

## REVENUE AND TAXATION

6. Positive post accident or return to duty tests will result in the employee's immediate dismissal.

7. Any employee who refuses to submit to a urine test for the presence of illegal drugs or a breath test for the presence of alcohol shall be subject to the consequences of a positive test.

8. In the event that a current or prospective employee receives a confirmed positive test result, the employee may challenge the test results within 72 hours of actual notification.

a. The employee's challenge will not prevent the employee from being placed on suspension pending the investigation until the challenge is resolved.

b. The employee may submit a written explanation of the reason for the positive test result to the medical review officer.

c. Employees who are on legally prescribed and obtained medication for a documented illness, injury or ailment will be eligible for continued employment upon receiving clearance from the medical review officer.

9. In the event that a current or prospective employee remains unable to provide a sufficient urine specimen or amount of breath, the collector or Breath Alcohol Technician (BAT) must discontinue testing and notify the Director of Human Resources of their actions.

a. In both instances, whether the discrepancy is an insufficient urine specimen or amount of breath, the Director of Human Resources shall promptly inform the secretary.

b. The secretary shall then direct the employees to have a medical evaluation, at the expense of the Department of Revenue, by a licensed physician who possesses expertise in the medical issue surrounding the failure to provide a sufficient specimen.

c. This medical evaluation must be performed within five working days after the secretary is notified of the employee's inability to provide a sufficient specimen.

d. The physician shall provide the secretary with a report of his/her conclusions as to whether the employee's inability to provide a sufficient urine specimen or amount of breath is genuine.

e. If the physician determines that the employee's inability to provide a sufficient urine specimen or amount of breath is not genuine, the employees will be subject to the consequences of a positive test.

J. Safety-Sensitive or Security-Sensitive Positions to be Randomly Drug Tested

1. All candidates for the following positions are required to pass a drug test before being placed in the position, whether through appointment or promotion and employees who occupy these positions are subject to random drug/alcohol testing.

a. Alcohol Beverage Control Investigator Supervisor

b. Alcohol Beverage Control Investigator

c. Alcohol Beverage Control Manager

d. Alcohol Beverage Control Staff Officer

e. Alcohol Beverage Control Special Investigator

f. Alcohol and Tobacco Control Agent 1-6

g. Alcohol and Tobacco Control Commissioner

h. Alcohol and Tobacco Control Deputy Commissioner

i. Alcohol and Tobacco Control Financial Investigator 1-2

j. Alcohol and Tobacco Control Special Investigator 1-2

k. Alcohol and Tobacco Control Specialist

l. Special Investigation Division—Assistant Director

m. Special Investigations Division—Director

n. Special Investigations Division—Revenue Agent

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AUTHORITY NOTE: Promulgated in accordance with Executive Orders KBB 2005-08 and 2005-11 and R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of the Secretary, LR 25:1523 (August 1999), amended LR 34:668 (April 2008).

### §103. Criminal History Records Checks for Access to Federal Tax Information

#### A. Introduction and Purpose

1. Safeguarding federal tax information (FTI) is critically important to the continuous protection of taxpayer confidentiality as required by the IRS statute found at 26 USCS 6103(p)(4) and its supplemental publication 1075. The Department of Revenue will conduct fingerprinting, along with national, state and local criminal history record checks on all individuals handling and those who may handle FTI in order to ensure the Department of Revenue is making a complete effort to protect the sensitive information of all taxpayers and complying with federal confidentiality laws and background investigation standards. The criminal history record checks will be used to determine the suitability of individuals to access FTI in performance of their job duties or services for the Department of Revenue. In determining suitability, the Department of Revenue will use information obtained through the criminal history record check to identify trends of behavior that may not rise to the criteria for reporting to the FBI or state database, but are a good source of information about the individual.

B. Applicability

1. This regulation applies to all current employees, prospective employees, contractors and subcontractors of the Department of Revenue.

C. Definitions

*Criminal History Record Check*—a review of an individual’s criminal history on the national level through the use of fingerprints sent to the Federal Bureau of Investigation (FBI), the state level, through the use of fingerprints sent to the Louisiana Bureau of Criminal Identification and Information and the local level, through various local law enforcement agencies.

*Department*—the Louisiana Department of Revenue.

*FTI Suitable (no reports)*—an employee, contractor or subcontractor who is suitable to access federal tax information in the performance of his duties, function or service at the department.

*FTI Suitable (with reports)*—an employee, contractor or subcontractor where information was received during the criminal history record check process that indicated there were criminal cases, convictions, arrests or serious misconduct but a determination was made based upon compelling reasons, to allow access to FTI in the performance of his duties, function or service at the department.

*FTI Unsuitable*—an employee, contractor or subcontractor who is not suitable to access federal tax information in the performance of his duties, function or service at the department.

*Federal Tax Information (FTI)*—consists of federal tax returns and return information (and information derived from it) that is in the department’s possession or control which is covered by the confidentiality protections of the *Internal Revenue Code* and subject to its safeguarding requirements, including IRS oversight.

D. General Provisions for Criminal History Record Checks

1. Every current employee, prospective employee, contractor or subcontractor identified as having or who will have access to FTI, shall sign a written authorization to have the fingerprinting and criminal history record check performed.

2. Criminal history record checks will include, at minimum, a national check through the use of fingerprints that are sent to the FBI, a state check, through the use of fingerprints sent to the Louisiana Bureau of Criminal Identification and Information along with a local check, through various local law enforcement agencies.

3. Criminal history record checks will be completed, at minimum, every 10 years.

4. Criminal history record checks will only be done on prospective employees after a conditional offer of employment is signed by the prospective employee.

5. Background checks on prospective contractors must be done prior to the contractor beginning work on the contract.

E. Suitability Standards

1. Whether a current or prospective employee, contractor or subcontractor is deemed to be “FTI suitable (no reports),” “FTI suitable (with reports),” or “FTI unsuitable” is determined by the factors contained in the following table.

Designation	Criminal History Record Check Results
FTI Suitable (No Reports)	No reports of open criminal cases, convictions, arrests or serious misconduct
FTI Suitable (With Reports)	<ul style="list-style-type: none"> <li>• No reports of open criminal cases, convictions, arrests or serious misconduct with relevance to the duties of the position or access to FTI</li> <li>• Reports of open criminal cases, convictions, arrests or serious misconduct relevant to the duties of the position or access to FTI; but, compelling mitigating documentation has been provided</li> <li>• Reports of criminal cases, convictions, arrests or serious misconduct that occurred 10 or more years prior to the date of the criminal history record check                             <ul style="list-style-type: none"> <li>- The criminal case, conviction, arrest or serious misconduct cannot be one or of the nature discussed in the FTI Unsuitable category.</li> <li>- The current or prospective employee, contractor and/or subcontractor shall submit a detailed explanation.</li> <li>- The detailed explanation will be reviewed to determine FTI suitability.</li> </ul> </li> </ul>
FTI Unsuitable	Reports of criminal cases, convictions, arrests or serious misconduct that includes but is not limited to: <ul style="list-style-type: none"> <li>• Misappropriation Crimes*</li> <li>• Computer Related Crimes*</li> <li>• Offenses Affecting Organized Government, subparts B through F*</li> <li>• Tax, Alcohol Beverage, Tobacco or Charitable Gaming offenses where the federal or state statute exposes the offender to a penalty of imprisonment, with or without hard labor                             <ul style="list-style-type: none"> <li>- The asterisk (*) indicates a specific category of various related crimes that are listed in Title 14 of the Louisiana Revised Statutes.</li> <li>- Compelling or mitigating documentation must be provided to show the offense is irrelevant to FTI suitability.</li> </ul> </li> </ul>

2. Any criminal history record check that does not result in a determination of FTI suitable (no reports) will be reviewed on a case by case basis.

3. The case by case assessment of all open criminal cases, convictions, arrests, or reports of misconduct shall take into consideration all the items/factors below:

- a. the nature of the offense;
- b. the relation of the offense to the duties of the employee, contractor or subcontractor;
- c. any aggravating or mitigating circumstances, including the passage of time; and
- d. any evidence of rehabilitation of the subject or the lack thereof.

F. Impact of Suitability Determination

1. Prospective and current employees as well as contractors and subcontractors who have been deemed FTI

suitable (no reports) or FTI suitable (with reports) will be able to exercise one of the options below that is applicable to their status:

- a. continue to or be allowed to access FTI in the performance of job duties;
- b. continue to or be allowed to access FTI in the performance of job duties with special restrictions or caveats; or
- c. be considered for a vacant position with FTI access.

2. If a current or prospective employee, contractor or subcontractor has been deemed FTI unsuitable, the department will exercise one of the options below:

- a. access or use of FTI will immediately be denied, suspended or prevented;
- b. the job offer may be rescinded;
- c. the contract may be terminated; or
- d. the contractor or subcontractor's employee may be removed or prohibited from performing work on the contract.

3. A determination of FTI unsuitable may be appealed using the procedures outlined in Subsection G of this Section.

4. A successful appeal is the only mechanism in which the impact of a FTI unsuitable determination can be avoided.

**G. Appeal Procedures**

1. In the event the criminal history record check reveals information that leads to a determination of FTI unsuitable for a current or prospective employee, contractor or subcontractor, the impacted person will be notified. This notification will also inform the impacted person of their right to challenge the accuracy of the criminal history record check.

2. The impacted person will have 30 days to present documentation to refute or mitigate the determination.

3. The department will review the documentation and notify the impacted person of its determination. The department may also use this information to request a new or updated criminal history record check, if allowed by the national, state and/or local law enforcement agencies.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 15:587.5, R.S. 47:1504.1 and R.S. 47:1511

**HISTORICAL NOTE:** Promulgated by the Department of Revenue, Policy Services Division, LR 44:98 (January 2018).

**Chapter 2. Alcoholic Beverages**

**§201. Direct Shipments of Sparkling or Still Wines**

**A. Identification of Shipments**

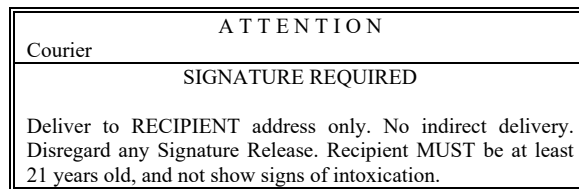
1. All shipments made by an authorized manufacturer or retailer of sparkling or still wines that are shipped directly to any consumer in Louisiana shall be identified as follows:

a. the words "Alcoholic Beverage—Direct Shipment" shall be marked and clearly visible on both the front and back of the package in lettering measuring at least 1/4 inch in height; and

b. the words "Unlawful to Sell or Deliver to Anyone under 21 Years of Age" must be clearly visible on the front of the package, in lettering measuring at least 1/4 inch in height.

2. The manufacturer's or retailer's Louisiana registration or permit number assigned by the Excise Taxes Division shall be clearly displayed on the front of the package.

3. All shipments shall have affixed to the exterior packaging a notification to the person making the delivery that a signature of the recipient is required prior to delivery. The notice should be at least 3" by 3" and contain words similar to the following.



**B. Reporting of Shipments**

1. For each shipment made by an authorized manufacturer or retailer of sparkling or still wines that is shipped directly to any consumer in the state of Louisiana, the authorized manufacturer or retailer shall maintain the following records until December 31 of the year following the year in which the shipment was made. These records shall be available for inspection by the Department of Revenue upon request:

- a. an invoice detailing the transaction; and
- b. a certification, on a written form as specified by the secretary, by the person receiving the shipment that the recipient is 21 years of age or older.

2. Each certification required by §201.B.1.b must be signed and dated at the time of delivery to any consumer in Louisiana.

3. The carrier making the actual delivery of packages of sparkling or still wines shall forward copies of the bills of lading to the Excise Tax Division of the Louisiana Department of Revenue by the fifteenth day of the month following the month of delivery in the same manner as reports showing the handling of alcoholic beverages as required under R.S. 26:369.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 26:341, 26:344, and 26:359.

**HISTORICAL NOTE:** Promulgated by the Department of Revenue, Excise Taxes Division, LR 25:526 (March 1999).