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**STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL**

**Summary
of
Juvenile Tobacco Sales
Enforcement
1998**

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March 2, 1999

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MAY 27 1999

SCOPE:

Unannounced inspections of licensed tobacco outlets were conducted during September, October, and November of 1998. The inspections were carried out pursuant to Maine's Juvenile Tobacco Law, 22 MRSA §1551 *et seq.* and the U.S. Food and Drug Administration "Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents" CFR Part 801, *et seq.* Agents of the Maine Sheriffs Association and officers of the Portland, Westbrook, Lewiston, and Auburn Police Departments were trained and commissioned as officers of the U.S. Department of Health and Human Services. Working with underage purchasers trained in the Enforcement Procedures and Protocols for Unannounced Inspections of Tobacco Vendors and adult supervisors, the agents and purchasers conducted the inspections under contract with the Maine Department of Human Services¹. The Maine Department of Mental Health Mental Retardation and Substance Abuse Services, Office of Substance Abuse (OSA), is required by the SYNAR amendment² to report results of tobacco inspections to the U.S. Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention (CSAP) pursuant to the terms of the Substance Abuse Prevention and Treatment Block Grant. The results are also reported to the FDA and letters of violation or compliance with federal regulations are mailed to each of the inspected locations. The results are also used to file complaints against violators of Maine law including both license holders and their employees.

INSPECTIONS:

Of 1225 outlets visited 1083 were inspected. The remaining 142 locations were either closed at the time of inspection or out of business. Four hundred ninety eight of the sites visited were selected from a sample of 550 tobacco vendors chosen at random from those licensed by the Department of Human Services³. This random sample was used to satisfy the requirements of the Substance Abuse Prevention and Treatment Block Grant administered by OSA. Agents and underage purchasers attended one of two one day training sessions held in Portland and Bangor and were trained on Procedures and Protocols developed by the Department of the Attorney General

¹ 22 MRSA § 1556-A-DHS authority to contract enforcement

² Section 1926(b)(2) Public Health Service Act [42 USC 300x-26(b)(2)] 1992

³ Required by 22 MRSA § 1551-A.

and FDA procedures. Additional training was provided on how to complete reports, and included role playing of likely situations during inspections and when testifying in court.

Agents and underage purchasers were assigned regions and four regional coordinators developed inspection schedules. Inspection results were filed with both the FDA and the Department of the Attorney General. Results of the SYNAR sample were submitted to the Office of Substance Abuse and reported to CSAP.

RESULTS OF INSPECTIONS:

Of the 1083 outlets inspected, the underage purchasers purchased tobacco products 71 times. Of the 498 locations included in the SYNAR sample 20 resulted in purchases. The "buy rate" for these SYNAR inspections conducted during 1998 was 4%. The overall "buy rate" for all inspections during 1998 was 6.56%. It is important to note that this rate of non-compliance is down 45% from the non-compliance rate of 14.6% for 1997 and down 152% from a non-enforcement compliance check of 87 stores in Portland during February of 1994. The reported non-compliance for the 1994 Portland compliance check was 43%.

The buy rates ranged from 28.57% to 0%. Ten counties (Androscoggin, Aroostook, Cumberland, Franklin, Kennebec, Knox, Oxford, Somerset, Waldo and York) had buy rates under 10%; six counties (Hancock, Lincoln, Penobscot, Piscataquis, Sagadahoc, and Washington) had rates exceeding 10%; only Sagadahoc county had a rate of 20% or more.

Whenever tobacco products were purchased, law enforcement officers, trained as tobacco control agents and commissioned as FDA officers, issued Notices of Civil Administrative Action. Both clerks and owners were issued notices pursuant to 22 MRSA § 1555-B. Copies of the notices and reports were forwarded to the Department of the Attorney General and civil complaints were filed with the Administrative Court and/or warnings were issued to the violators. A FDA compliance check form is submitted to FDA. For first offenses FDA issues a warning letter. Repeat offenses are subject to federal fines up to \$10,000. Under Maine law a violator may be fined up to \$1500 and tobacco sales licenses may be suspended or revoked.

A small number of violators complained about the procedures used during inspections. Most complaints focused on being unable to confront the underage purchaser who purchased the tobacco product at the time violators were served the Notice of Civil Administrative Action⁴. All such complaints were addressed and the Department of the Attorney General considered the circumstances of a given inspection when making the final decision on pursuing a complaint, seeking a reduced fine or issuing a warning. These decisions are based on interviews with the violator, purchasers and agents involved.

Of the 130 Complaints brought by the Department of the Attorney General, on behalf of the Department of Human Services, an agreement resulting in a consent order being entered was reached in 112 of the cases. In the remaining 18 cases that were contested, seven judgments were issued in favor of the state after hearings, six cases are scheduled for hearings and five remain to be scheduled. Of the cases settled, 100% included admissions or findings of a violation.

RECOMMENDATIONS:

Continued review of procedures and on-going training to assure the safety of participants is required. All agencies and contractors involved need to continue to communicate so that proven efficiencies of a collaborative effort continue to be realized.

The Procedures and Protocols must be reviewed periodically and any insights gained from experience in the field incorporated. This field experience needs to be shared with the federal agencies involved to assure that federal requirements meet the needs of Maine's program. New training must continue to address situations which are to be avoided such as conducting inspections where underage purchasers are known. Training must continue to stress strict adherence to the protocols. It must also be clear that purchasers involved in a buy may be required to testify in court.

⁴ Both State and FDA Procedures prohibit the purchaser from returning to the store for safety concerns. Purchasers are named in complaints and appear for contested hearings in Administrative Court.

Adopting changes to licensing procedures could reduce the large number of stores that were found upon inspection to be out of business or closed. Dates of seasonal operations within their application and regular renewals would reduce unproductive inspection operations.

In order to assure dedicated participants, compensation of underage purchasers, law enforcement agents and adult supervisors must remain competitive with other employment opportunities available to them.

ONGOING EFFORTS:

The Maine Department of Human Services' Bureau of Health/Partnership for Tobacco Free Maine, has a current contract with the FDA, and subcontracts with law enforcement and regional coordinators.

It is the policy of the Department of the Attorney General to not file complaints when inappropriate inspections occur. If a complete file on the underage purchaser is not maintained, complaints will not be filed. Underage purchaser files will need to be complete, including a copy of a birth certificate or other age documentation⁵, in order for the Department of the Attorney General to pursue complaints.

It is the consensus of all the Departments involved that inspections in Maine will be ongoing. FDA and DHS media campaigns continue to alert the public to this program. Retailers will continue to receive information about the program from both the FDA and DHS. The Tobacco Prevention and Control Advisory Council, established in 22 MRSA § 271 *et seq*, continues to be informed of the results of tobacco inspections and advises the Bureau of Health on all components of the Tobacco Prevention and Control Program including the stated goal of increased law enforcement efforts.

⁵ Specifications included in the FDA contract for tobacco enforcement requires submission of birth certificates.
Maine Department of the Attorney General

By statute 50% of the fines collected from tobacco violations are returned to "law enforcement."⁶ Currently, these funds are administered by the Maine Criminal Justice Academy. The Academy has formed a committee with representatives of the Maine Sheriffs Association, the Maine Police Chiefs Association, the Department of Education and the Department of the Attorney General to oversee the account. To date, \$43,661 has been distributed to local law enforcement agencies for youth drug and tobacco outreach programs and education.

CONCLUSIONS:

The unannounced retail tobacco inspection program is an important piece in the overall strategy for reducing tobacco use by underage teenagers. The underage purchasers, adult supervisors, and agents perform professionally. Most civil actions initiated by the Department of the Attorney General are resolved quickly by negotiated consent orders. The rate of out of court settlements for 1998 is over 82%. Importantly, the compliance rate has continued to rise from 57% in 1994 to 93% in 1998. This decrease in underage tobacco sales can be attributed to the implementation of the federally mandated programs combined with enforcement of state law. These results demonstrate that the intended change of attitude toward tobacco sales among retailers is being achieved.

The program is successful in its operation and in assessing penalties for violations. Both Maine law and FDA rules requiring that sellers check identification of any person age 27 or younger sets a clear parameter for sellers and provides a clear determination if a violation has occurred.

One can finally conclude that an organized, adequately funded and credible enforcement program, when combined with education, increased product cost and media campaigns does reduce the availability of tobacco products to underage individuals and will lead to lowered demand for tobacco by teens.

⁶ 22 MRSA§ 1555-B ¶ 9.

APPENDIX

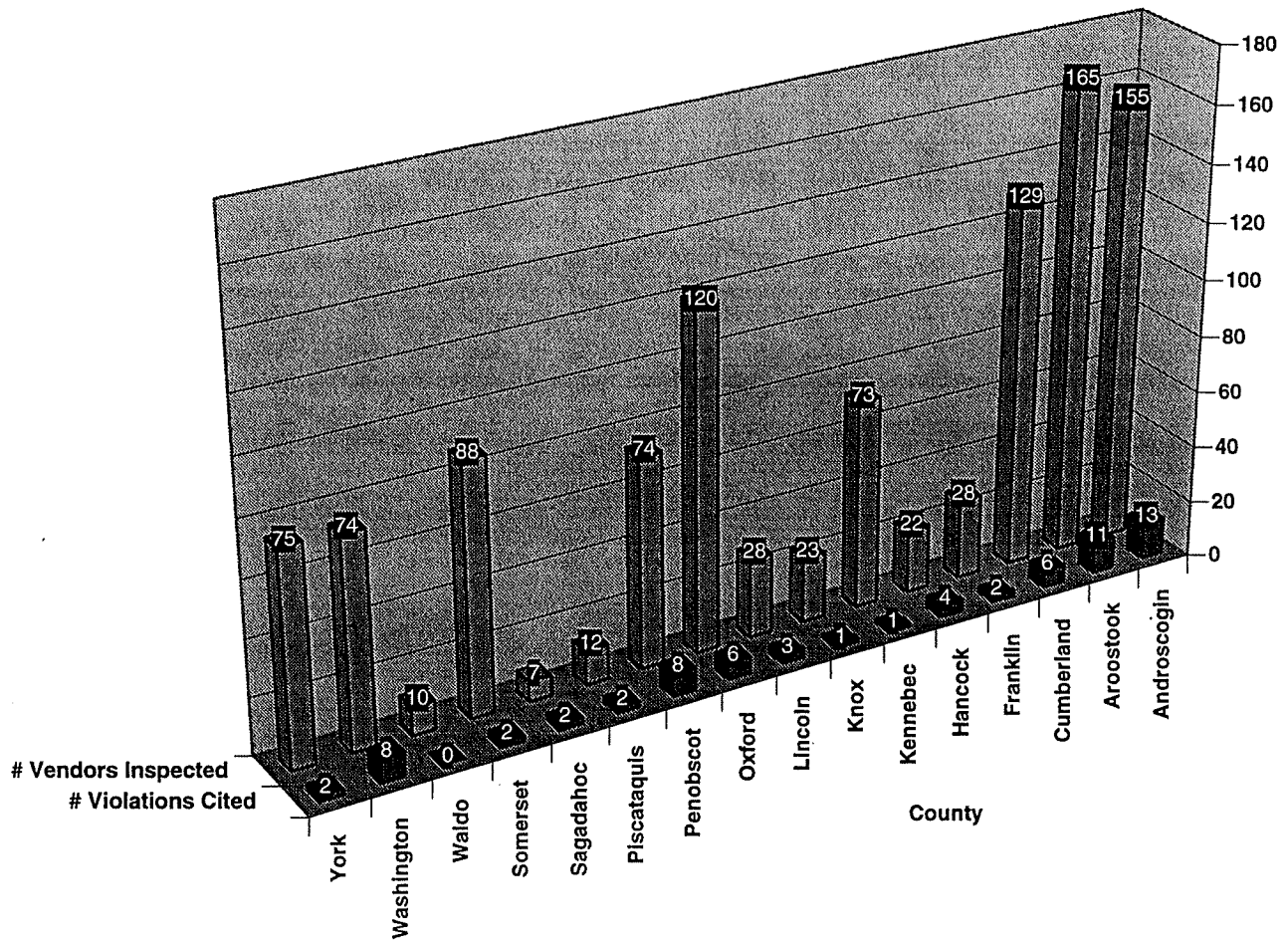
Table - 1
Complaints Filed September - November 1998

<i>County</i>	<i># Complaints Against Licensees</i>	<i># Complaints Against Clerks</i>
Androscogin	13	12
Aroostook	11	10
Cumberland	6	4
Franklin	2	2
Hancock	4	3
Kennebec	1	1
Knox	1	1
Lincoln	3	2
Oxford	6	6
Penobscot	8	7
Piscataquis	2	2
Sagadahoc	2	2
Somerset	2	2
Waldo	0	0
Washington	8	3
York	2	2
Total	71	59

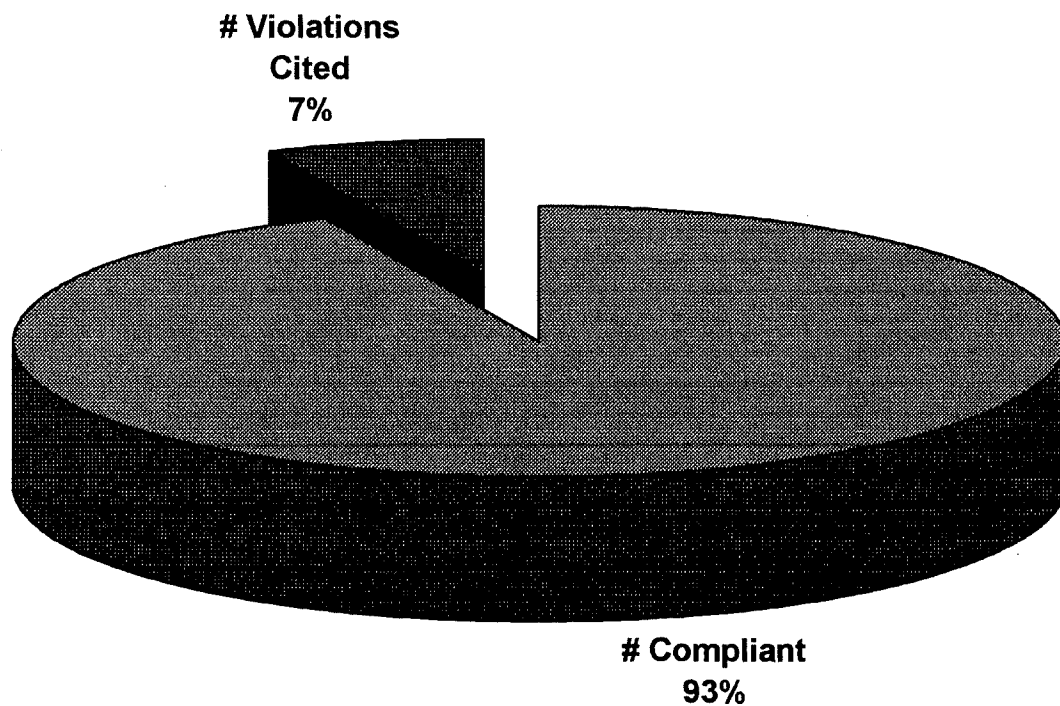
Table - 2
Unannounced Retail Tobacco Inspections September - November 1998

<i>County</i>	<i># Compliant</i>	<i># Violations Cited</i>	<i># Vendors Inspected</i>	<i>Non- Compliance Rate</i>	<i>Compliance Rate</i>
Androscogin	142	13	155	8.39%	91.61%
Aroostook	154	11	165	6.67%	93.33%
Cumberland	123	6	129	4.65%	95.35%
Franklin	26	2	28	7.14%	92.86%
Hancock	18	4	22	18.18%	81.82%
Kennebec	72	1	73	1.37%	98.63%
Knox	22	1	23	4.35%	95.65%
Lincoln	25	3	28	10.71%	89.29%
Oxford	114	6	120	5.00%	95.00%
Penobscot	66	8	74	10.81%	89.19%
Piscataquis	10	2	12	16.67%	83.33%
Sagadahoc	5	2	7	28.57%	71.43%
Somerset	86	2	88	2.27%	97.73%
Waldo	10	0	10	0.00%	100.00%
Washington	66	8	74	10.81%	89.19%
York	73	2	75	2.67%	97.33%
Total	1012	71	1083	6.56%	93.44%

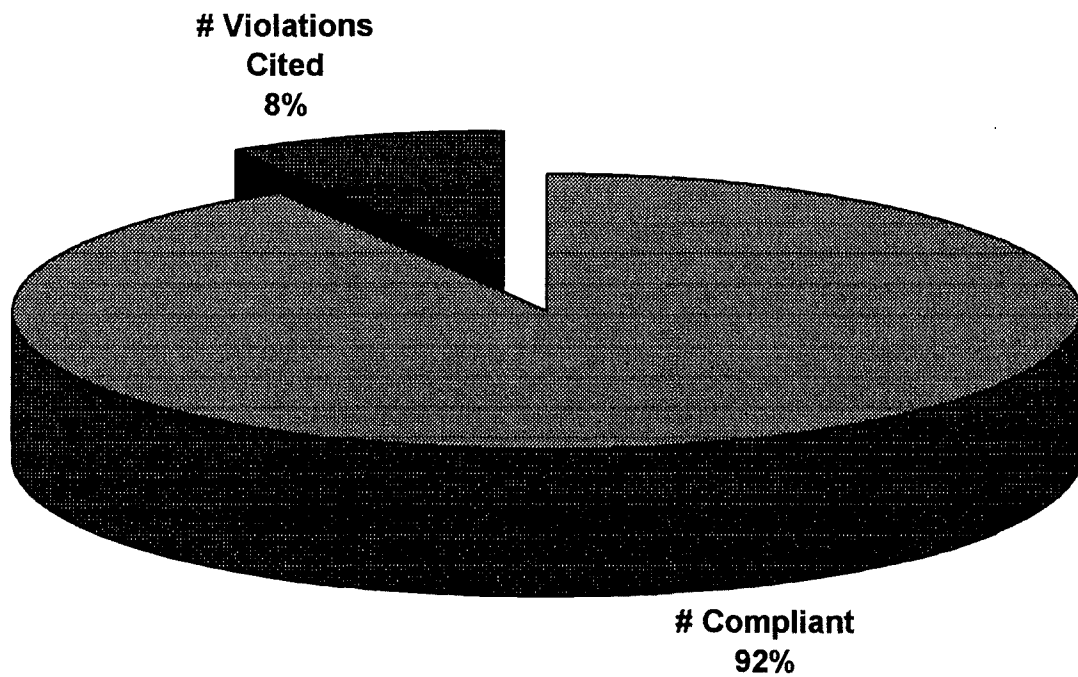
Results of Unannounced Tobacco Inspections September-November 1998



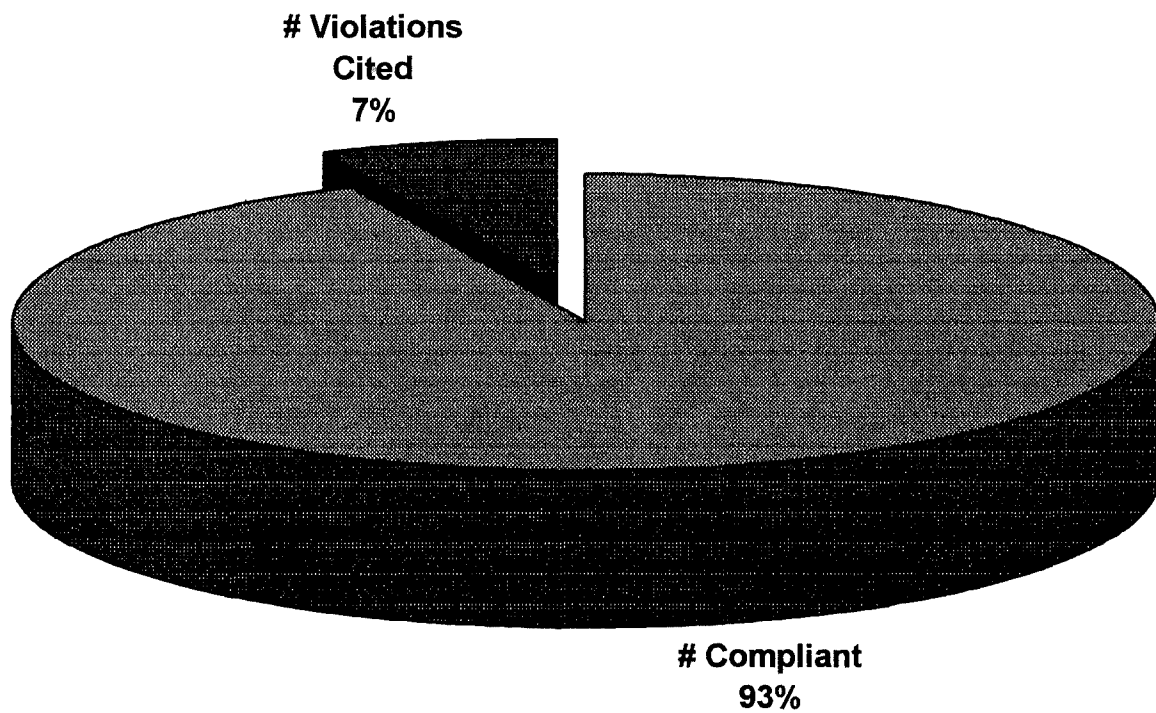
**Results
of
Unannounced Retail Tobacco Inspections
Statewide
September -November 1998**



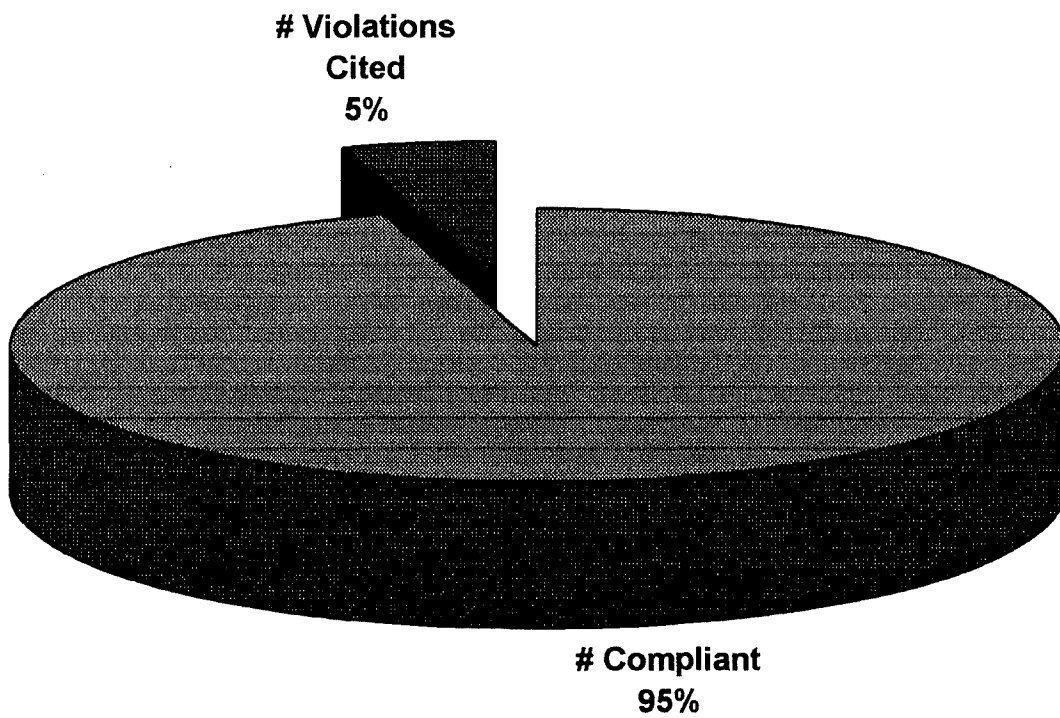
**Results
of
Unannounced Retail Tobacco Inspections
Androscoggin County
September -November 1998**



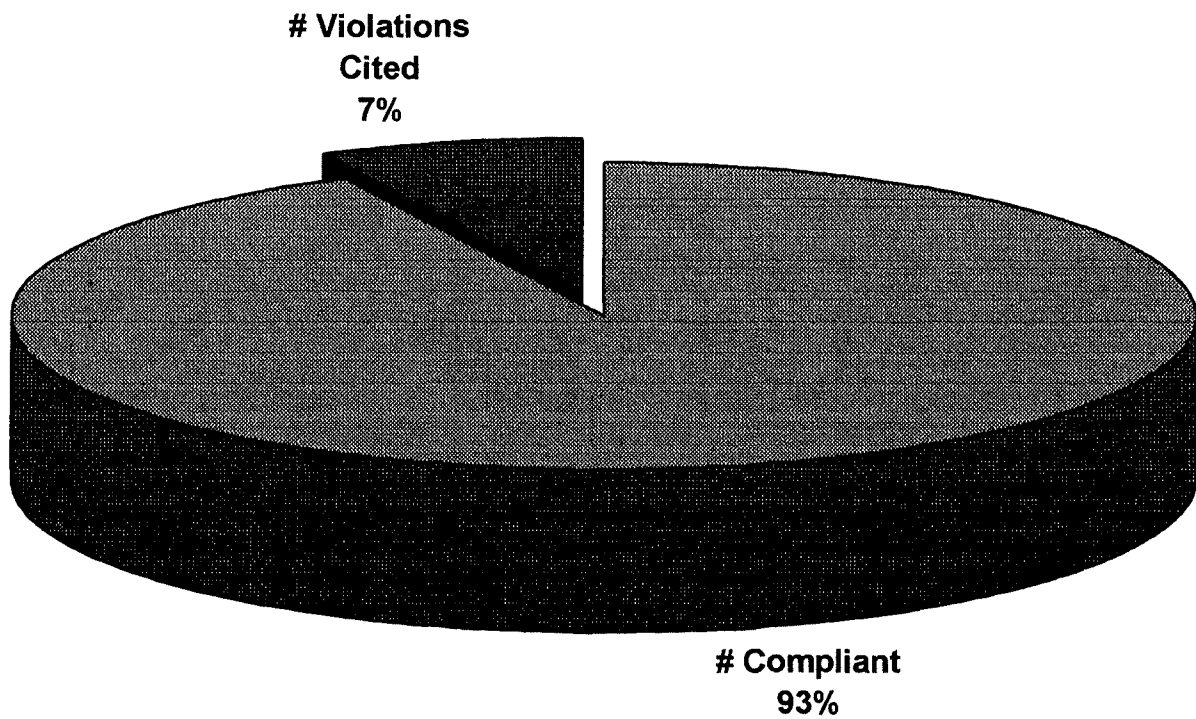
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of
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Aroostook County
September -November 1998**



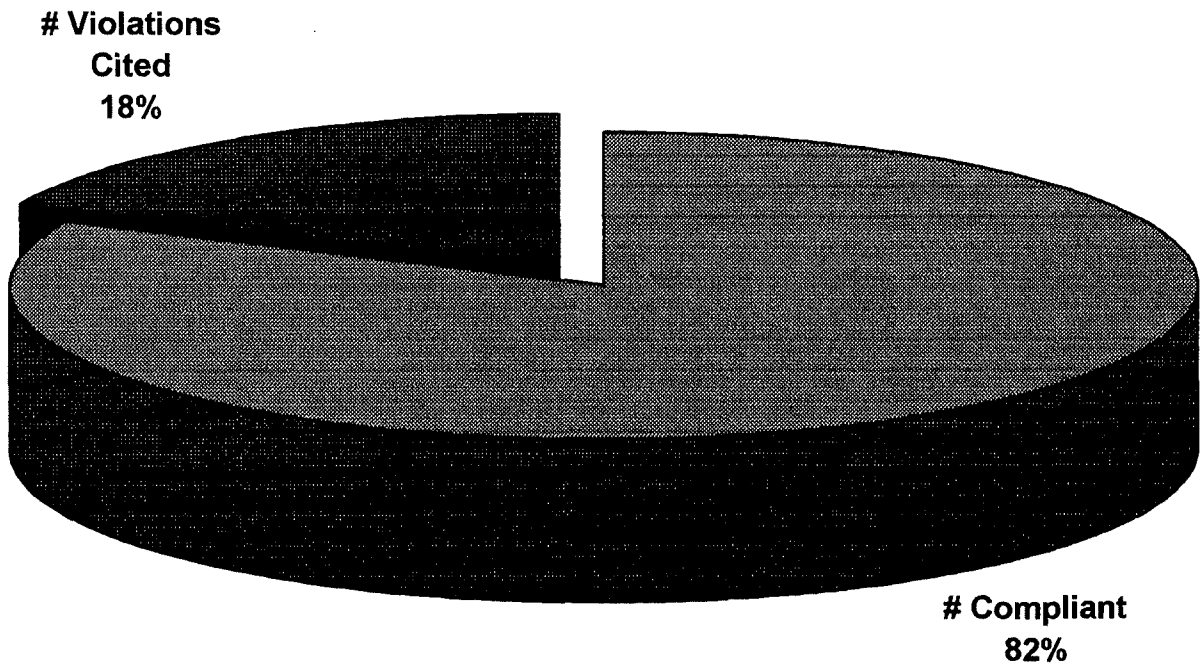
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of
Unannounced Retail Tobacco Inspections
Cumberland County
September -November 1998**



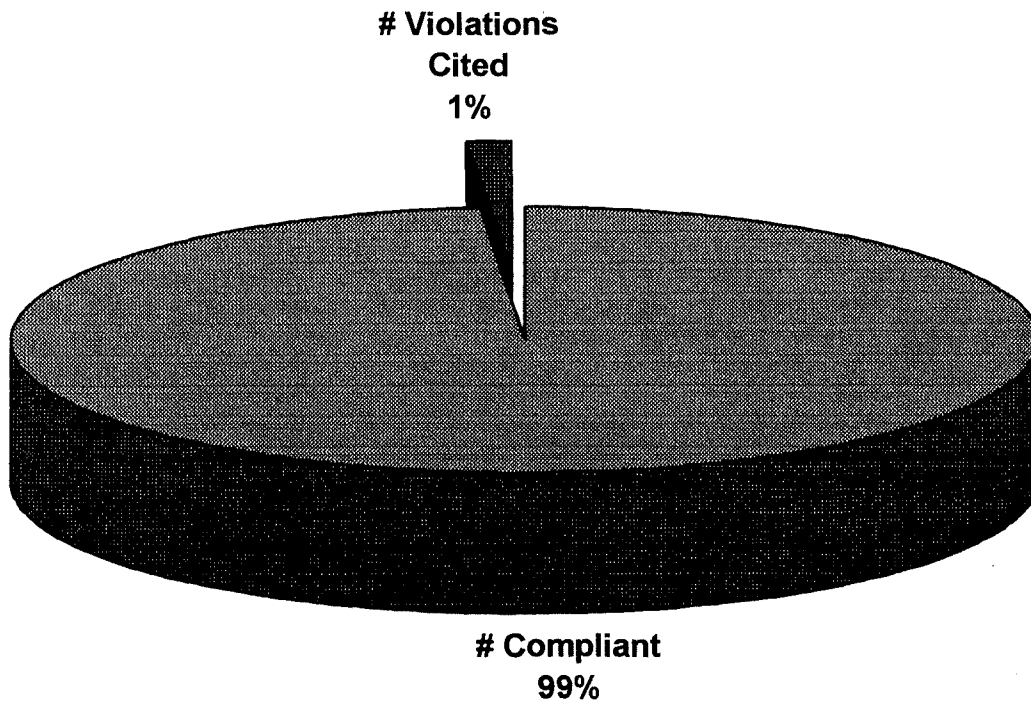
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of
Unannounced Retail Tobacco Inspections
Franklin County
September -November 1998**



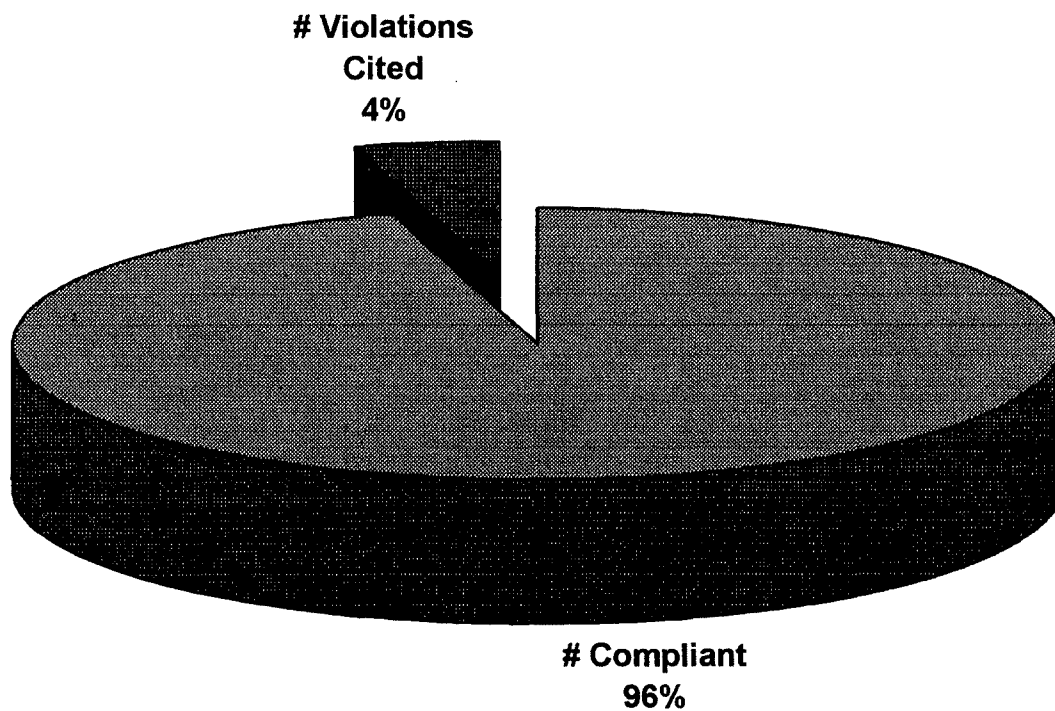
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of
Unannounced Retail Tobacco Inspections
Hancock County
September -November 1998**



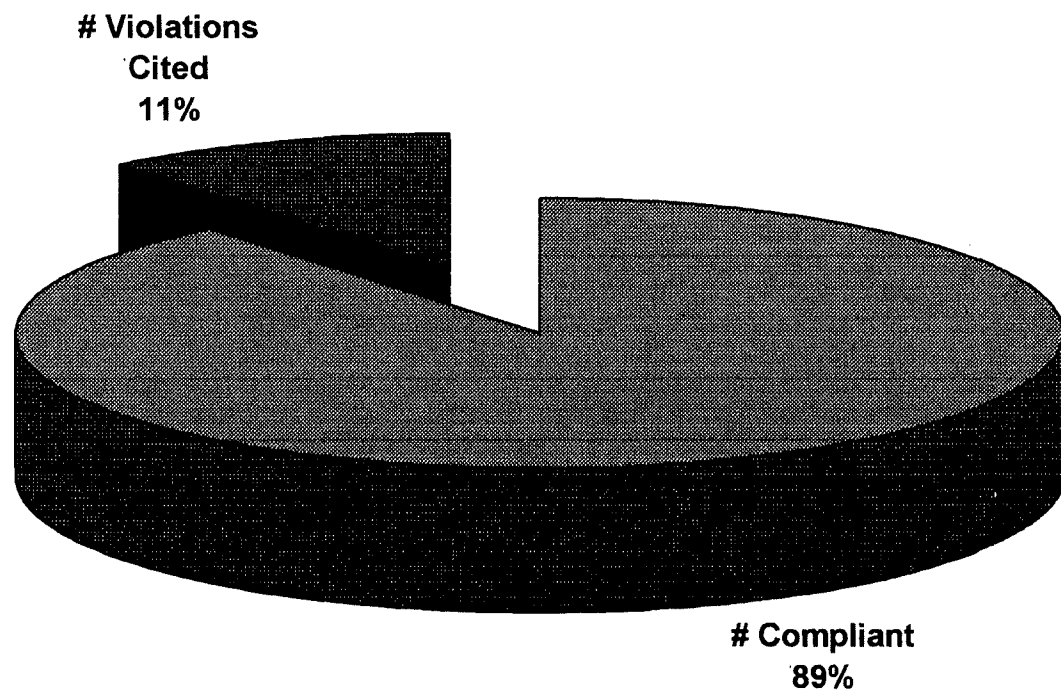
**Results
of
Unannounced Retail Tobacco Inspections
Kennebec County
September -November 1998**



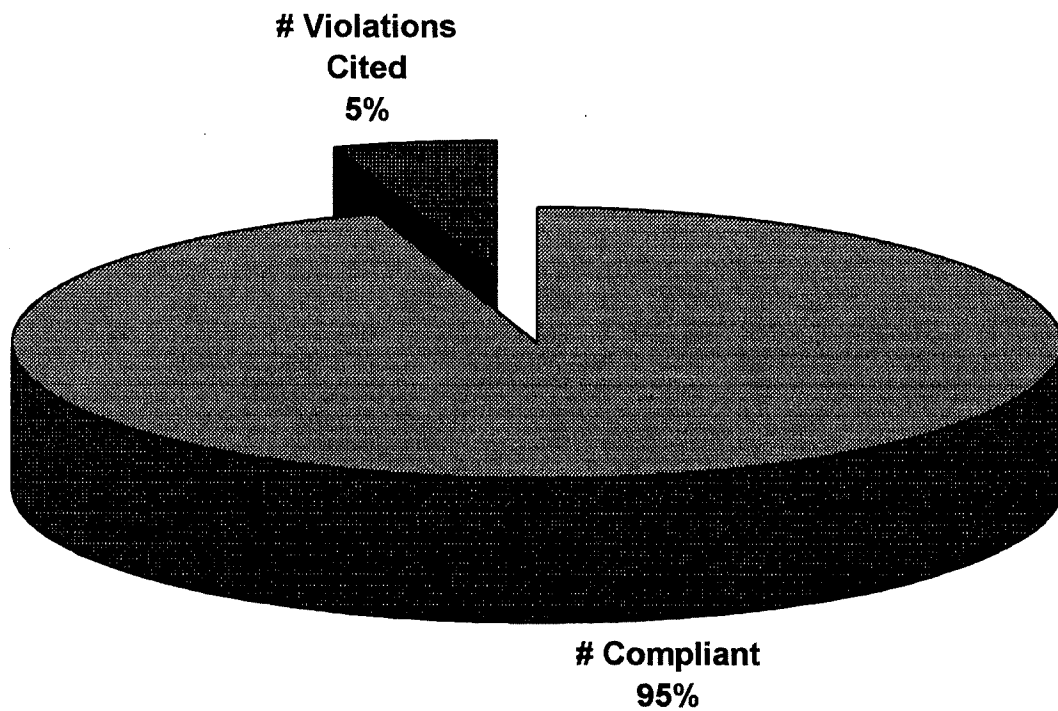
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of
Unannounced Retail Tobacco Inspections
Knox County
September -November 1998**



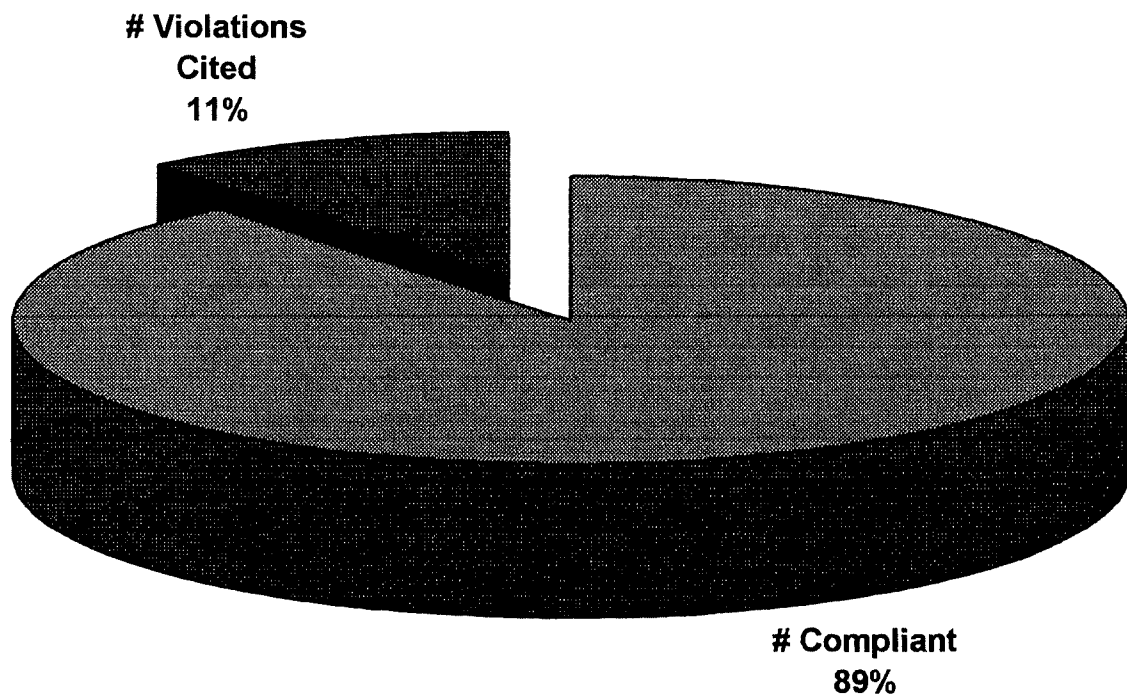
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of
Unannounced Retail Tobacco Inspections
Lincoln County
September -November 1998**



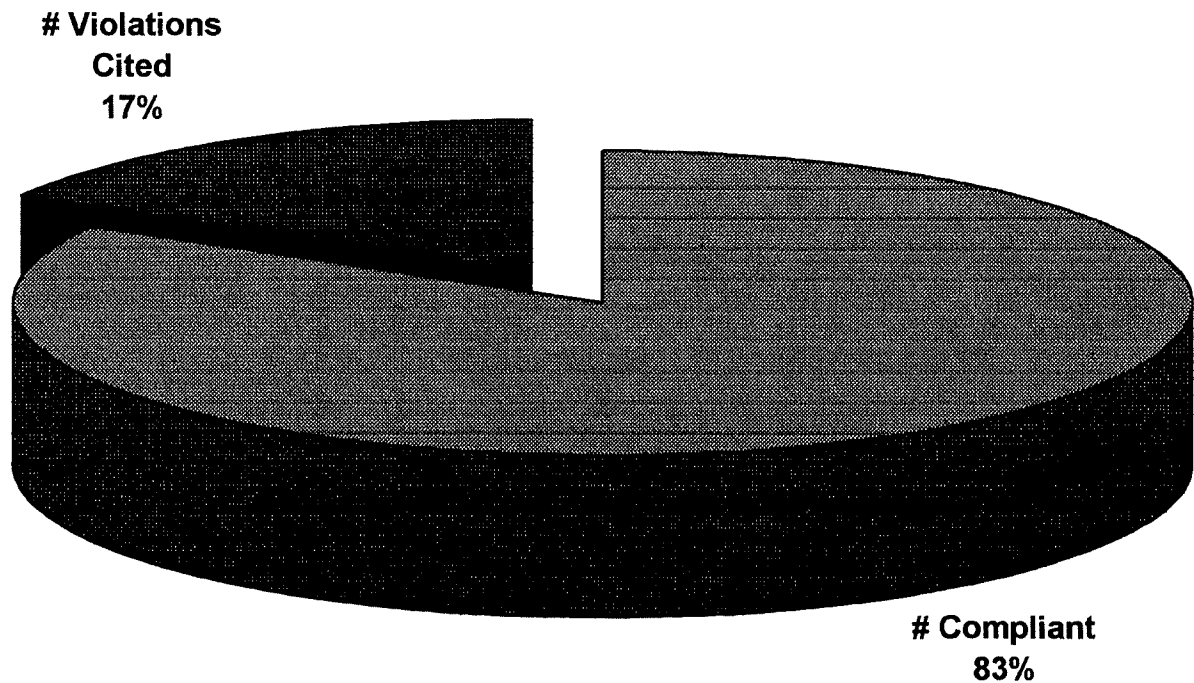
**Results
of
Unannounced Retail Tobacco Inspections
Oxford County
September -November 1998**



**Results
of
Unannounced Retail Tobacco Inspections
Penobscot County
September -November 1998**

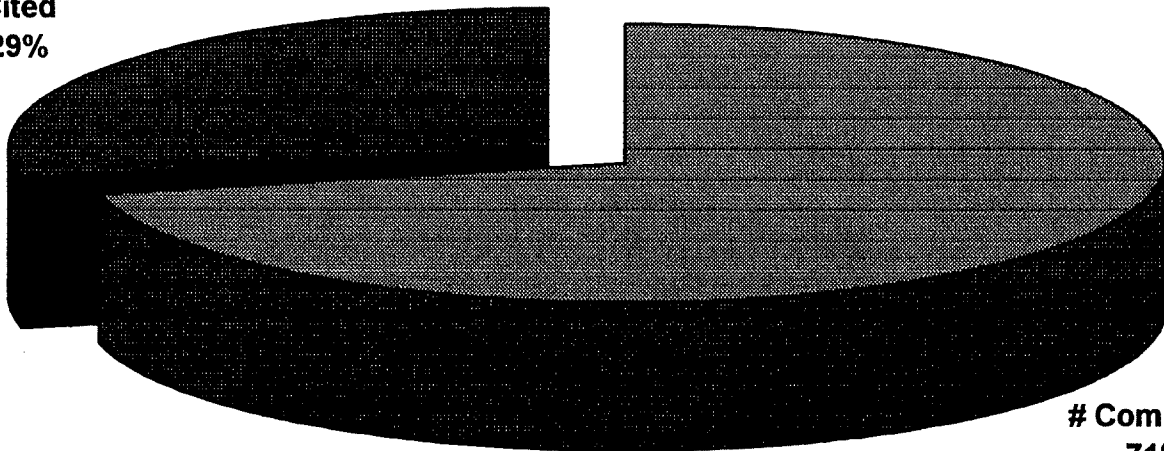


**Results
of
Unannounced Retail Tobacco Inspections
Piscataquis County
September -November 1998**



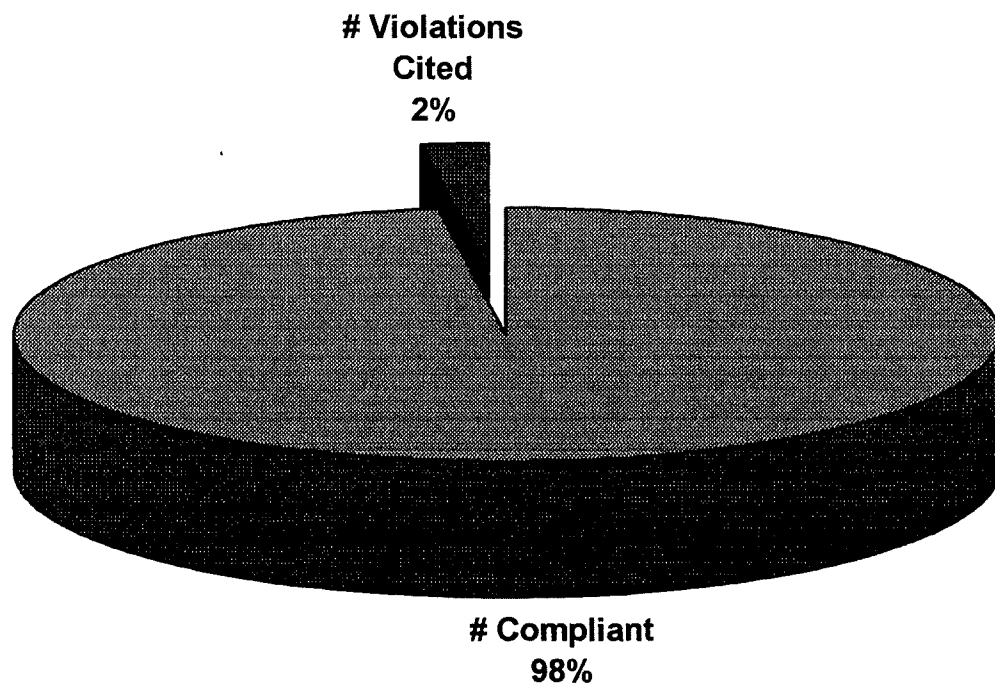
**Results
of
Unannounced Retail Tobacco Inspections
Sagadahoc County
September -November 1998**

**# Violations
Cited
29%**

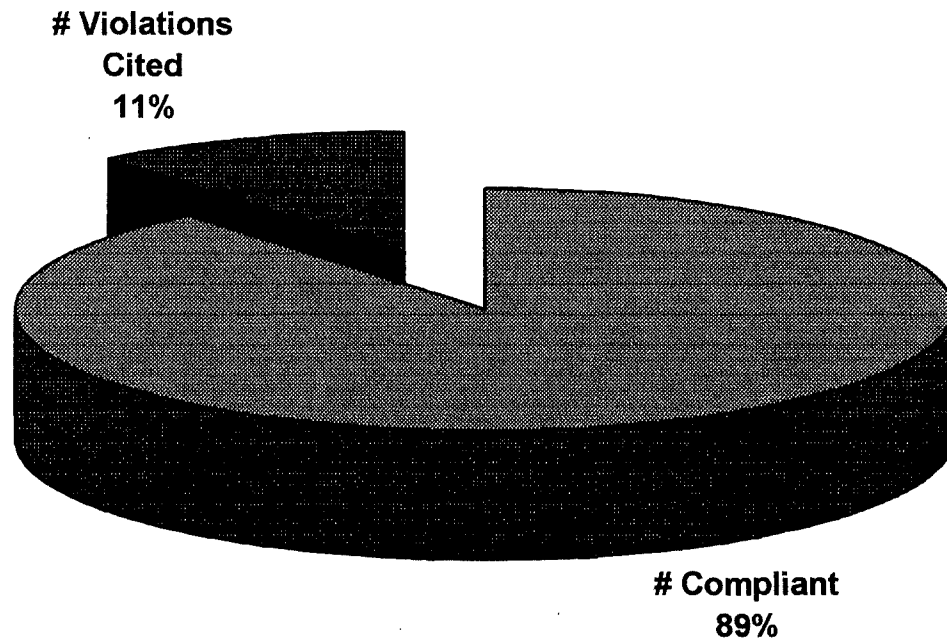


**# Compliant
71%**

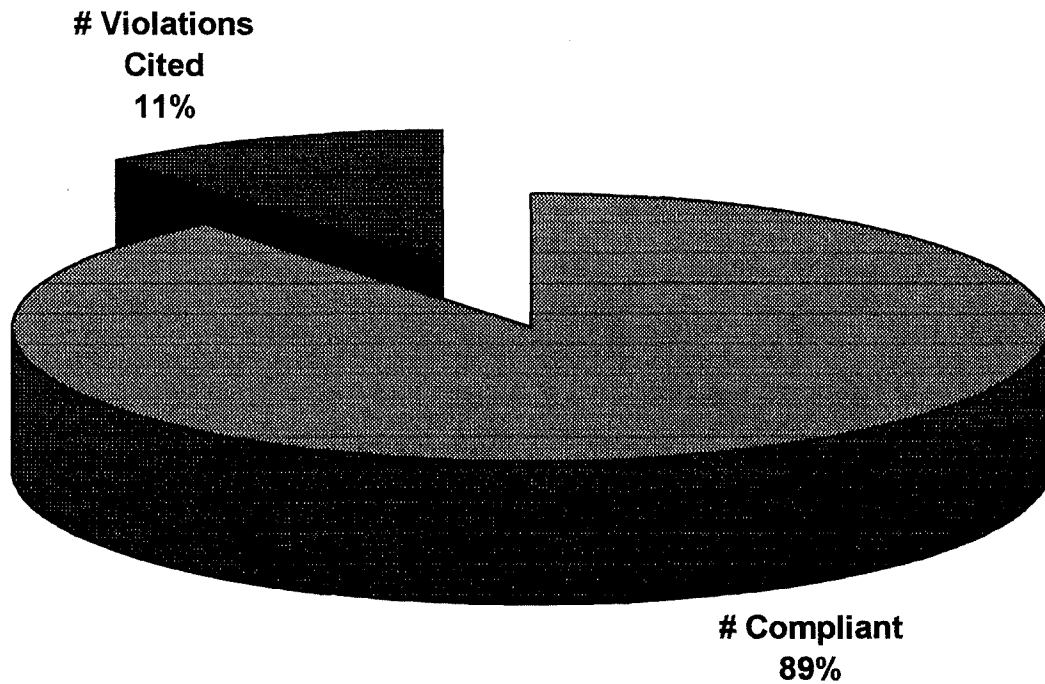
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of
Unannounced Retail Tobacco Inspections
Somerset County
September -November 1998**



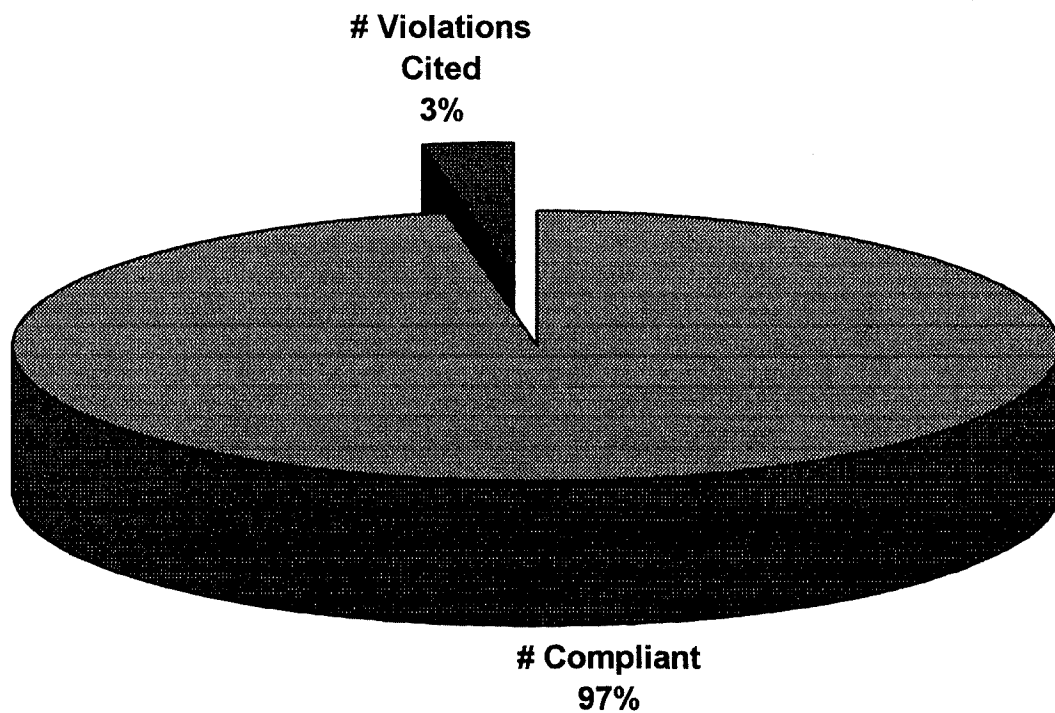
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of
Unannounced Retail Tobacco Inspections
Waldo County
September -November 1998**



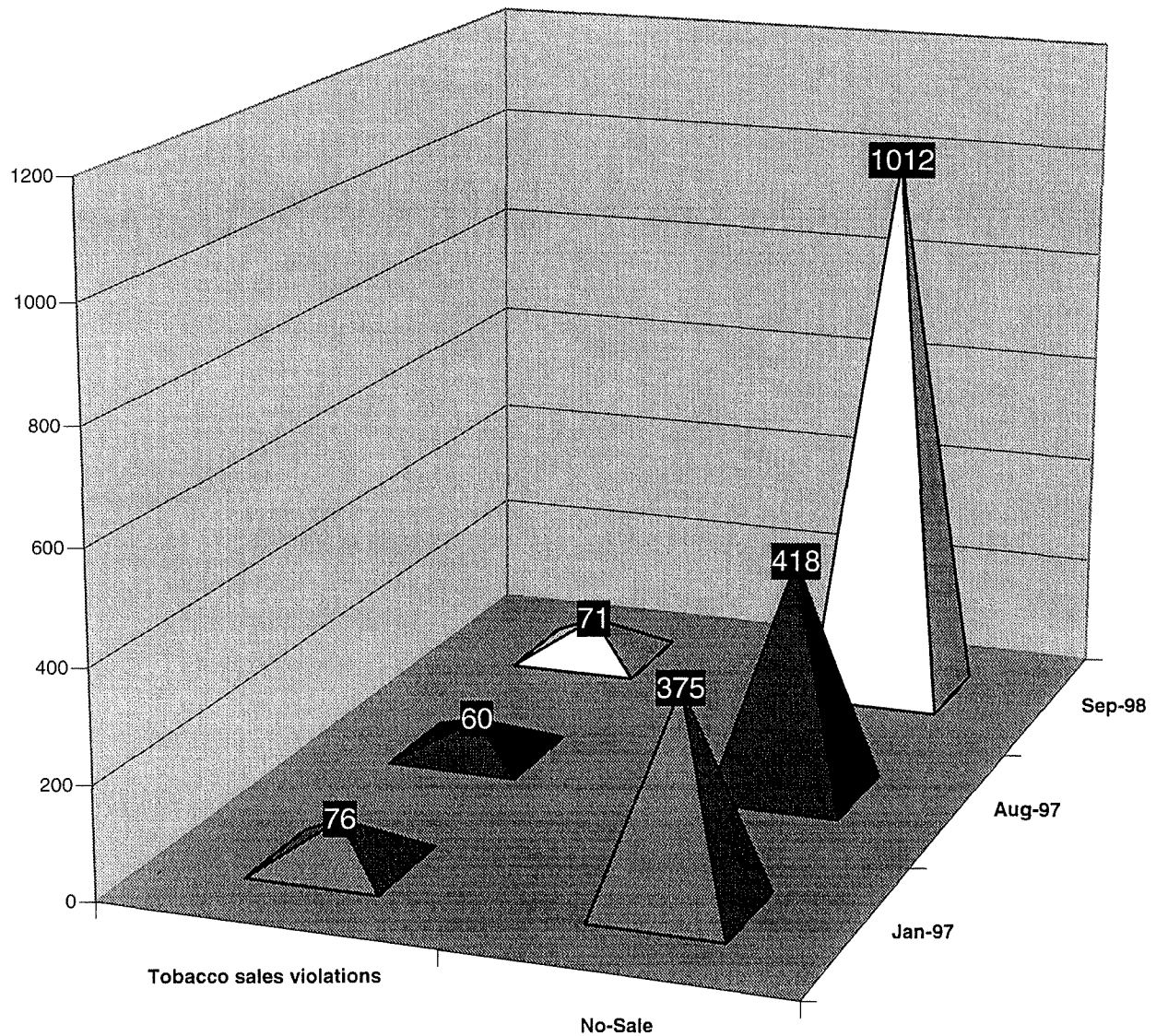
**Results
of
Unannounced Retail Tobacco Inspections
Washinton County
September -November 1998**



**Results
of
Unannounced Retail Tobacco Inspections
York County
September -November 1998**



Results of Unannounced Tobacco Inspections

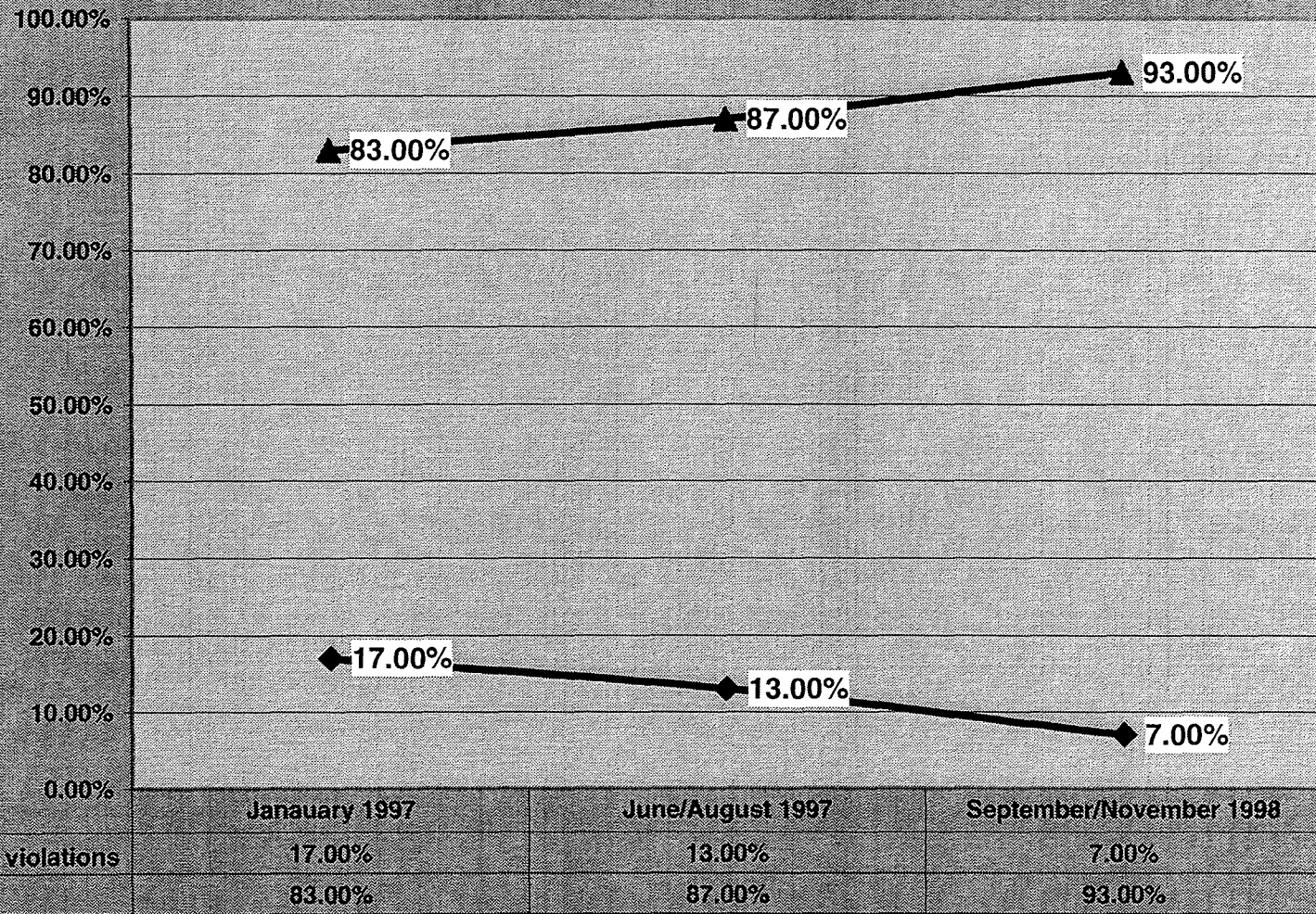


	Tobacco sales violations	No-Sale
Jan-97	76	375
Aug-97	60	418
Sep-98	71	1012

Jan-97 Aug-97 Sep-98

Results of Tobacco Compliance Inspections in Maine 1997-1998

Percent of Inspections



Dates of Inspections