

LOUISIANA OFFICE OF ALCOHOL
AND TOBACCO CONTROL



PERFORMANCE AUDIT
ISSUED MARCH 12, 2014

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

March 12, 2014

The Honorable John A. Alario, Jr.,
President of the Senate
The Honorable Charles E. "Chuck" Kleckley,
Speaker of the House of Representatives

Dear Senator Alario and Representative Kleckley:

This report provides the results of our performance audit on the Louisiana Office of Alcohol and Tobacco Control (ATC). The purpose of this audit was to determine whether ATC effectively regulated alcohol beverage outlets during fiscal years 2011 through 2013.

The report contains our findings, conclusions and recommendations. Appendix A contains ATC's response to this report. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the management and staff of ATC for their assistance during this audit.

Sincerely,

A handwritten signature in blue ink that reads "Daryl G. Purpera". The signature is written in a cursive, flowing style.

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/ch

ATC 2014

Louisiana Legislative Auditor

Daryl G. Purpera, CPA, CFE



Louisiana Office of Alcohol and Tobacco Control

March 2014

Audit Control # 40130004

Introduction

The purpose of this audit was to determine whether the Louisiana Office of Alcohol and Tobacco Control (ATC), a division of the Department of Revenue, effectively regulated alcohol beverage outlets¹ (ABOs) during fiscal years 2011 through 2013. We focused on ATC's permitting, monitoring, and enforcement processes since these are the primary activities ATC uses to regulate ABOs.

ATC issues permits to ABOs to sell alcohol in Louisiana. As of January 12, 2014, ABOs had 15,599 active alcohol permits.² ATC regulations require that ABOs renew their permits every year. ATC monitors the permitted ABOs through routine inspections, compliance checks, and the investigation of complaints. When ATC identifies violations during monitoring, such as underage drinking or selling illegal substances, ATC may issue enforcement actions. Enforcement actions include monetary penalties, permit suspensions, and permit revocations. ATC also conducts inspections after permits have been suspended to ensure that ABOs are no longer selling alcohol.

The **mission** of ATC is to provide the state with an effective regulatory system for the alcohol beverage and tobacco industries with emphasis on access to underage individuals through efficient and effective education and enforcement efforts.

This audit focused on fiscal years 2011 through 2013. We were only able to evaluate activities since the new commissioner was appointed because prior to that time limited data existed on ATC's regulatory activities. In addition, the new commissioner implemented several new requirements when he was appointed, including requiring inspections every year, which were not in place prior to this time. During fiscal year 2014, ATC had a budget of approximately \$6.3 million and a staff of 57 employees. See Appendix C for additional background information on ATC. Our audit objective was as follows:

Objective: Did ATC effectively regulate alcohol beverage outlets (ABOs) during fiscal years 2011 through 2013?

Overall, we found that while ATC has improved its timeliness in issuing alcohol permits, it needs to better manage its monitoring and enforcement processes to ensure that all ABOs are in compliance with ATC regulations. Appendix A contains ATC's response to the audit and Appendix B contains our scope and methodology.

¹ This is the term ATC uses for businesses that are permitted to sell alcohol.

² This number includes all alcohol permits for an ABO. ABOs may have a beer and liquor permit, a catering permit, and a restaurant permit.

Objective: Did ATC effectively regulate alcohol beverage outlets (ABOs) during fiscal years 2011 through 2013?

We found that while ATC has improved its timeliness in issuing alcohol permits, it needs to better manage its monitoring and enforcement processes to ensure that all alcohol beverage outlets (ABOs) are in compliance with ATC regulations. Specifically, we identified the following:

- While ATC has improved its timeliness in issuing alcohol permits, it needs to properly assess late fees for ABOs that do not renew their permits timely.
- ATC decreased the number of compliance checks it conducted by 50%, from 8,972 during fiscal year 2012 to 4,458 during fiscal year 2013. Compliance checks are the primary method ATC uses to determine if ABOs are selling to underage individuals.
- ATC did not conduct required routine inspections on 2,419 (24%) of 10,046 ABOs during fiscal year 2013. As a result, ATC did not ensure that these ABOs were operating in compliance with regulations and other requirements.
- ATC did not effectively plan inspections as some agents did not inspect ABOs that were close to others that were inspected and some agents conducted multiple inspections of ABOs with no compliance issues.
- ATC did not follow up on 197 (54%) of the 365 ABOs from October 2012 through June 2013 that had violations identified on their routine inspections.
- ATC did not inspect 61 (82%) of 74 ABOs with suspended alcohol permits within five days from October 2012 through June 2013 as required by the commissioner to ensure these ABOs were not selling alcohol.
- ATC cannot ensure that agents are citing violations consistently because it does not capture sufficient electronic information on inspection results.
- ATC has not developed procedures for its complaint process including timeframes for when complaints should be addressed and closed. The closed complaints took an average of 40 days to close, while the complaints that are still open have been open an average of 141 days. According to ATC, the complaint data may include investigations opened for other reasons such as following up on media reports which typically take longer to investigate.
- ATC issued all penalties we reviewed in accordance with its policies; however, penalty amounts in law are low compared to other regulatory agencies like the Office of Public Health.

- ATC’s data system limits management’s ability to use data to monitor and evaluate its regulatory activities. While this system allows ATC to look at cases on an individual basis and view images of documents, it does not allow ATC to generate reports showing performance as a whole for its various processes.

These issues are explained in more detail below.

While ATC has improved its timeliness in issuing alcohol permits, it needs to properly assess late fees for ABOs that do not renew their permits timely.

ATC has increased the percentage of alcohol permits it issues in a timely manner. Louisiana Revised Statute (R.S.) 26:87 requires that ATC issue permits within 35 days. Under the current commissioner, ATC has increased its percentage of timely alcohol permits from 69% in fiscal year 2011 to 93% in fiscal year 2013 as shown in Exhibit 1.

Exhibit 1 Percentage of Timely and Untimely Permits Fiscal Years 2011 to 2013					
FY	Total New Permits	New Permits Processed Timely	% Processed Timely	New Permits Processed Untimely	% Processed Untimely
2011	1,175	808	69%	367	31%
2012	1,356	1,085	80%	271	20%
2013	1,361	1,264	93%	97	7%
Total	3,892	3,157	81%	735	19%

Source: Prepared by legislative auditor’s staff using ATC data.

According to ATC, it improved the efficiency of the permit process by implementing various process changes. For example, ATC requires that the permit analyst call or email applicants with missing application documents. Previously, analysts mailed the entire application back to the applicant. In addition, ATC now verifies tax clearances directly from the Louisiana Department of Revenue instead of requiring that applicants obtain paper clearances and submit them as part of the application.

ATC did not always assess late fees to ABOs that did not renew their permits timely. ATC regulations require that ABOs renew their alcohol permits every year. ABOs must submit renewal applications no later than 30 days prior to the permit expiration date. ATC assesses penalties to ABOs that do not renew their permits timely.³ We reviewed 300 late renewal files from fiscal years 2011 to 2013 and found that in 99 (33%) cases, ATC did not assess \$2,322 in

³ The penalty for not renewing a beer permit timely is 25% of the permit fee and the penalty for not renewing a liquor permit timely is 5% of the permit fee with an additional 5% for each 30 days thereafter. For example, a beer permit is \$70.00 per year so the penalty is \$17.50.

late fees when it should have. This occurred because ATC's data system automatically determines if renewals are late but it does not automatically generate late fee letters for analysts to send. Assessing late fees is important because it encourages ABOs to comply with permit requirements.

Recommendation 1: ATC should ensure it assesses late fees to ABOs that do not renew their permits timely in accordance with ATC regulations. This could be done through changes to its data system to automatically generate late letters.

Summary of Management's Response: ATC agrees with this recommendation. See Appendix A for ATC's full response.

During fiscal year 2013, ATC conducted approximately half the number of compliance checks it conducted in fiscal year 2012.

ATC conducts compliance checks to monitor ABOs for selling alcohol or tobacco to underage persons.⁴ As stated previously, the mission of ATC emphasizes, in part, reducing alcohol sales to underage individuals. Compliance checks involve using an underage operative who tries to buy alcohol. If the ABO sells alcohol to the operative, the ABO will receive an administrative citation that results in fines ranging from \$150 to \$1000. These compliance checks are important because they are the primary tool ATC uses to monitor and detect ABOs selling to underage individuals. During the audit, we accompanied ATC agents on five alcohol compliance checks. During the five compliance checks, three of the ABOs failed because they sold alcohol to ATC's underage operative.

Compliance checks are reimbursed through grants⁵ with other state and federal agencies. These grants specify a certain number of compliance checks that will be paid for with grant funds depending on the number they complete. According to ATC, in fiscal year 2012, it conducted 8,972 alcohol and tobacco compliance checks. However, in fiscal year 2013, ATC conducted 4,458 alcohol and tobacco compliance checks and thus received less grant funds. According to ATC, it reduced the number of compliance checks conducted because the number of ATC agents decreased by 52%, from 44 employees during fiscal year 2009 to 21 during fiscal year 2014. According to ATC, restructuring processes, such as agent work schedules, will allow them to complete more compliance checks in the future and it plans to conduct 8,500 compliance checks in fiscal year 2014.

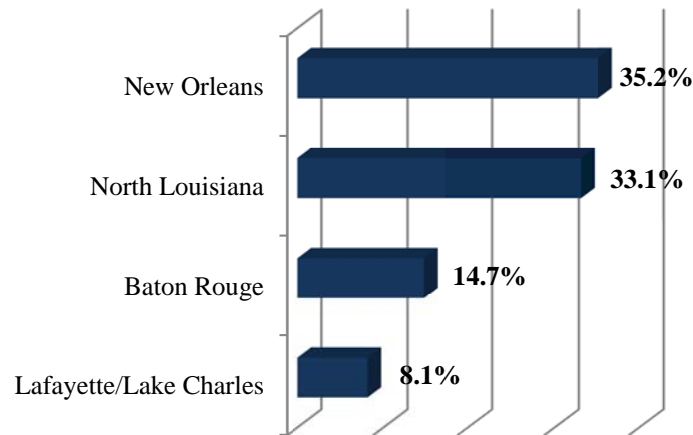
⁴ An individual 20 and below is considered underage for alcohol and 17 or below is considered underage for tobacco.

⁵ Although some compliance checks are funded by ATC, most are funded through grants with the Department of Health and Hospitals, the Food and Drug Administration, and the Office of Juvenile Justice and Delinquency Prevention.

ATC did not conduct required routine inspections on 2,419 (24%) of 10,046 ABOs in fiscal year 2013 as required.

To ensure that all ABOs were inspected on a regular basis, the commissioner issued a directive⁶ on routine inspections in July 2012 requiring that ATC agents inspect all ABOs at least once every 12 months. Prior to this directive, there was no formal requirement for how often an ABO should be inspected and according to ATC, some ABOs had not been inspected in years. The purpose of a routine inspection is to determine whether ABOs are in compliance with laws and regulations. Agents use a standardized form on iPads and review a list of regulatory requirements, such as whether permits are valid and displayed and whether ABOs are complying with laws prohibiting alcohol sales to intoxicated patrons and minors. However, we found that 2,419 (24%) of 10,046 ABOs⁷ were not inspected in accordance with this directive during fiscal year 2013. As a result, ATC did not ensure that these ABOs were in compliance with ATC regulations. Exhibit 3 shows the percent of ABOs not inspected by region. Appendix D shows the percent of ABOs that were not inspected by parish and Appendix E shows the percent of ABOs that were not inspected by city.

Exhibit 3
Percent of Uninspected ABOs by Region
Fiscal Year 2013



Source: Prepared by legislative auditor's office using data from ATC.

As the exhibit shows, the Lafayette region had the lowest percentage of uninspected ABOs during fiscal year 2013 while the New Orleans region had the highest. One reason for these inspection results may be that ATC has not assigned its agents to regions in proportion to the number of ABOs to ensure that workload is equally distributed. We found that some regions have more agents but fewer permitted ABOs. For example, the Lafayette region has the lowest number of permitted ABOs per agent at 445 and also had the most inspections conducted at

⁶ According to ATC policies and procedures, the commissioner has the authority to issue directives as a method to replace or revise policies and procedures.

⁷ The 10,046 only includes those ABOs that were open and active during the entire 2013 fiscal year.

4,107; whereas the other regions have over 600 permitted ABOs per agent and conducted fewer inspections as shown in Exhibit 4.

Exhibit 4 Number of Agents and Permits by Region Fiscal Year 2013				
Region	Number of Permitted ABOs*	Number of Agents	Average per Agent	Number of Inspections Conducted
Baton Rouge	2,306	3	769	3,707
New Orleans	3,547	4	887	3,762
Lafayette/Lake Charles	2,227	5	445	4,107
North Louisiana	1,966	3	655	2,131
*This number represents only those ABOs that were active and open during the entire 2013 fiscal year. Source: Prepared by legislative auditor’s staff using data from ATC.				

Recommendation 2: ATC should ensure that it conducts all required routine inspections of ABOs in accordance with the commissioner’s directive.

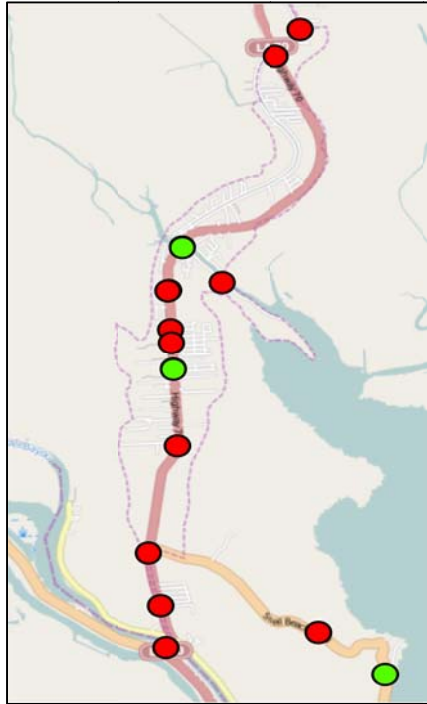
Recommendation 3: ATC should evaluate its current staffing to ensure equal distribution of workload among its four regions. This may help ensure that inspections are performed as required.

Summary of Management's Response: ATC agrees with these recommendations. See Appendix A for ATC's full response.

ATC did not effectively plan routine inspections as some agents did not inspect ABOs that were close to others that were inspected and some agents conducted multiple inspections of ABOs with no compliance issues.

In addition to ensuring that staff’s workload is equally distributed, ATC should improve how it schedules and plans routine inspections. For example, we found that some smaller towns, such as Pierre Part, had the highest percentage of ABOs that were not inspected at 74% or 14 of 19. Using GIS and addresses, we plotted all of the ABOs with alcohol permits along a 10-mile road in Pierre Part to show how close these ABOs are in proximity. Exhibit 5 shows the town’s permitted establishments dotted on a map. The green dots show ABOs that were inspected in fiscal year 2013, while the red dots show ABOs that were not inspected. As the exhibit shows, many of these ABOs that were inspected are right next to those that were not inspected. During our audit, ATC implemented the use of a GIS to help agents identify the location of those ABOs that need an inspection. This technology should help ATC better plan its inspections to ensure that ABOs in close proximity are inspected at the same time.

Exhibit 5
ABOs Inspected and Not Inspected on 10-Mile Road in Pierre Part



Source: Prepared by legislative auditor’s staff using ATC and GIS.

Note: Some of the 19 ABOs cannot be seen in this chart because the points overlap in five instances since they are so close in proximity.

Better planning of inspections would also help ensure that agents do not inspect ABOs more often than necessary. For example, we found that 1,448 (14%) of 10,046 ABOs were inspected three or more times in fiscal year 2013. According to the commissioner’s directive on routine inspections, “problem” ABOs may be inspected more frequently. However, ATC has not developed criteria for what constitutes a problem ABO. Some agents also conducted multiple inspections on ABOs despite citing no compliance issues on the inspection. We reviewed the imaged inspection forms for 67 ABOs that had five or six inspections conducted in fiscal year 2013 and found that of the 342 inspections conducted on these 67 ABOs, 328 (96%) of the inspections had no violations or comments cited. Examples of what we found include the following:

- Seven instances where the *same* agent inspected the same ABO two times during a seven-day period even though it passed the first inspection.
- Six instances where six *different* agents inspected the same ABO two times during a seven-day period even though the ABO passed the first inspection.

- 15 instances where four different agents conducted five total inspections on the same ABO in fiscal year 2013.

One reason that some agents conducted multiple inspections on the same ABOs may be due to a new performance-based services system that ATC implemented in October 2012. This system requires that agents complete a minimum of 50 routine inspections per month. Therefore, some agents may be over-inspecting certain ABOs to meet this requirement.

Recommendation 4: ATC should ensure that ABOs in close proximity to one another are inspected during the same monitoring visit.

Summary of Management's Response: ATC agrees with this recommendation in concept, but states that adoption of this recommendation would likely hinder enforcement efforts and distort compliance data in many smaller towns because the agents' presence in the area would quickly be conveyed to other ABOs after the first inspection. See Appendix A for ATC's full response.

Recommendation 5: ATC should ensure that ABOs are not inspected more often than necessary and clarify in its performance standard system that unnecessary inspections will not be counted toward an agent's performance goal.

Summary of Management's Response: ATC agrees with this recommendation. See Appendix A for ATC's full response.

Recommendation 6: ATC should define what constitutes a "problem ABO" and develop criteria for how often these establishments should be inspected.

Summary of Management's Response: ATC agrees with this recommendation. See Appendix A for ATC's full response.

ATC did not follow up on 197 (54%) of the 365 ABOs that had violations identified on their routine inspections.

According to ATC enforcement data from October 1, 2012 to June 30, 2013, there were 365 ABOs that had routine inspections that resulted in violations. Of these, 197 (54%) were not re-inspected after the violation occurred to ensure that the ABOs had corrected them. Although ATC does not currently require agents to conduct re-inspections, some of the agents said that they follow up with ABOs. In addition, ATC management said that they will require re-inspections in the future. ATC should also specify when agents should conduct the re-inspection. Exhibit 6 shows how long it took agents to conduct re-inspections. As the chart shows, 75 (21%) of 365 were conducted 90 days after the violation was cited.

Exhibit 6 Timeframe for When Re-inspections Were Conducted October 1, 2012 to June 30, 2013		
Timeframe (in Days)	Number of Re-inspections within Timeframe	Percent of Re-inspections within Timeframe
1 - 29	38	10%
30 - 59	25	7%
60 - 89	30	8%
> 90	75	21%
No Re-inspection	197	54%
Total	365	100%

Source: Prepared by legislative auditor's staff using enforcement data from ATC legal counsel.

Recommendation 7: ATC should require that its agents conduct re-inspections on ABOs with violations and develop a timeframe for when agents should conduct these re-inspections.

Summary of Management's Response: ATC partially agrees with this recommendation and states that certain serious violations necessitate a follow-up inspection. However, due to variances in circumstances of each violation, a policy mandating a specific timeframe for follow-up on every possible violation would likely impede enforcement objectives. See Appendix A for ATC's full response.

ATC did not inspect 61 (82%) of 74 ABOs with suspended alcohol permits within five days as required by the commissioner to ensure these ABOs were not selling alcohol.

Because of the importance of ensuring that ABOs with suspended licenses are not still selling alcohol, the commissioner sent a message to all agents in February 2012 requiring them to conduct inspections of all ABOs with suspended permits within five days of the suspension date. Prior to this, there was no requirement that agents inspect businesses with suspended ABOs. From October 1, 2012 to June 1, 2013, there were 74 ABOs with suspended alcohol permits. However, we found that 61 (82%) of the 74 ABOs were not inspected within the five-day requirement. Exhibit 7 summarizes these suspensions and how long it took ATC to inspect them.

Exhibit 7 Suspension and Inspection Timeframes October 2012 to June 2013		
Days to Inspection	Number of Suspensions	% of Suspensions
Within 5 days (timely)	13	18%
Between 6 and 29 days	11	15%
Between 30 and 59 days	9	12%
Between 60 and 89 days	6	8%
More than 90 days	23	31%
No inspection conducted	12	16%
Total	74	100%
Source: Prepared by legislative auditor's staff using data from ATC.		

Recommendation 8: ATC should formalize the requirement that agents conduct inspections of all ABOs with suspended permits within five days in its policies and procedures.

Recommendation 9: ATC should ensure that agents are conducting timely inspections of ABOs with suspended alcohol permits.

Summary of Management's Response: ATC agrees with these recommendations. See Appendix A for ATC's full response.

ATC cannot ensure that agents are citing violations consistently because it does not capture sufficient electronic information on inspection results.

As mentioned earlier, ATC agents use a checklist that consists of 35 regulatory requirements that agents must review on each required routine inspection. For each requirement, agents must identify whether the ABO passed or failed. If the ABO fails the requirement, agents are allowed to use their discretion in determining whether to issue a citation. While ATC maintains an image of the inspection checklist, ATC's data system does not capture whether ABOs passed or failed each requirement. Without this information, management cannot easily analyze inspection results to determine if agents are issuing citations for violations consistently. For example, we reviewed imaged checklists and found two ABOs that failed their inspection because their employee had not obtained their responsible vendor certification.⁸ In one of these cases, the ABO was issued a citation while the other was not cited.

If ATC captured inspection violation information electronically, it could more easily identify potential inconsistencies among agents. Capturing violation information could also help

⁸ Individuals who work at ABOs that serve or sell alcohol must receive this certification.

ATC develop a risk-based inspection process. As mentioned earlier, ATC has not conducted all of its required inspections and has experienced a 52% decrease in agents. Therefore, implementing a risk-based inspection process that targets ABOs with a history of violations would help ATC devote its limited resources to the ABOs most at risk of noncompliance.

Because we were not able to obtain violation information from inspection data, ATC generated a report of all enforcement cases and their associated violations.⁹ Using this data we found that in fiscal year 2013, there were 835 enforcement cases involving a total of 2,887 counts of violations. Most of these violations involved controlled substances, such as synthetic marijuana. Exhibit 8 summarizes this information on the type of violations and the number of counts of the violation in fiscal year 2013.

Exhibit 8 Violations by Type Fiscal Year 2013			
Violation Type	Description	Number of Counts*	Percent
Controlled Substance on Premises	Selling illegal substances, such as synthetic marijuana	1,584	54.9%
Permit Related Violation	Operating without a permit or proper type of permit, renewal application not filed, permit qualifications not maintained	532	18.4%
Other	Failure to pay sales tax, consuming alcohol in parking lot, persons under 18 on premises, failure to post permit or prohibited acts	377	13.1%
Selling to Minor	Serving alcohol to person under 18 or under 21	151	5.2%
Unclean or Unsanitary Conditions	Flies in bottles, dead rodents	147	5.1%
Lewd Acts	Prostitution, display of pornographic images	96	3.3%
Total		2,887	
*This number represents the counts involved; for example, for controlled substances, one case may have had 500 counts meaning that there were 500 illegal substances. Source: Prepared by legislative auditor's staff using enforcement data from ATC legal counsel.			

Recommendation 10: ATC should develop electronic information detailing whether each requirement on the inspection checklist passed or failed.

Recommendation 11: ATC should develop a risk-based inspection process that targets ABOs most at risk for noncompliance.

⁹ Although ATC cannot generate a report of all the violations identified on inspections, it can generate a report of all violations cited in enforcement cases. These violations may result from inspections but are not linked to the inspection.

Summary of Management's Response: ATC agrees with these recommendations. See Appendix A for ATC's full response.

ATC has not developed complaint procedures including timeframes for when complaints should be addressed and closed.

Since the beginning of fiscal year 2013, ATC data showed that it received 715 complaints. Although ATC does not collect easily quantifiable information on the type of the complaint it receives, ATC said that the most common type involves underage drinking. ATC's expectation for agents is that they address complaints within 48 hours and complaints that remain open or under investigation be updated every 30 days. However, while these expectations are included in the agent's performance evaluation, they are not included in ATC's procedures or directives. In addition, ATC has not established a timeframe for when complaints should be closed.

Of the 715 complaints filed since fiscal year 2013, 357 (50%) have been closed and 358 (50%) are still open. The closed complaints took ATC an average of 40 days to close, while the complaints that are still open have been open an average of 141 days. At the time of our analysis, there were 13 complaints that had been open for more than a year. We reviewed details related to these cases and found that five of the complaints appear to have had no action taken on them because there was no documentation of any type in CAVU.¹⁰ Four of these five cases involved complaints regarding underage drinking at these ABOs.

According to ATC, it is difficult to establish definite timeframes for when complaints should be closed because the specific nature of the complaint dictates the extent of investigation required. In addition, ATC's current data system prevents complaints from being closed until enforcement actions are complete (i.e., penalties are paid). Therefore, even though an agent could have taken action on a complaint within the 48-hour expectation, it is possible for the system to show that the complaint was not closed out for months. Also, according to ATC, the 715 complaints may include investigations opened for other reasons such as following up on media reports which typically take longer to investigate.

Recommendation 12: ATC should develop formal complaint procedures including a timeframe for when complaints should be addressed and closed.

Recommendation 13: ATC should track complaints and investigations initiated for other reasons separately.

Recommendation 14: Once ATC develops formal procedures and timeframes, it should monitor compliance with these procedures to ensure complaints are addressed and closed timely and appropriately.

¹⁰ This is ATC's case management system.

Recommendation 15: ATC should develop a method to categorize complaints into different types such as underage drinking, synthetic marijuana, etc. This information would help ATC determine the most prevalent types of complaints and would enhance ATC monitoring efforts.

Summary of Management's Response: ATC agrees with these recommendations. See Appendix A for ATC's full response.

ATC issued all penalties we reviewed in accordance with state law; however, penalty amounts in law are low compared to other regulatory agencies.

From July 12, 2011 to June 28, 2013, ATC had 1,490 enforcement cases involving 1,327 ABOs and issued \$845,230 in penalties. R.S. 26:292 outlines penalty amounts that increase depending on the number of offenses as shown in Exhibit 9. We reviewed 153 (10%) of the 1,490 enforcement cases to determine if ATC assessed penalties in accordance with state law and found three cases where ATC did not escalate the penalty amount. According to ATC, these three cases were not increased because one was a data entry error and the other ABOs were granted leniency as permitted by state law because of the type of violation (e.g., sanitary violations).

Exhibit 9
Penalty Amounts in State Law
<ul style="list-style-type: none">• First offense: \$50 to \$500• Second offense: \$250 to \$1000 (if occurs within three years of first offense)• Third offense: \$500 to \$2,500 (if occurs within three years of the first offense)
Source: Prepared by legislative auditor's staff using state law.

Although penalties were issued in accordance with state law, the highest penalty that ATC is statutorily allowed to assess is \$2,500 for a third offense. Other Louisiana agencies that regulate the same types of businesses and inspect for similar types of violations can assess higher penalties in lieu of suspending or revoking an ABO's permit or license. For example, the Office of Public Health (OPH) which issues permits and inspects restaurants, bars, and grocery stores has maximum penalties of \$10,000 for violations of the state sanitary code. OPH's Women, Infants, and Children (WIC) program enrolls and inspects grocery stores and has penalties for noncompliance that can be issued in lieu of suspension of up to \$11,000.

Matter for Legislative Consideration: The legislature may wish to consider increasing ATC's maximum penalty amount for violations.

ATC's data system limits management's ability to use data to monitor and evaluate its regulatory activities.

Since 2000, ATC has used CAVU as its case management system for its regulatory activities. However, this system limits ATC's ability to use data to manage its activities. While this system allows ATC to look at cases on an individual basis and view images of documents, it does not allow ATC to generate reports showing performance as a whole for its various

processes. For example, as stated earlier in the report, ATC cannot determine how many renewals are late and whether appropriate late fees were assessed. In addition, it does not capture sufficient data to enable management to monitor its activities. As stated earlier, ATC cannot evaluate the consistency of inspections because CAVU does not capture data on whether violations are identified on inspections. Being able to use data to monitor and manage its activities is important because it helps management efficiently identify whether activities are performed in accordance with requirements.

Recommendation 16: ATC should consider including additional capabilities in its current system of identify alternatives to CAVU.

Summary of Management's Response: ATC agrees with this recommendation. See Appendix A for ATC's full response.

APPENDIX A: MANAGEMENT'S RESPONSE

February 26, 2014

Via Email and U.S. Mail
dpurpera@lla.state.la.us

Mr. Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor
1600 North Third Street
P.O. Box 94397
Baton Rouge, Louisiana 70804-9397

Dear Mr. Purpera:

The Louisiana Office of Alcohol and Tobacco Control (“ATC”) appreciates the response of your office to our request dated July 1, 2012 for a review of our processes. We would like to thank your office and your personnel for their professionalism and cooperation throughout the audit process and for the opportunity to respond. ATC’s goal is to provide its customers and the citizens of Louisiana with exceptional service in a cost efficient manner. We have already begun implementing your suggestions for the continued improvement of the agency.

In response to each of the Recommendations contained in the Audit Report, ATC respectfully submits as follows:

Recommendation 1: ATC should ensure it assesses late fees to ABOs that do not renew their permits timely in accordance with ATC regulations. This could be done through changes to its data system to automatically generate letters.

ATC agrees with this recommendation. ATC has been in the process of seeking new options for its outdated data system and, prior to your audit, began the process to amend existing regulations to clarify late fee assessments.

Current regulations require assessment of late fees on alcoholic beverage renewals not submitted one month prior to expiration date. Late fees are only assessed on tobacco renewals submitted after the expiration date. This inconsistency in late fee assessments causes confusion for personnel and permit holders. ATC is addressing this inconsistency by amending current regulations to require late fee assessments on both alcoholic beverage and tobacco permits after the permit expiration date.

ATC agrees with the Auditor’s findings that deficiencies would be significantly minimized by changes to its data system, which was acquired in 2004, and is seeking options for a new system. ATC understands that obtaining and launching a new system is a lengthy process due to statutory purchasing and contracting requirements. ATC continues making internal modifications to improve the operation of its current system to the extent possible.

Recommendation 2: ATC should ensure that it conducts all required routine inspections of ABOs in accordance with the Commissioner's directive.

ATC agrees with this finding. Although not required by law, Commissioner Hebert issued an enforcement directive to have all ABOs inspected at least once per year; a target never before achieved by ATC. Agents and supervisors failing to follow directives have been and will continue to be disciplined. ATC has implemented new procedures to further ensure that ABOs are inspected as directed.

ATC conducted 12,746 routine inspections from October, 2012 through June, 2013. ATC issued 1,896 citations in fiscal year 2013 totaling \$645,192 in fines as compared to 736 citations in fiscal year 2011 totaling \$167,300 in fines. This 158% increase in citation issuance and 286% increase in fine collections over a two year period reflects ATC's increased enforcement efforts to ensure compliance with laws and regulations.

There are no statutory or regulatory mandates as to the frequency that an ABO must be inspected. Commissioner Hebert issued a directive that all ABOs should be inspected at least once per year upon learning that ATC Agents were only conducting between 0 and 40 routine inspections per month. Under the current commissioner, agents are now required to conduct over one hundred inspections per month. This directive was issued based on the finding that some ABOs had never been inspected.

ATC will continue reviewing its directives to ensure the completion of its objectives in a manner that efficiently utilizes all resources, including, but not limited to, human resources, vehicles, fuel, equipment and working hours.

Recommendation 3: ATC should evaluate its current staffing to ensure equal distribution of workload among its four regions. This may help ensure that inspections are performed as required.

ATC agrees with this recommendation. ATC has re-apportioned enforcement regions and districts to provide an even distribution of ABOs.

ATC has taken into account the size of geographical regions and districts as well as the time required to complete inspections based on the size of each region and district. Additionally, ATC developed a GIS mapping system to allow agents to view the location of all ABOs within their district.

Recommendation 4: ATC should ensure that ABOs in close proximity to one another are inspected during the same monitoring visit.

ATC agrees with this recommendation in concept, but submits that adoption of this recommendation would likely hinder enforcement efforts and distort compliance data in many smaller towns because the agent's presence in the area would quickly be conveyed to other ABO owners after the first inspection.

ATC is currently considering alternatives, such as the use of cameras and videos to capture violations, which would allow for the completion of numerous inspections or compliance checks in an area at once without jeopardizing enforcement objectives.

Recommendation 5: ATC should ensure that ABOs are not inspected more often than necessary and clarify in its performance standard system that unnecessary inspections will not be counted toward an agent's performance goal.

ATC agrees with this recommendation. ATC will continue taking corrective measures to ensure that all personnel work responsibly and are disciplined for substandard work performances.

ATC has implemented work-flow reports to document all actions taken at an ABO by ATC agents. ATC is also developing new technological mechanisms for supervisory review and management of inspections to maximize the efficiency and effectiveness of enforcement resources.

Recommendation 6: ATC should define what constitutes a "problem ABO" and develop criteria for how often these establishments should be inspected.

ATC agrees with this recommendation. Agents have been told repeatedly to utilize common sense and basic enforcement techniques to identify problem ABOs. Agents should focus more on ABOs with significant and/or repeat compliance issues.

ATC has implemented work-flow reports to document all actions taken at an ABO by ATC agents. ATC has increased supervisory and legal review to determine appropriate inspection requirements on a case-by-case basis.

Recommendation 7: ATC should require that its agents conduct re-inspections on ABOs with violations and develop a timeframe for when agents should conduct these re-inspections.

ATC agrees with this recommendation in part. ATC agrees that certain serious violations necessitate a follow-up inspection. However, due to variances in the circumstances of each violation, ATC finds that a policy mandating a specific time frame for follow-up on every possible violation would likely impede enforcement objectives.

There are no statutory or regulatory mandates requiring follow-up inspections of ABOs with violations, but common sense yields that serious violators should be re-inspected timely where as others may not compel immediate additional enforcement action. Example: The nature of many violations (fruit flies in bottles, permits posted in the wrong place, etc.) would not require an immediate follow-up inspection and are commonly effectively addressed through the administrative hearing and penalty process.

Recommendation 8: ATC should formalize the requirement that agents conduct inspections of all ABOs with suspended permits within 5 days in its policies and procedures.

ATC agrees with this recommendation. Prior to the current commissioner, there was no directive relative to inspections of ABOs with suspended permits. Commissioner Hebert issued the current directive to verify compliance with ATC orders. ATC will continue taking corrective action, including discipline, to ensure that its directives and policies are followed by all personnel.

Recommendation 9: ATC should ensure that agents are conducting timely inspections of ABOs with suspended alcohol permits.

ATC agrees with this recommendation and will continue taking corrective action against personnel who do not follow directives. ATC has increased supervisory review over ABOs with suspended permits to ensure compliance with all suspension orders.

ATC began utilizing field audit reports in March, 2013 to record all activity conducted by agents at an ABO. The field audit reports yield increased accuracy in data management and agent performance reviews.

ATC would like to note that the findings of the Audit Report may be inaccurate as they are based solely on inspection reports entered into the ATC database. Agents were previously not required to complete an inspection report upon verification that businesses under suspension were not operating. A review of agents' daily work logs would provide more accurate data on suspension follow-ups during the covered time frame.

Recommendation 10: ATC should develop electronic information detailing whether each requirement on the inspection checklist passed or failed.

ATC agrees with this recommendation that enforcement efforts would be maximized by improvements to its data system, which was acquired in 2004, and is seeking options for a new system. ATC continues making internal modifications to improve the operation of its current system to the extent possible. ATC understands that obtaining and launching a new system is a lengthy process due to statutory purchasing and contracting requirements.

Recommendation 11: ATC should develop a risk-based inspection process that targets ABOs most at risk for noncompliance.

ATC agrees with this recommendation. ATC agents are afforded significant discretion. With such discretion comes the responsibility to utilize common sense and basic enforcement training. Supervisors continue is currently reviewing options to implement an effective and efficient risk-based inspection system within the limitations of its current data system.

Recommendation 12: ATC should develop formal complaint procedures including a timeframe for when complaints should be addressed and closed.

ATC agrees with this recommendation. Prior to the current commissioner, ATC had no system, methodology or time requirements for tracking or addressing complaints. It is

crucial that ATC responds immediately to all citizens who take the time to contact the Agency about potential issues at businesses it permits.

To ensure that citizens' complaints are promptly addressed, Commissioner Hebert implemented a requirement that initial action must be taken on all complaints within forty-eight hours of receipt and that the complainant must be notified of the action taken. Additionally, ATC has implemented a policy that all complaints must be closed within thirty days of receipt, except upon supervisory approval to keep the complaint open for a longer duration.

Recommendation 13: ATC should track complaints and investigations initiated for other reasons separately.

ATC agrees with this recommendation and has implemented mechanisms to track complaints separately from other enforcement actions such as investigations, operations with other law enforcement agencies and violations. ATC began utilizing field audit reports in March, 2013 to document all actions taken on a complaint.

Recommendation 14: Once ATC develops formal procedures and timeframes, it should monitor compliance with these procedures to ensure complaints are addressed and closed timely and appropriately.

ATC agrees with this recommendation. ATC will monitor all procedures and disciplinary action will be taken against any personnel who fail to address and close assigned complaints timely and appropriately.

Recommendation 15: ATC should develop a method to categorize complaints into different types such as underage drinking, synthetic marijuana, etc. This information would help ATC determine the most prevalent types of complaints and would enhance ATC monitoring efforts.

ATC agrees with this recommendation, but is unable to efficiently categorize complaints with its current data system, which was acquired in 2004, and is seeking options for a new system.

ATC understands that obtaining and launching a new system is a lengthy process due to statutory purchasing and contracting requirements. ATC continues making internal modifications to improve the operation of its current system to the extent possible.

Recommendation 16: ATC should consider including additional capabilities or identify alternatives to CAVU.

ATC wholeheartedly agrees with this recommendation, but is extremely limited on the modifications that can be made internally to the outdated CAVU database.

ATC continues seeking options for a new system, but understands that obtaining and launching a new system is a lengthy process due to statutory purchasing and contracting requirements. ATC

continues making internal modifications to improve the operation of its current system to the extent possible.

In response to the following additional finding contained in the Audit Report, ATC respectfully submits as follows:

Finding: ATC decreased the number of compliance checks it conducted by 50% from 8,972 during fiscal year 2012 to 4,458 during fiscal year 2013.

To date, ATC has conducted over 5,015 compliance checks for fiscal year 2014 and is on target to complete at least 8,500 compliance checks by fiscal year end. ATC maintains a workforce sufficient to meet or exceed all performance targets.

ATC conducted 5,162 compliance checks in fiscal year 2013. ATC attributes the decrease in fiscal year 2013 compliance checks to a decrease in federal grant deliverables, insufficient tracking mechanisms, and inefficient enforcement work schedules. ATC has reconciled the adjustment in federal grant deliverables with self-funded compliance checks. In June, 2013, ATC implemented new procedures to track the completion of compliance checks. ATC adjusted agents' work schedules from 8:00a.m. to 4:30p.m. Monday through Friday to include regular shifts on nights and weekends when the majority of ABOs are operating at peak capacities.

ATC issued 1,896 citations in fiscal year 2013 totaling \$645,192 in fines as compared to 736 citations in fiscal year 2011 totaling \$167,300 in fines. This 158% increase in citation issuance and 286% increase in fine collections over a two year period reflects ATC's increased enforcement efforts to ensure compliance with laws and regulations.

In closing, ATC would like to acknowledge that because this was the first official performance audit conducted of the Agency and because the Agency maintained very little data and records prior to Commissioner Hebert's appointment, no sufficient bench mark exists to measure the tremendous progress the Agency has made over the last three year. Accordingly, ATC would like to note the following statistics:

- Permits are currently issued in less than 10 days. Prior to the audit period, the permit issuance time averaged over 30 days.
- Fine collections currently average \$70,000.00 per month. Prior the audit period, fine collections averaged less than \$10,000.00 per month.
- Wait time at ATC's customer service windows is currently less than 30 minutes. Prior to the audit period, customer wait times were over 120 minutes.
- The number of employees was cut by 25%.
- ATC has voluntarily given back over \$1.2 million dollars to the state each year. Prior to the audit period, ATC ran a one-half million dollar deficit.
- ATC voluntarily took 20 state vehicles off the roads and surplused them.
- GPS devises were installed on all ATC agents' state-issued vehicles.

ATC recognizes that there are still numerous improvements to be made, but the Agency has come a long way in ensuring that the taxpayers of Louisiana are getting the most for their hard earned money. Your staff's keen set of independent eyes and recommendations has helped

tremendously in identifying areas that require further improvement. Our commitment to becoming one of the most efficiently run agencies in the state will guarantee that the citizens we all serve will be proud of their Office of Alcohol & Tobacco Control.

Sincerely,

A handwritten signature in black ink that reads "Troy Hebert". The signature is written in a cursive style with a large, stylized initial 'T'.

Troy Hebert, Commissioner
Louisiana Office of Alcohol and Tobacco Control

cc: Tim Barfield, Secretary,
Louisiana Department of Revenue

Nicole B. Edmonson, Director of Performance Audit Services
Louisiana Legislative Auditor

Karen LeBlanc, Audit Manager
Louisiana Legislative Auditor

APPENDIX B: SCOPE AND METHODOLOGY

This report provides the results of our review of the Louisiana Office of Alcohol and Tobacco Control (ATC) within the Louisiana Department of Revenue (LDR). We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. This audit covered the period July 1, 2011 through June 30, 2013, although some analyses included data from fiscal year 2009 and some used information from fiscal year 2014. The audit objective was as follows:

Did ATC effectively regulate alcohol beverage outlets (ABOs) during fiscal years 2011 through 2013?

We conducted this performance audit in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. To answer our objective, we reviewed internal controls relevant to the audit objective and performed the following audit steps:

- Researched and reviewed relevant federal and state legal statutes, agency policies, and regulations.
- Interviewed ATC program staff and accompanied enforcement personnel on routine inspections and compliance checks.
- Conducted file reviews of active permitted ABOs.
- Received access to CAVU (ATC's case management system) and reviewed and analyzed inspection, renewal, and complaint data on selected ABOs.
- Obtained and analyzed active permit data from fiscal year 2011 through fiscal year 2013 to determine timeliness of permit issuance and renewals. Used ACL to perform a variety of analyses on the data, such as whether an alcohol permit was issued within 35 days.
- Obtained and analyzed inspection data for fiscal year 2013 to determine compliance with inspection requirements. Used ACL to determine the number of inspections conducted, the number of ABOs that did and did not have inspections, and the percentage of ABOs within the state that did and did not have inspections.

- Obtained and analyzed enforcement and penalty information to determine compliance with enforcement requirements. Received a list of ABOs with violations, penalties and suspensions from October 2012 to June 2013. Reviewed enforcement cases in CAVU to determine if the penalties and suspensions assessed for violations were within state law.
- Obtained and reviewed compliance check data for fiscal year 2012 and fiscal year 2013 to determine the number of compliance checks conducted in each fiscal year. Used ACL to determine the number of ABOs that did and did not have compliance checks conducted for fiscal year 2013.
- Obtained and reviewed complaint data for fiscal year 2013 to determine how many and how long complaints were open and closed.

APPENDIX C: BACKGROUND

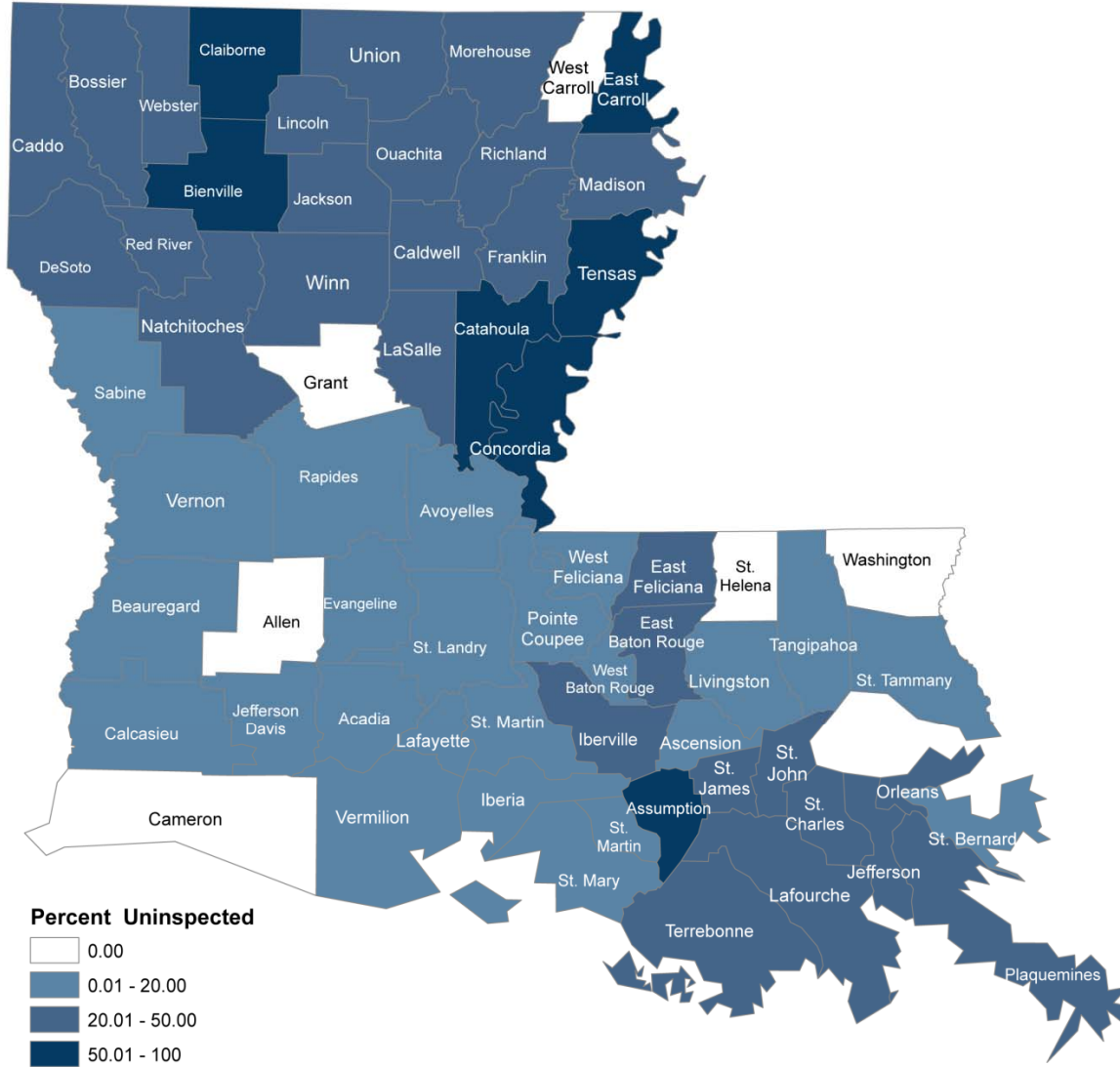
ATC Mission and Goal. The mission of the Louisiana Office of Alcohol and Tobacco Control (ATC) is to provide the state with an effective regulatory system for the alcoholic beverage and tobacco industries, with emphasis on access to underage individuals through efficient and effective education and enforcement efforts. The goal of ATC is to reduce underage consumption of alcohol through professional, knowledgeable, and efficient service to the taxpayers of the state by reducing the average time required for taxpayers to receive permits and maintain the number of alcohol and tobacco compliance violations at low levels.

Regulatory Processes. ATC regulates alcohol beverage outlets (ABOs) through three main functions. These functions include permitting, monitoring, and enforcement. A description of these functions is summarized below.

- **Permits.** As of January 12, 2014, ABOs had 15,599 active alcohol permits. The permit types include beer, liquor, restaurant, caterer, manufacturer, wholesaler, wine, and out-of-state permits. ATC reviews all alcohol permit applications to ensure the applicant is qualified and that all required documentation is submitted. Applicants for permits must meet certain specific qualifications and conditions. For example, an applicant must be 18 years of age, a citizen of the United States, and not have been convicted of a felony. ATC also requires that applicants provide fingerprints for background checks.
- **Monitoring.** ATC uses different processes to monitor alcohol permits in the state including the following:
 - **Routine inspections.** In fiscal year 2013, ATC conducted 15,211 inspections of alcohol permit holders. The purpose of a routine inspection is to ensure that permit holders are following all laws and regulations.
 - **Compliance checks.** In fiscal year 2013, ATC conducted 4,458 alcohol and tobacco compliance checks. Compliance checks use underage agents to enter a permitted establishment to ensure the ABO is not selling alcohol or tobacco products to minors.
 - **Complaint investigations.** From July 1, 2012 to September 19, 2013, ATC has received 715 complaints. Most complaints involved ABOs selling alcohol to minors.

- **Enforcement.** In fiscal year 2013, ATC identified 2,887 violations in 835 enforcement cases. When an ATC agent issues a violation, the permit holder is given an administrative hearing date and the citation is forward to ATC’s legal department. A penalty is established based on the violation committed and can include a fine, suspension of license, or revocation of license. Although not required, ATC may also conduct follow-up inspections to ensure all violations have been corrected. If a permit is suspended, ATC is required to conduct an inspection within five days to ensure the ABO is not selling alcohol.

APPENDIX D: PERCENTAGE OF ABOs NOT INSPECTED



Parish	Total		Percent
	Uninspected	Total	
Acadia	9	177	5.08%
Allen	0	36	0.00%
Ascension	36	212	16.98%
Assumption	35	65	53.85%
Avoyelles	10	97	10.31%
Beauregard	1	22	4.55%
Bienville	12	19	63.16%
Bossier	88	222	39.64%
Caddo	175	478	36.61%
Calcasieu	9	435	2.07%
Caldwell	6	17	35.29%
Cameron	0	22	0.00%
Catahoula	12	23	52.17%
Claiborne	16	25	64.00%
Concordia	25	43	58.14%
Desoto	9	21	42.86%
East Baton Rouge	180	885	20.34%
East Carroll	13	21	61.90%
East Feliciana	7	25	28.00%
Evangeline	9	62	14.52%
Franklin	9	24	37.50%
Grant	0	8	0.00%
Iberia	20	170	11.76%
Iberville	33	87	37.93%
Jackson	7	17	41.18%
Jefferson	318	1266	25.12%
Jefferson Davis	2	32	6.25%
Lafayette	39	541	7.21%
Lafourche	111	282	39.36%
Lasalle	5	16	31.25%
Lincoln	27	60	45.00%
Livingston	3	157	1.91%
Madison	16	55	29.09%
Morehouse	14	42	33.33%
Natchitoches	23	80	28.75%
Orleans	544	1235	44.05%
Ouachita	102	274	37.23%
Plaquemines	29	70	41.43%
Pointe Coupee	14	71	19.72%
Rapides	10	187	5.35%
Red River	5	18	27.78%
Richland	5	17	29.41%
Sabine	7	37	18.92%
St. Bernard	17	101	16.83%
St. Charles	38	99	38.38%
St. Helena	0	20	0.00%
St. James	25	67	37.31%
St. John	55	114	48.25%
St. Landry	22	213	10.33%
St. Martin	26	240	10.83%
St. Mary	23	160	14.38%
St. Tammany	17	449	3.79%
Tangipahoa	4	143	2.80%
Tensas	22	23	95.65%
Terrebonne	102	315	32.38%
Union	9	24	37.50%
Vermilion	21	117	17.95%
Vernon	3	60	5.00%
Washington	0	64	0.00%
Webster	16	45	35.56%
West Baton Rouge	13	88	14.77%
West Carroll	0	0	0.00%
West Feliciana	7	38	18.42%
Winn	4	13	30.77%

Source: Prepared by legislative auditor's staff using GIS and data from ATC.

APPENDIX E: ABOs NOT INSPECTED - TOP 50 CITIES

City	Region	Number of Permitted Establishments	Total Not Inspected	Percent Not Inspected
New Orleans	2	1,233	542	43.96%
Baton Rouge	1	814	161	19.78%
Shreveport	4	431	155	35.96%
Houma	2	249	76	30.52%
Monroe	4	167	73	43.71%
Bossier City	4	170	69	40.59%
Gretna	2	151	67	44.37%
Marrero	2	115	50	43.48%
Metairie	2	373	50	13.40%
Kenner	2	177	47	26.55%
Thibodaux	2	128	42	32.81%
LaPlace	2	61	28	45.90%
Harvey	2	85	28	32.94%
Lafayette	3	439	28	6.38%
West Monroe	4	85	22	25.88%
Ruston	4	49	21	42.86%
Natchitoches	4	65	18	27.69%
Gonzales	1	86	17	19.77%
Morgan City	3	78	15	19.23%
Pierre Part	2	19	14	73.68%
Raceland	2	34	14	41.18%
Plaquemine	1	48	14	29.17%
Harahan	2	66	14	21.21%
Vidalia	4	19	13	68.42%
Lake Providence	4	21	13	61.90%
Cut Off	2	22	13	59.09%
Reserve	2	24	13	54.17%
New Iberia	3	133	13	9.77%
Grand Isle	2	18	12	66.67%
Donaldsonville	1	32	12	37.50%
Zachary	1	38	12	31.58%
Homer	4	17	11	64.71%
Napoleonville	2	17	11	64.71%
Chauvin	2	22	11	50.00%
Belle Chasse	2	31	11	35.48%
Bastrop	4	36	11	30.56%
St. Martinville	3	58	11	18.97%
Port Allen	1	67	11	16.42%
Opelousas	3	103	11	10.68%
Newellton	4	11	10	90.91%
Springhill	4	20	10	50.00%
Vacherie	1	22	10	45.45%
Chalmette	2	61	10	16.39%
Erath	3	14	9	64.29%
Larose	2	15	9	60.00%
Lockport	2	20	9	45.00%
Golden Meadow	2	21	9	42.86%
Westwego	2	31	9	29.03%
Jefferson	2	43	9	20.93%
Abbeville	3	64	9	14.06%

Source: Prepared by legislative auditor's staff using ATC data.