that equals, in the aggregate, at least \$27,000.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.104. **AGE REQUIREMENT FOR PEACE OFFICERS OR FIRE FIGHTERS.** An employer does not commit an unlawful employment practice by imposing a minimum or maximum age requirement for peace officers or fire fighters.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.105. DISCRIMINATION BASED ON DISABILITY. A provision in this subchapter or Subchapter B referring to discrimination because of disability or on the basis of disability applies only to discrimination because of or on the basis of a physical or mental condition that does not impair an individual's ability to reasonably perform a job.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.122. BURDEN OF PROOF IN DISPARATE IMPACT CASES. (a) An unlawful employment practice based on disparate impact is established under this chapter only if:

(1) a complainant demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, sex, national origin, religion, or disability and the respondent fails to demonstrate that the challenged practice is job-related for the position in question and consistent with business necessity; or

(2) the complainant makes the demonstration in accordance with federal law as that law existed June 4, 1989, with respect to the concept of alternative employment practices, and the respondent refuses to adopt such an alternative employment practice.

(b) To determine the availability of and burden of proof applicable to a disparate impact case involving age discrimination, the court shall apply the judicial interpretation of the Age Discrimination in Employment Act of 1967 and its subsequent amendments (29 U.S.C. Section 621 et seq.).

(c) To demonstrate that a particular employment practice causes a disparate impact, the complainant must demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complainant demonstrates to the satisfaction of the court that the elements of a respondent's decision-making process are not capable of separation for analysis, that decision-making process may be analyzed as one employment practice.

(d) If the respondent demonstrates that a specific practice does not cause a disparate impact, the respondent may not be required to demonstrate that the practice is consistent with business necessity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

Sec. 21.123. SCOPE OF DEFENSE. A demonstration that an employment practice is consistent with business necessity may not be used as a defense under this chapter against a complaint of intentional discrimination.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

Sec. 21.124. PROHIBITION AGAINST DISCRIMINATORY USE OF TEST SCORES. It is an unlawful employment practice for a respondent, in connection with the selection or referral of applicants for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of employment-related tests on the basis of race, color, sex, national origin, religion, age, or disability.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

40 Texas Administrative Code § 819.22

(a) CRD shall review the initial tests administered by a fire department, as provided in Texas Government Code, Chapter 419. The initial tests defined as written tests, physical tests, and assessment center tests for firefighter positions, are used to measure the ability of a person to perform the essential functions of the position.

(b) CRD shall use the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. 1607, to conduct the review of the administration of initial tests by fire departments.

(c) CRD shall develop a list of recommended tests for firefighter positions that are nationally recognized tests by independent authorities. The tests will be available on the Agency's Web site.

(d) Fire departments that use tests from CRD's list of recommended tests are presumed to be in compliance with the law. However, if CRD perceives the need to review a fire department that is using such recommended tests, nothing shall prevent such review.

(e) Fire departments that use a test not included on the recommended list shall submit, upon request by CRD, documentation regarding the reliability and validity of the chosen test.

(f) Each fire department shall submit documentation concerning the administration of its initial tests, as required in this section. CRD shall perform a desk audit by reviewing these documents using risk-assessment criteria. Fire departments selected for a desk audit shall receive notice by mail. Documents to be submitted for a desk audit include, but are not limited to:

(1) a copy of the initial test used. If it is not from CRD's recommended list of tests, then documentation regarding the reliability and validity of the test used;

(2) a description of how such test is administered and a copy of applicable policies and procedures governing the administration of such test; and

(3) information and documentation of prior complaints lodged against the fire department concerning discrimination in selection of personnel for a firefighter position.

(g) CRD shall evaluate the requested information set forth in subsection (f) of this section as part of its risk-assessment analysis. Based on the analysis, fire departments may be selected for expanded review, including on-site investigation. CRD shall notify a fire department selected for expanded review by mail.

Source Note: The provisions of this §819.22 adopted to be effective September 27, 2005, 30 TexReg 6065

Texas Workforce Commission

Civil Rights Division

Recommended Tests effective August 2012

Fire Department Initial Testing

40 Texas Admin. Code § 819.22(c)

International Public Management Association (IPMA)

B-5 Firefighter Examination

1617 Duke Street

Alexandria, VA 22314

(703) 549-7100

www.ipma-hr.org

Cooperative Personnel Services (CPS)

Initial Entry Firefighter Examination

241 Lathrop Way

Sacramento, CA 95815

(866) 867-5272

www.cps.ca.gov

Industrial/Organizational Solutions, Inc. (I/O)

National Firefighter Selection Inventory (NFSI) Exam

1127 South Mannheim Road, Suite 203

Westchester, IL 60154

(888) 784-1290

www.iosolutions.org

Texas Workforce Commission

Civil Rights Division

Recommended Tests effective August 2012

Fire Department Initial Testing

40 Texas Admin. Code § 819.22(c)

Vantage McCann Associates

Initial Firefighter Examination

110 Terry Drive

Newtown, PA 18940

(215) 579-8390

www.vantagemccann.com

Fire & Police Selection, Inc.

Entry-level Tests for Public Safety

193 Blue Ravine Road, Suite 270

Folsom, CA 95630

(888) 990-3473

www.fpsi.com

Ergometrics & Applied Personnel Research, Inc.

FireTEAM Testing System

18720 33rd Avenue West, Suite 200

Lynnwood, WA 98037

(425) 774-5700

www.ergometrics.org

Texas Workforce Commission

Civil Rights Division

Recommended Tests effective August 2012

Fire Department Initial Testing

40 Texas Admin. Code § 819.22(c)

Morris & McDaniel, Inc.

Management Consultants

National Entry-Level Firefighter Exam

117 South Saint Asaph Street

Alexandria, VA 22314

(703) 836-3600

www.morrisandmcdaniel.com