Good Practices for Business Inspections

Guidelines for Reformers

Small and Medium Enterprise Department
World Bank Group
2006

Manufactured in the United States of America
First printing, October 2006

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Acknowledgments

The preparation of this toolkit was initiated by Frank Sader and led by Liliana de Sa from the Small and Medium Enterprise Department of the World Bank Group. The content of the toolkit was developed jointly with Scott Jacobs and Cesar Cordova, Directors, Jacobs and Associates Inc. The quality of the final toolkit benefited from the substantial comments received from Jackie Coolidge (Foreign Investment Advisory Service), Gregory Kisunko (World Bank Poverty Reduction & Economic Management Network, Public Sector Governance Department), and Bobir Taymetov (IFC Private Enterprise Partnership-Uzbekistan).
Edited by Vandana Mathur

Table of Contents

Acronyms

ACRONYM	TERM
BLS	Bureau of Labor Statistics (U.S.)
CAN	National Water Commission (Mexico)
CEC	North American Commission for Environmental Cooperation
CIH	Certified Industrial Hygienist (at U.S.-OSHA)
CSHO	Compliance Safety and Health Officer (U.S.-OSHA)
CSP	Certified Safety Professional (U.S.-OSHA)
CtH	Certified Industrial Hygienist (U.S.-OSHA)
DEP	Directorate of Enforcement Programs (U.S.-OSHA)
DOL	Department of Labor (U.S.)
EPA	Environmental Protection Agency (U.S.)
EU	European Union
FAP	Office of Federal Agency Programs (U.S.-OSHA)
FIAS	Foreign Investment Advisory Service
FIRM	Field Inspection Reference Manual (U.S.-OSHA)
FSIS	Food Safety and Inspection Service (U.S.)
HELA	Health and Safety Executive/Local Authority Enforcement Liaison Committee (United Kingdom)
IFC	International Finance Corporation
ILO	International Labour Organization
ILWDI	Lost workday injury/illness rate (U.S.-OSHA)
IMIS	Integrated Management Information System (U.S.-OSHA)
IMPEL	European Network for the Implementation and Enforcement of Environmental Law
LFPEASHW	Latvian Focal Point of the European Agency for Safety and Health at Work
LGEEPA	Law of Ecological Equilibrium and Environmental Protection (Mexico)
NAFTA	North American Free Trade Association
NGOs	Non-governmental Organizations

ACRONYM	TERM
NPCA	National Precast Concrete Association
OECD	Organisation for Economic Co-operation and Development
OET	Office of Training and Education (U.S.-OSHA)
OHE	Office of Health Enforcement (U.S.-OSHA)
OIA	Office of Investigative Assistance (U.S.-OSHA)
OME	Office of Maritime Enforcement (U.S-OSHA)
OSHA	Occupational Safety and Health Administration (U.S.)
OSHRC:	Occupational Safety and Health Review Commission (U.S.)
PEP	Private Enterprise Partnership (IFC)
PROFEPA	Office of the Environmental Prosecutor (Procuraduría Federal de Protección al Ambiente-Mexico)
SEMARNAT	Mexico's Ministry of Environment (Secretaria del Medio Ambientey Recursos Naturales)
SIC code	Standard Industrial Classification (U.S.-OSHA)
SIDA	Swedish International Development Cooperation Agency
SII	Deputy Prosecutor Office for Industrial Inspections (Subprocuraduria de Inspecciones Industriales-Mexico)
SIIP	Sistema de Información Institucional de la PROFEPA (central information system developed by PROFEPA-Mexico)
SLI	Latvia's State Labor Inspectorate
SME	Small and Medium Enterprise
SST	Site-specific targeting (U.S.-OSHA)
USAID	U.S. Agency for International Development
WB	World Bank
WBG	World Bank Group

Foreword

WB/IFC Small and Medium Enterprise Department

Purpose

This guide was prepared primarily for staff of the International Finance Corporation (IFC) Technical Assistance Facilities in the various regions that plan to undertake reforms in the area of business inspections, but it can also be easily used by the Foreign Investment Advisory Service (FIAS), other World Bank Group (WBG) staff or external partners working in this area.

The WBG's experience in implementing inspection reforms has been quite limited so far. However, the World Bank (WB) investment climate assessment reports, the FIAS administrative barriers studies, and IFC Private Enterprise Partnership (PEP) SME surveys provide relevant and useful information on assessing problems in the area of business inspections. Inspection reform projects can be initiated based on such diagnostics.

How to use these guidelines

This guide provides good practices—a first attempt to provide guidelines for inspection systems—in checklist form. The checklist (see Chapter IV) aims to guide a project team through the various aspects of an inspection system: the inspectorate as an institution; the inspection administrative procedure; monitoring and fairness of inspections; and coordination of inspections. For each aspect of the inspection sys-

tem, the checklist also defines elements that can be considered "ideal," "reasonable," and "bad practice" and outlines steps that can be taken to achieve good practice. This allows reforms to be tailored to a broad range of countries, from middle-income to low-income, taking into account the financial and human capacities to implement reforms.

These guidelines complement a lessons-learned note by FIAS, which focuses more on the political economy aspects and drivers of reforms, as well as the results of some reforms (http://rru.worldbank.org/documents/publicpolicyjournal/308Coolidge.pdf).

To conclude, a word of caution

Inspection reform is usually part of a broader program of governance and regulatory reforms. Most developed and many developing countries have launched regulatory reforms programs to reduce the costs of regulation and improve their effectiveness in carrying out public policies that protect human health and safety, as well as the environment. These reforms focus on the quality of regulatory instruments and policies, and increasingly include the inspection function, one of the weakest components of regulatory policy. In this sense, it is important to coordinate reform efforts with the WB to decide where interventions can achieve maximum impact and where they can complement broader efforts undertaken by the WB.

Finally, the SME Department, together with FIAS and other parts of the WBG, have developed toolkits and best practice materials that should be used when undertaking inspection reforms[1]. Most of the materials can be found on http://rru.worldbank.org

June 2006

[1] See e.g. the *FIAS Manual for the Identification and Removal of Administrative Barriers to Investment*.

Good Practices for Business Inspections

Guidelines for Reformers[2]

Executive Summary

Government inspectors are on the front line between the state and the market. Their performance has come under increasing scrutiny as the high costs of poor inspection practices for economic performance and the quality of governance in protecting vital public interests have become clearer.

This guide identifies key practices of effective inspections for the protection of human health and safety, and the environment. Its purpose is to set out a series of benchmarks that can be used as guidelines by reformers and to define elements of the inspection system that can be considered "ideal", "reasonable," and "bad practice." The guide also outlines steps that can be taken to achieve good practice.

Case studies from one developed and two middle-income countries are used to illustrate best practices. These practices must be reviewed carefully to determine their relevance to particular situations in developing countries. Some key findings seem quite relevant to developing countries. For example, a priority area for future reforms is to reduce inspector discretion in setting financial penalties by establishing checks and balances higher up in the hierarchy.

In this guide, a good inspection system:

- maximizes compliance with clear and legitimate government regulations by detecting and deterring non-compliance consistently and fairly;
- minimizes uncertainty and regulatory risks for businesses by operating transparently and under the rule of law;
- fights corruption by reducing the opportunity for abuse of discretionary powers; and

[2] This guide was prepared by Scott Jacobs and César Cordova, Directors, Jacobs and Associates, under contract to the IFC.

- minimizes costs to businesses and optimizes costs to governments by using resources efficiently to target the highest risks.

This guide examines the following aspects of the inspections role:

A. The Inspectorate as an Institution

A.1. The Mandate of the Institution

A.2. Human Resources Management of the Inspectorate

A.3. Inspectorate Staffing and Training Program

A.4. Accountability for Performance of the Inspectorate

B. The Inspection Administrative Procedure

B.1. Targeting Inspection Visits

B.2. Inspectorate Information Systems

B.3. Procedures for Inspector Visits, Including Control of On-site Discretion

B.4. Proportionality and Variety of Sanctions

B.5. Transparency and Consultation with Affected Businesses

C. Monitoring and Fairness of Inspections

C.1. Complaint Mechanisms

C.2. Protecting Due Process in Inspections

C.3. Inspectorate Mechanisms and Procedures to Combat Corruption

D. Coordination of Inspections

D.1. Coordination Among Inspectorates

The guide also discusses diagnostic methods that can be used to assess weaknesses in inspections practices, and potential performance indicators that can be used to assess progress.

I. Inspections: The Front Line of the Regulatory State

1. Government inspectors are on the front line between the state and the market. They are the public face of the state for most businesses. Their performance has come under increasing scrutiny as the high costs of poor inspection practices for economic performance and the quality of governance have become clearer.
2. This guide examines key practices of effective inspections for the protection of human health and safety, and the environment. In all countries, regulations and inspections to enforce them are part of the mix of policies intended to carry out these and many other public policies. Government effectiveness in protecting these vital public interests depends on the quality and skills of regulatory agencies in developing high- quality regulations and implementing them efficiently through inspections and other incentive mechanisms.
3. There is little international consensus on best inspection practices, but a growing body of recommendations, case studies, and research is documenting poor

Box 1: What are Quality Inspections?

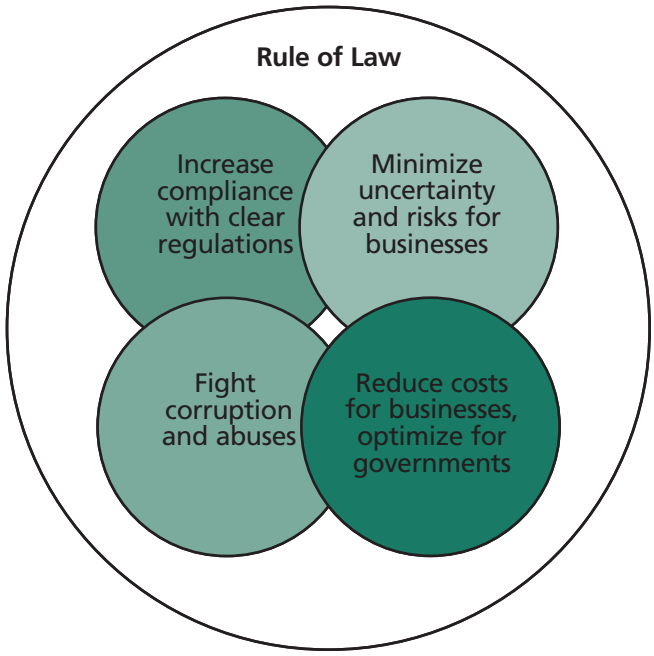
Defining "quality" for an inspection system is not easy, because an inspection system is only one piece of a larger and complex legal system. At bottom, inspections are meant to improve compliance with clear rules in order to achieve desired policy results. But compliance alone is not a sufficient standard of quality. This guide proposes four quality criteria:

1. maximizes compliance with clear government regulations;
2. minimizes uncertainty for businesses;
3. fights corruption;
4. minimizes costs to businesses and optimizes costs to governments.

practices and clarifying good practices. There is now a better sense of what "quality" means for an inspection system (See Figure 1). Based on a review of good inspection practices and reforms, the four criteria proposed in this guide for a good inspection system describe a system that:

- maximizes compliance with clear and legitimate government regulations by detecting and deterring non-compliance consistently and fairly;
- minimizes uncertainty and regulatory risks for businesses by operating transparently and under the rule of law;
- fights corruption by reducing the opportunity for abuse of discretionary powers; and
- minimizes costs to businesses and optimizes cost to governments by using resources efficiently to target the highest risks.

Figure 1: Four Quality Standards for Good Inspection Systems



4. These characteristics are not easy to achieve. In the difficult legal, institutional, and financial environments that are characteristic of transitional and developing countries, the inspection function is highly vulnerable to inefficiency, abuse, and under-budgeting. Inspectorates often fall short because they:

- leave *too much discretion* to inspectors to choose inspection targets, conduct inspections, and set penalties, increasing the risk of capriciousness, corruption, and abuse;
- are *not transparent and consistent* in the procedures through which they are conducted, and so obscure the legal rights of businesses;
- have *unclear limits and mandates*, so that businesses do not know the scope of the inspection, while inspections from various agencies and authorities overlap and duplicate each other;
- *do not make the underlying regulations and interpretations clear* well in advance so that businesses can understand their compliance obligations;
- *invest too little in training and pay inspectors too little*, and therefore cannot keep trained professional staff;
- *are not constrained by effective oversight, checks, due process, and appeals* to prevent and correct violations of procedures and rights;
- are *unsupported by information systems* that allow inspectors to target high-risk businesses, and therefore penalize the businesses who willingly comply; and
- *focus on legalities, paperwork, and formalities* instead of results and regulatory objectives and helping businesses to comply better with the spirit of the law.

5. The challenge in addressing these kinds of problems is not faced by inspectorates alone, because they cannot operate in isolation from the institutions of governance around them. Sustainable reform also requires the consolidation of the rule of law throughout national governing structures. "Rule of law" reforms should place a priority on creating a legal system and credible, effective institutions that protect market competition, respect property rights, and establish a level playing field for market entrants. The principles of such a legal regime are legality, neutrality, transparency, efficiency, and accountability. Inspectorates must play their role in achieving this goal, but they cannot do it alone.
6. For example, setting penalties is one of the crucial steps of the inspection. This review suggests that developing countries provide much more discretion to inspectors to set penalties than do industrialized countries. Shutting down a worksite is a common and alarming threat in many developing countries. In Latvia, this can be done at the sole discretion of the inspector (although suspension is the final sanction, after the employer has an opportunity to remedy the safety defect), but in the United States this severe penalty can be applied only with an order from an independent judge. Reducing inspector discretion

in setting penalties by involving checks and balances might be a priority area for future reforms to improve inspection quality.

7. For that reason, inspection reform is usually part of a broader program of governance and regulatory reforms. Serbia launched its regulatory reform program in 2001 by reducing the number of inspections needed for businesses before they opened their doors. This reform was aimed at quickly stimulating badly needed investment and start-ups, but was followed by wider reforms to address more difficult regulatory problems that businesses faced after launching. Most developed and many developing countries have launched programs of regulatory reform to reduce the costs of regulation and improve regulatory effectiveness in carrying out public policies, such as protecting human health and safety, and the environment. These reforms focus on the quality of regulatory instruments and policies, and increasingly include the inspection function, one of the weakest components of regulatory policy.
8. Improving inspections must be seen as an element in building the public-private relationships needed for good market regulation. Many developing countries suffer from a culture of noncompliance due to a wide range of institutional failures in both public and private sectors, including the durability of large informal sectors. When Vietnam's Ministry of Science, Technology, and Environment arranged a large-scale environmental inspection of enterprises in 1997, it found for the first time, that out of 9,000 enterprises in high-risk activities, some 50% were in violation of the Law on Environmental Protection.[3]
9. Compliance is particularly difficult in a period of economic transition, when regulations are changing quickly. Reformist governments have the difficult task of combining regulatory reforms, which often means profound changes as they deregulate and re-regulate while establishing a stable rule of law and providing, as much as possible, a stable regulatory environment.
10. The style of enforcement is key to improving compliance. An effective inspectorate cannot function as a police force seeking criminals in the business community. No regulatory system can operate mainly through fear and coercion. Rather, the inspectorate must improve compliance by building cooperative relations with the business community built on transparency and communication, backed up as needed by coercive powers as one element of the relationship. Recognition is needed of the limited resources of businesses, particularly SMEs, in responding to the demands of inspectors. Inspectorates should be seen as providing compliance assistance services rather than as policing.

[3] Ngoc Sinh Nguyen & Van Vui Phung, A Large Scale Survey Using Environmental Inspections to Assess and Enforce the Implementation of the Law on Environmental Protection in Vietnam, 1997, 5th INECE conference proceedings, Vol. 1 (1998) at http://www.inece.org/mlw/makinglawwork_toc.html

II. The Nature of Safety, Health, and Environmental Inspections

11. Inspections cover a very wide range of policy fields from tax to customs to environmental protection. Each field requires a different set of authorizations, skills, procedures, and equipment. This guide focuses on general practices relevant to inspections for health, safety, and environmental regulations. These fields are broad, but share similar characteristics:

- They require that inspectors know the locations of many business sites around the country and visit many of those workplaces to investigate compliance.
- They are technical in nature and require a skilled and trained inspectorate force.
- Compliance usually requires changes in workplace processes or product characteristics, and so it directly affects enterprise performance.

12. Inspectors in the health, safety, and environmental areas take on a broad array of tasks to check compliance:

- *Environmental and health inspectors* ensure that water, air, soils, and often foods meet government standards. They check the cleanliness and safety of food and beverages produced in dairies and processing plants, or served in restaurants, hospitals, and other institutions. They often examine the handling, processing, and serving of food for compliance with sanitation rules and regulations and oversee the treatment and disposal of sewage, refuse, and garbage. In addition, inspectors may visit pollution sources and test for pollutants by collecting air, water, or waste samples for analysis. They try to determine the nature and cause of pollution and initiate action to stop it. In large environmental protection departments, environmental health inspectors may specialize in milk and dairy products, food sanitation, waste control, air pollution, water pollution, institutional sanitation, or occupational health. In rural

Box 2: The Cases of Three Inspectorates

To provide concrete examples of good practices, three health, safety, and environmental inspectorates are presented in brief cases in Annexes 1, 2, and 3. These three were chosen because they have taken important steps to improve the quality of inspections:

- The U.S. **Occupational Safety and Health Administration** (OSHA) covers more than 114 million workers at 7 million workplaces with a staff of only 1,100 inspectors.
- Mexico's **Office of the Environmental Prosecutor** (PROFEPA) is an independent entity under the Ministry of Environment in charge of enforcing the environmental laws.
- Latvia's **State Labor Inspectorate** supervises labor laws for 121,095 organizations employing a million workers.

areas and small cities, they may be responsible for a wide range of environmental health activities.

- *Consumer safety inspectors* inspect food, feeds and pesticides, weights and measures, biological products, cosmetics, drugs and medical equipment, as well as radiation emitting products. They check on firms that produce, handle, store, or market the products they regulate. They ensure that standards are maintained and respond to consumer complaints by questioning employees, vendors, and others to obtain evidence. Inspectors look for inaccurate product labeling, and for decomposition or chemical or bacteriological contamination that could result in a product harming human health. They may use portable scales, cameras, ultraviolet lights, thermometers, chemical testing kits, radiation monitors, or other equipment to find violations. They may send product samples collected as part of their examinations to laboratories for analysis.
- *Occupational safety and health inspectors* visit places of employment to detect unsafe machinery and equipment or unhealthy working conditions. They interview supervisors and employees in response to complaints or accidents, and may order suspension of activities posing threats to workers.

13. These are vital functions essential to the quality of life for citizens. Developing countries often show poor performance in these fields. An International Labour Organization (ILO) report warns that work-related diseases and accidents are probably increasing, not declining, in developing countries.[4] For that reason, the procedures recommended in this guide are intended to better support inspectors in carrying out their vital jobs as much as to control the abuses of inspection systems.

[4] International Labour Office (2005) Introductory Report: Decent Work – Safe Work, Geneva (September), at http://www.ilo.org/public/english/protection/safework/wdcongrs17/intrep.pdf

III. How Inspections Work

14. An inspection can be seen as a process that starts once a government regulation has been adopted, focuses on reducing non-compliance, and ends with the resolution of any compliance problems. Doing this well requires a fairly consistent sequence of tasks, each of which requires conditions and capacities in the inspectorate. The three case studies in the Annexes present detailed descriptions of how these inspectorates organize the inspection process. Their general approach is summarized in Table 1.

Table 1. Carrying Out an Inspection: Tasks and Capacities

Inspection task (in sequence)	Conditions and capacities needed to carry out the task
Set the mandate of the inspection	■ Clear authority in law that sets the limits of inspections ■ Train inspectors in the legal mandate ■ Communicate to businesses of the legal mandate ■ Coordinate as necessary with other inspectorates to avoid duplication
Supply competent inspectors	■ Recruit and pay inspectors so that professional skills are maintained in the inspectorate ■ Train inspectors in the legal, procedural, and technical skills needed to carry out the inspection ■ Provide specific information so that the inspector knows the history and conditions of the site to be inspected

Table 1. Carrying Out an Inspection: Tasks and Capacities (continued)

Inspection task (in sequence)	Conditions and capacities needed to carry out the task
Set the goals of the inspection	■ Provide a framework of clear goals and targets for the performance of the inspectorate as a whole ■ Show how this inspection relates to the performance goals ■ Relate these goals and targets to the specific actions of the inspector
Select the site or business to be inspected	■ Use an information system that identifies the locations and activities of the regulated businesses ■ Select the specific business or site to be inspected using clear and consistent criteria; a risk-based targeting system is the best approach ■ Communicate the reason for the selection to the inspector and business
Establish the authority of the inspector and the purpose of the inspection to the business manager	■ Display official credentials when entering a site ■ Provide a national phone line to verify inspector credentials by calling a central office ■ Explain in an opening meeting the authority, purpose, and scope of the inspection ■ Provide copies of regulations to be used, or explain where copies can be found
Carry out inspection using transparent procedures	■ Permit manager and employees to accompany inspector ■ Make a written record of all observations and tests ■ Permit manager to check calibration of all testing equipment
Explain what was found and next steps	■ Explain in a closing meeting what was found, the conclusions of the inspection, and the process of finalizing the inspection ■ Give manager a copy of employer's rights to appeal

Table 1. Carrying Out an Inspection: Tasks and Capacities (continued)

Inspection task (in sequence)	Conditions and capacities needed to carry out the task
Finalize results of the inspection	■ Senior officer in the inspectorate finalizes the decisions based on the report of the inspector ■ Decisions explained to business manager, who has opportunity to discuss results with senior officer
Assess and collect penalties	■ Penalties assessed by senior officers using transparent and consistent criteria ■ Penalties collected by a separate unit and placed in general government revenues
Make available appeals and due processes	■ Ensure a flow of information as needed to administrative and judicial appeals processes ■ Participate in mediation procedures to reduce penalties based on correction of the problems
Follow-up inspections to ensure that major problems are corrected	■ Use management system to schedule limited follow-up inspections with the goal of quickly assessing compliance in problem areas
Monitor results of inspections	■ Use information system that can track incidence of non-compliance to determine effects of inspections

IV. A Checklist of Good Inspection Practices: How to Get There

15. To achieve the four standards of quality through this entire sequence of tasks, inspectorates must improve several dimensions of performance. Though haphazardly documented, the universe of reforms to improve traditional inspection systems is growing. The World Bank and FIAS have begun to document how some governments have put into place new mechanisms that can increase compliance, reduce the costs of enforcement, and minimize regulatory burdens and risks for businesses.

16. Based on the growing recognition of how inspection systems fail and succeed, this project develops practices for good inspection systems. These practices can function as a checklist of practices for national and local governments to use in systematically improving their inspection functions. The checklist is organized around 13 key practices:

A. The Inspectorate as an Institution

A.1. The Mandate of the Institution

A.2. Human Resources Management of the Inspectorate

A.3. Inspectorate Staffing and Training Program

A.4. Accountability for Performance of the Inspectorate

B. The Inspection Administrative Procedure

B.1. Targeting Inspection Visits

B.2 Inspectorate Information System

B.3. Procedures for the Inspector Visits, Including Control of On-site Discretion

B.4. Proportionality and Variety of Sanctions

B.5. Transparency and Consultation with Affected Businesses

C. Monitoring and Fairness of Inspections

C.1. Complaint Mechanisms

C.2. Protecting Due Process in Inspections

C.3. Inspectorate Mechanisms and Procedures to Combat Corruption

D. Coordination of Inspections

D.1. Coordination among Inspectorates

The Mandate of the Institution

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Precisely define the mandate of the inspectorate in law. The authority of the inspector should be defined by the jurisdiction of a specific regulatory body, and should be confined to regulations that are published in the national gazette or other means of information. The mandate should exclude the collection of fees for the inspectorate but focus on maximizing compliance and impact through the introduction and measurement of performance standards.	Define the mandate and goals of the inspectorate by written government policy that is communicated to businesses. Place revenues from fines and fees in general revenues, not in inspectorate budgets.	Leave mandate undefined so that the inspector can choose to apply any regulations issued by government authorities. Combine fees with inspecting functions so that inspectors have incentives to require more tests and services. Bonuses based on percentage of fines collected.	Revise the law authorizing the inspectorate to define its mandate by a specific body of laws and rules adopted and published under a specific process. Develop a written policy statement for the inspectorate that does the same thing. Communicate with businesses on the goals and scope of the inspections. Train inspectors in the scope of the regulations to be inspected. Draw up a complete inventory of fees for services from inspectorates, and a transition plan to place those revenues into general government revenues. Cost-recovery systems should be designed according to OECD and World Bank manuals.

Human Resources Management of the Inspectorate

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Once it is determined that inspectors are actually needed for public policy purposes, progressively increase the pay of trained inspectors to an amount commensurate with similarly skilled jobs in private sector. Increase use of private-public schemes using private auditors (i.e. inspectors) to assess conformity and compliance. Recruit and pay inspectors with financial incentives comparable to private sector pay levels for similar skills.	Explore a range of financial incentives to recruit and reward skilled and high-performing inspectors. Use private-public schemes to use private auditors (i.e., inspectors) to assess conformity and compliance. Pay inspectors a decent salary to avoid corrupt behavior. Performance needs to be defined, e.g., level of compliance of business, better services provides by inspectorates, etc.	Pay so little that skilled inspectors move on to private sector jobs, and retained inspectors are justified or motivated to demand payments or bribes or fees for services.	Develop a multiyear budget plan to increase the financial incentives in inspectorates to reduce the gap with private wages for similar skills. Finance these increases through a well-designed cost recovery system for legitimate services. Put into place a system of bonuses and performance incentives to attract and reward good inspectors.

Inspectorate Staffing and Training Program

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
A technical exam should be used in the recruitment process. Inspectors should receive initial training in procedures, and annual training in key technical and problem areas. Much of this training is contracted out to reduce costs and increase quality. A large percentage of inspectors should have the appropriate professional certifications in their areas of work.	Review and update the recruitment exam annually. Contract out annual training in key technical areas. Provide financial incentives for staff that complete professional certification procedures	Rely on on-the-job training for inspectors, with no routine in-house training facilities to ensure that inspectors have minimum skills.	Assess training needs of current staff in legal, procedural, and technical areas. Review and upgrade the recruitment exam. Develop a progressive training program based on available financing. Open discussions with private sector bodies about providing public-private training to inspectors in the technical issues in the industry. Assess extent and quality of training services available outside the regulatory body, and use them as appropriate. Develop training materials such as guidance manuals Work with certification authorities to provide services to inspectorate staff.

Accountability for Performance of the Inspectorate

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Incorporation of standards of performance into the regulators' legal duties under law. Performance monitoring of key inspectorates through three mechanisms: tracking against clear targets and goals; assessment of results in annual budget process; and vigorous oversight of actions through due process and appeals reviews, and publication of annual report.	Adoption of clear performance targets by the head of the inspectorate, and regular consultation with stakeholders on progress in reaching the targets. Progressive construction of database that can be used to track performance against key indicators.	There is no clear sense of the desired performance of the inspectorate, and no means to hold inspectorate accountable for its performance on any dimension.	Develop annual targets and goals for the inspectorate (e.g. incidents of fire reduced by x percentage), based on performance indicators of number of inspections to actual results in reducing incidents. Develop information system for monitoring against performance targets. Consult regularly with regulated community on the performance of the inspectorate. Encourage third-party monitoring of performance.

Targeting Inspection Visits

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
The inspectorate maintains databases of sufficient detail to track risks by sector and business, and targets inspections to those activities and firms where risks are highest (risk based approach). Confidential business information remains protected.	Inspectorate tracks repeat offenders and high-risk sectors (maintains an approximate database, not a "scientific" one), and allocates disproportionate share of inspections resources to those areas.	Inspectorate attempts to visit each enterprise on a determined scheduled (once a year), without considering risk or past history.	Set up information system that identifies high-risk sectors and the businesses in those sectors. Set up historical databases to detect trends and patterns of compliance and non-compliance by sectors, regions, etc. Track repeat offenders in high-risk sectors and potential "usual suspects" based on trends and sector- wide patterns. Track accident events and worker complaints by business. Shift inspection resources toward the highest risk sectors and businesses. Frequency of inspection visits must be based according to potential risk of each enterprise.

Inspectorate Information System

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Development of an online, integrated management database based on systematic, timely national information collection mechanisms to ensure completeness and reliability. The database should permit allocation of resources on risk-based criteria, tracking of outcomes, risks, and events in the business sector. It should provide public information on risk by sector and enterprise and protect confidential business information.	Development of an in-house database of available information, such as accident information and results of inspections, which can be built up over time into a more complete picture of risks and business activities.	No database of management information, management decisions made on non-transparent and inconsistent, arbitrary information.	Develop an inventory of data needs in the inspectorate. Assess data availability in the inspectorate and in the business sector. Develop data collection mechanisms to respond to the most urgent data needs. Solicit public-private cooperation in collecting information. Cooperate with other public agencies to gain access to their data. Develop an integrated database that is usable in making daily management decisions and tracking key variables.

Procedures for Inspector Visits, Including Control of On-site Discretion

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Each inspectorate should publish detailed, transparent, and consistent procedures covering every step of the inspection process, through final resolution of problems. The procedures should be backed up by legal requirements that such procedures be complied with by all inspectors. Inspectors should not have the unilateral authority to set penalties or close worksites.	Each inspectorate should publish guidance for its inspectors, in consultation with the business community, on inspections procedures. Monitoring of inspector actions should be carried out through a public-private process.	No clear procedures either written inside the inspectorate or available publicly.	Draft a procedures manual for review by inspectors. Consult with the business community on the manual. Companies need to understand that they have to comply with regulation. If something happens, the inspectorate can not be blamed. Discuss with due process and judicial authorities how procedures can be organized to best support appeals and due process Train inspectors in basic elements of the process, including the opening conference, the rights of employers, and the closing conference. Remove the authority of inspectors to close work- sites and set penalties. The closing of a business can only be decided by court decision.

Proportionality and Variety of Sanctions

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
The inspectorate should develop a large and graduated set of options for sanctioning businesses, rewarding fast correction of problems, and gradually moving to coercive solutions proportionate to the offense.	The inspectorate should develop a public document setting out the criteria used for setting sanctions, increasing sanctions for willful and repeat offenders.	Penalties are set by the inspector or inspectorate without advance clarity in the criteria for setting penalties.	Set out the penalty structure to be used, with criteria for each penalty. Consult the penalty structure and criteria with stakeholders. Review the monetary penalties (fines) periodically to avoid having fines devalued by inflation. Set penalties at a senior level after review of all evidence. Reward good behavior such as rapid correction of problems by setting lower penalties. Develop a graduated approach, with warnings and cooperative approaches as a first choice. If businesses disagree, there should be an opportunity to appeal sanctions in court.

Transparency and Consultation with Affected Businesses

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Inspectorates should spend considerable resources in acting as an information service for businesses – providing texts of regulation and interpretations, assisting in finding solutions, and distributing educational materials. A Web site should offer materials to explain regulatory and compliance programs, such as press releases, frequently asked questions, publications, industry alerts, technical reports and stakeholder announcements.	Inspectorates should prepare lists of regulations for which they are responsible, and circulate the lists and texts to businesses on a routine basis, not just during inspections. A public-private effort can be set up to facilitate communication. A single point of contact for business inquiries should be set up.	Little or no effort to communicate with businesses about regulatory requirements or to assist in sharing information about how to comply with the rules. Inspectors believe it is not "their" job.	Set up a public-private effort to facilitate communication between inspectors and businesses. Develop a complete set of regulations for which inspectors are responsible as well as the inspection procedures to enforce them, and distribute them widely. Set up a help desk or phone line where businesses can call anonymously to ask questions about how to comply.

Complaint Mechanisms

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Inspectorates should offer easily accessible means of filing complaints about businesses or about inspectorate activities. Complaints should be anonymous when necessary to avoid reprisals. Complaints are followed by independent unit of the agency.	Senior official responsible for taking complaints and reporting to the head of the agency.	No channel for complaints from the public, cutting off this source of information.	Set up a national phone line to take complaints from citizens or businesses. Designate a senior official to assess complaints and make recommendations to the head of the agency.

Protecting Due Process in Inspections

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Recruit and pay inspectors with financial incentives that are comparable to private sector pay levels for similar skills. Set a "cooling off" period after resignation from the inspector to discourage the private sector from promising jobs to inspectors in exchange for favors. Rotate inspectors to avoid formation of unhealthy relationships with the regulated public.	Inspectorate should ensure that businesses are fully informed about their rights, and should give adequate time to carry out those rights. A mediation process should be created to settle disputes efficiently.	Inspectorate undermines due process rights by violating procedural duties, by failing to clarify the reasons for its actions, and by failing to explain their rights to businesses.	Prepare materials to give to businesses clarifying their rights to appeals and reviews. Review procedures to ensure that adequate time is given for businesses to use due processes. Consult with external authorities such as courts to ensure that procedures support the efficient review of inspectorate actions.

Inspectorate Mechanisms and Procedures to Combat Corruption

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Separate site choice, inspection, penalty, and oversight functions in the inspectorate. Inform firms that inspectors cannot decide closure or penalties. Avoid collusion and capture of inspectors by firms by regionally shifting rotating inspectors. Develop an ethics program in the inspectorate with ethics training, an ethics manual, a complaints hotline, and authority to refer complaints to authorities outside of the inspectorate. Check incomes through annual declarations. Set a "cooling off" period after resignation from the inspectorate, to discourage promises from the private sector from promising jobs to inspectors in exchange for favors. Funding of inspectorate should not depend on fees/penalties.	Designate a senior official as ethics officer as part of the development of an ethics policy. Create business consultation channels to assess the nature and scope of the ethics problem. Set up an independent telephone hotline to take complaints about ethics problems. Deal with specific inspectors clearly and swiftly. Audit inspectorates by a specialized neutral entity, preferably outside the jurisdiction of the executive power.	Participation by senior management in corruption at lower levels, acceptance of problem as normal, lack of any external defenses against abuses.	Assess extent of problem using international benchmarks and business consultation. Establish medium-term, multifaceted strategy to reduce incentives for corruption e.g., fire inspectors known to be corrupt to set a good example. Create external monitoring group to respond to specific complaints and problems. Organize corruption auditing systems.

Coordination Among Inspectorates

Coordination Among Inspectorates			
Ideal Practice	**Reasonable Practice**	**Bad Practice**	**Steps toward Good Practice**
The inspectorate has formal agreements to coordinate with other inspectorates with overlapping jurisdictions. The inspectorates agree not to ask for the same piece of information more than once from any business, and they coordinate data sharing.	The inspectorate coordinates with other key inspectorates—labor, environment, health—to identify duplicate information requirements and create a program to reduce them.	Little discussion with other inspectorates; no attempt to coordinate information needs and burdensome requirements.	Arrange meetings with other key inspectorates and business representatives to identify areas of duplication. Establish a step-by-step strategy to address most costly areas of duplication and overlap.

V. Good Inspection Practices in Detail

A. The Inspectorate as an Institution

A.1. The Mandate of the Institution

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Precisely define the mandate of the inspectorate in law. The authority of the inspector should be defined by the jurisdiction of a specific regulatory body, and should be confined to regulations that are published in the national gazette. Fines and fees should be set separately from the inspectorate's mandate.	Define the mandate and goals of the inspectorate by written government policy that is communicated to businesses. Place revenues from fines and fees in general revenues, not in inspectorate budgets.	Leave mandate undefined so that the inspector can choose to apply any regulations issued by government authorities. Combine fees with inspecting functions so that inspectors have incentives to require more tests and services. Provide discretion to inspectorates and inspectors to set the amount of fines, creating an incentive for corrupt practices.	Revise the law authorizing the inspectorate to define its mandate by a specific body of laws and rules adopted and published under a specific process. Develop a written policy statement for the inspectorate that does the same thing. Communicate with businesses on the goals and scope of the inspections. Train inspectors in the scope of the regulations to be inspected. Draw up a complete inventory of fees for services from inspectorates, and a transition plan to place those revenues into general government revenues. Cost-recovery systems should be designed according to OECD and World Bank manuals.

17. What is the legal limit of the inspection? Inspectors in some countries extend their discretionary powers without limit, using any regulations issued by any part of the government as the basis for the inspection. In these cases, the busi-

ness manager is unsure about the purpose of the inspection and highly vulnerable to abuse. The consequence can be regulatory risk, confusion, duplication, overlap, and contradictions between various inspectorates. In some cases, inspectors even use "regulations" without any legal basis. A regulatory practice used in parts of Asia, for example, is the use of any administrative guidance, or orders given by public officials. In Moldova and Kenya, inspectorates have often simply invented their own orders, without publication or any legal authority whatever.

18. Explicit definition and limitation of inspectorate powers to specific and legal regulatory instruments are vital:

- Inspectorates should carry out responsibilities within a legal sphere that is well defined and transparent. Inspectors should enforce only those regulations specifically under their authority. The limits should be defined in the legislation itself. For example, U.S. OSHA inspectors are authorized to inspect only for regulations that are adopted under the Occupational Safety and Health Act. Mexico's Office of the Environmental Prosecutor (PROFEPA) is responsible for inspecting sites and enforcing the federal legal and regulatory framework adopted by the Ministry of Environment. PROFEPA also enforces international agreements, such as the Basel Convention on Cross-Boundary Movements of Hazardous Waste. The mandate and authority of Latvia's State Labor Inspectorate (SLI) are precisely defined in a special law, *"On State Labor Inspectorate"* that also ensures its impartiality and independence.

19. Another mandate problem is confusion and conflict in the roles of the regulator. In many countries, regulatory bodies simultaneously develop, inspect, and enforce rules, as well as provide services for fees. Decisions to inspect should be made on a basis of technical need, not a tax basis. Inspectorates should operate with clear boundaries between inspection, testing, and prosecution roles. However, these fees, often treated as extra-budget income, can cause serious problems as a kind of a business tax. Inspections can become "addicted" to fees systems, justifying a regulation or a regulatory process because of the income they generate.

- A complex, opaque and unaccountable regulatory enforcement system developed in Spain in the 1990s, based on perverse incentives for Spanish municipal authorities to inspect and enforce permits on businesses. Mayors had important discretionary powers to set the amounts of fees and fines and to provide zoning authorizations. An unforeseen consequence was that many used the system to ask for "contributions either in money or in kind (for example, through the "donation" of land or public installations to the town

Box 3: Clarifying the Mandate for Inspections in Moldova

Moldova implemented business environment reforms by first reducing conflicts of interest in its inspectorates. With some 67 inspectorates and control bodies, Moldova suffered from a proliferation of inspection bodies and had little success in streamlining them. The inspection agencies operated in a nontransparent and uncertain legal environment, which created problems of legality, transparency, and market-friendliness of inspections.

A key problem was that the inspectorates had become revenue-raising bodies – both inspecting and charging for services. They were charging businesses for some 400 regulatory fees for tests, authorizations, and permits required by regulations. For example, cars needed certificates proving that they met all safety and legal requirements. This is a normal requirement, but in Moldova, various ministries required their own certificates, and as a result numerous certificates were required just to own a car. This pattern was repeated throughout business activities. Some fees were created not by law but by unpublished orders of ministers and heads of departments. In many cases, ministries made money by carrying out the tests that their own inspectors required for businesses. In fact, government institutions had come to rely on paid services to raise off-budget revenues to pay for normal operating costs such as staffing and equipment.

The government decided that inspectorates should not be used both to enforce compliance and to impose fees for services on businesses. It launched a systematic and transparent government-wide reform process led by a National Working Group. The reforms succeeded in reducing the number of paid services from 400 to only 107 in only a few months.

The reform took shape in two phases. First, a diagnostic report on state controls and inspections was financed by the U.S. Agency for International Development (USAID). This report mapped out the legal and institutional framework, and showed the extent of the paid services problem. Second, the Ministry of Economy pushed for a rapid and global solution to the problem, rather than trying to resolve each individual certificate separately.

The reform was structured as follows:

- The National Working Group took a government-wide approach, with no exclusions from the reform. It involved some 16 ministries with many subordinate units.
- The National Working Group took a government-wide approach, with no exclusions from the reform. It involved some 16 ministries with many subordinate units.
- The National Working Group asked all ministries to report on their legal and regulatory framework and to justify any paid services. A Secretariat was created in the Ministry of Economy to manage the process and document flows.
- The National Working Group reviewed the justifications, and in many cases asked for more information. Incomplete submissions were rejected. The presentations were structured almost as a formal tribunal: each Ministry reported its views, while the Working Group appointed a rapporteur who would present the contrary view.
- As the National Working Group reviewed the paid services, an inventory was created of the ones that were satisfactorily justified.
- The list was adjusted to reflect the budget needs of the ministries, some of which had come to depend on the revenues from paid services to pay their core staff. The reform was timed with the budget process to ensure that losses in off-budget revenues would be dealt with by on-budget decisions.
- The final list was adopted by the National Working Group, and then by the high-level Inter-ministerial Commission. A legal government decision formally adopted the list of paid services as the only such services that were permitted. All services not on the list were abandoned

hall), in exchange for prompt delivery and reduced inspections. This system worked as a substitute for unpopular local tax increases and spawned much abuse and corruption.[5]

20. The common practice in civil and common law countries is to differentiate policy and rulemaking from implementation and inspection as well as enforcement and prosecution. Inspectorates should never profit from charging for services that they provide or the fines they collect. An example from Moldova is given in Box 3 above.

    The principle is that those who write the rules should not enforce them, and those that enforce them should not adjudicate them. To combine these functions is to combine the roles of legislature, sheriff, and judge, which eliminates essential checks and balances and puts businesses in jeopardy of rogue inspections.

21. A lack of clear mandates can also encourage discrepancies and differences of type and procedures of inspections across products and regions, increasing regulatory risks.

A.2. Human Resources Management of the Inspectorate

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Once it is determined that inspectors are actually needed for public policy purposes, progressively increase the pay of trained inspectors to an amount commensurate with similarly skilled jobs in private sector. Increase use of private-public schemes using private auditors (i.e. inspectors) to assess conformity and compliance.	Explore a range of financial incentives to recruit and reward skilled and high-performing inspectors. Use private-public schemes to use private auditors (i.e., inspectors) to assess conformity and compliance.	Pay so little that skilled inspectors move on to private sector jobs, and retained inspectors are justified or motivated to demand payments or bribes or fees for services.	Develop a multiyear budget plan to increase the financial incentives in inspectorates to reduce the gap with private wages for similar skills. Finance these increases through a well-designed cost recovery system for legitimate services. Put into place a system of bonuses and performance incentives to attract and reward good inspectors.

[5] Changes to inspection procedures have been slow and difficult due to the increasingly federal and decentralized Spanish state. A key challenge is that the inspection function is often devolved to regions and municipalities with little central oversight. Some autonomous communities, like Catalonia, have experimented with new approaches that have gone further than the central government. For instance, Catalonia clarified the relationship between licenses and authorizations, on one hand, and fees and taxes on the other. In the central government, the key tool for improving inspections was strengthening the administrative procedure law (Régimen Jurídico De Las Administraciones Públicas Y Del Procedimiento Administrativo Común of November 1992, modified in 2001 and 2003). The law established the "silence is consent" rule for many procedures and reinforced appeals mechanisms for people abused by inspectors. Since then, the Public Management Ministry has carried out a review of public services under a General Administrative Simplification Program (www.administracion.es) to improve and simplify the administrative procedures based on benchmarks established by the law. Also, many inspection problems were resolved by new transparency mechanisms. For instance, Spain has promoted one-stop-shops that have improved transparency and business rights. See OECD (1999) Regulatory Reform in Spain, Background Report, Paris.

22. Recruiting and retaining a professional, skilled staff of inspectors can be difficult in countries where civil servants are not paid living wages. The difficulties are magnified when skills are not easily available in labor markets. Just as there is a scarcity of experienced human resources in emerging economies to develop and implement public policy objectives in general, there is a scarcity of experienced human resources to staff regulatory bodies and inspectorates.

- Mexican environmental inspectorates suffer from a high turnover of trained inspectors. As industrial inspectors gain expertise, industrial firms hire them, frequently offering to double or triple their public salaries.[6]
- Low salaries are the main reason for the high turnover of staff in Latvia's SLI (average turnover of staff at the SLI is 20% a year).
- This is not unique to developing countries. Even in the large U.S. labor market, the Federal Energy Regulatory Commission "has struggled to recruit and retain highly qualified and experienced employees in order to be able to regulate and oversee evolving competitive energy markets."[7]

23. The low pay of civil servants in developing countries is often blamed for high corruption among inspectorates. The promise of a future better paid position in an inspected firm can also create incentives for a lenient approach to inspections. Clearly there is a link, but it is probably not the case that increasing the salaries of inspectors will in itself significantly reduce corruption. A multifaceted approach will include sustainable wages, accompanied by greater accountability for performance, checks and balances through due processes, and less opportunity through systematic regulatory reform and simplification. However, pay levels are an important element of this larger picture.

24. The "right" level of wages is not clear. A measure that might be appropriate is to pay wages equivalent to wages for similar skills in the private manufacturing sector, discounting for civil service benefits like higher job security and training. If we use other measures, such as average manufacturing wages, it is not clear that inspectors in developed countries are paid proportionately more than inspectors in developing countries, or that the level of corruption is directly linked to pay levels.

- The OSHA staff is composed of civil servants, recruited and paid under civil service regulations. The median annual salary of OSHA inspectors and compliance officers was around $43,000 in 2004, or 158% of the average annual earnings in the United States, and 100% of the average manufacturing wage. Corruption is not seen to be an important problem with OSHA inspectors.
- In Mexico, where corruption has been a problem, an industrial inspector earns between US$800 and $900 per month, or about 140% of the average manufacturing salary in Mexico.[8] Yet the level of salaries of industrial inspec-

[6] Recently, the entire staff of industrial inspectors of Nayarit State left and had to be replaced.

[7] U.S. General Accounting Office (June 2002) Energy Markets: Concerted Actions Needed by FERC to Confront Challenges That Impede Effective Oversight, U.S. GPO, Washington, D.C.

tors is seen as low compared to the private sector, because the legal and technical skills required for inspectors apparently command far higher prices in the private sector.

- The average monthly salary for a staff position at SLI in 2004 was around US$400, about equal to the average salary for manufacturing, but too low to attract and retain trained professionals. Even with low pay, corruption seems to have substantially declined from 2001 to 2004 due to substantial efforts to set up controls against abuses.

25. In Moldova, just beginning its economic transition, labor inspectors are paid an average of 950 Moldovan lei per month (almost US$72[9]), or about 85% of the average wage in the economy as a whole.[10] Corruption is seen as a large problem in this inspectorate. This is far below equivalent manufacturing wages. Public sector wages in 2005 were fast losing ground to private wages, which are rapidly increasing. In Bosnia, inspectors receive even lower below-average salaries than do other civil servants. At the Federation level, a chief inspector earns around US$125/month and a regular inspector around US$45/month. A civil servant of medium level earns around US$60/month.

26. The use of financial incentives to recruit and retain skilled staff does not seem to be common in regulatory inspectorates. This might be changing. OSHA, for example, is exploring a range of financial incentives that can help recruit certified professionals, such as recruitment bonuses, superior qualification appointments, and other incentives. To address its shortage of employees, Latvia's SLI plans to develop a new remuneration system emphasizing the link between qualifications and salary. In the existing system, the salary depends only on the inspector's rank within the civil service.

27. The size of the inspectorate is highly dependent on financing constraints. A continuing pressure on inspectorate wages is the understaffing of inspections agencies. There is no benchmark for the size of regulatory agencies, but most inspectorates should aim to visit all facilities in the high-risk categories (see discussion below of risk targeting in Mexico) at least once a year, and to have a random inspection program for the others. This benchmark can yield a workload and estimated staffing needs. For those working in an understaffed inspectorate, excessive workloads reduce the sense of professionalism and contribute to low-quality or corrupt practices.

28. If resources are unavailable to bring staffing up to reasonable levels, the inspectorate could recognize consultancy services or third-party inspections services that businesses can hire to prove compliance. The resources for such services are usually provided through fees for services paid directly by the private busi-

[8] About $4/hour in 2004.
[9] As of 05/31/06, National Bank of Moldova, www.bnm.org
[10] These figures do not include considerable fringe benefits, which can change the results in either direction.
[11] See FIAS (2005), Alternatives to Public Sector Inspections: Public-Private Partnerships and Corporate Social Responsibility (CSR). Report prepared by Jacobs and Associates.

ness. In this approach, the costs of inspections become a normal cost of business, rather than tax-payer financed. For some risks, governments can rely on conformity assessments provided by private auditors or inspectors. This reduces the budget costs of inspectorates, which can then concentrate on monitoring and inspecting the private auditors. It also externalizes the costs of inspecting and makes the inspected firms pay for such services through a competitive market.[11]

A.3. Inspectorate Staffing and Training Program

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
A technical exam should be used in the recruitment process. Inspectors should receive initial training in procedures, and annual training in key technical and problem areas. Much of this training is contracted out to reduce costs and increase quality. A large percentage of inspectors should have the appropriate professional certifications in their areas of work.	Review and update the recruitment exam annually. Contract out annual training in key technical areas. Provide financial incentives for staff that complete professional certification procedures	Rely on on-the-job training for inspectors, with no routine in-house training facilities to ensure that inspectors have minimum skills.	Assess training needs of current staff in legal, procedural, and technical areas. Review and upgrade the recruitment exam. Develop a progressive training program based on available financing. Open discussions with private sector bodies about providing public-private training to inspectors in the technical issues in the industry. Assess extent and quality of training services available outside the regulatory body, and use them as appropriate. Develop training materials such as guidance manuals Work with certification authorities to provide services to inspectorate staff.

29. The quality of the inspectorate staff is a key determinant of its performance. Recruitment standards and training by the inspectorate are the two main methods for ensuring quality. In general, it appears that higher quality inspectorates uniformly train their inspectors more. In other words, the extent of staff training may be a reliable proxy for inspection quality.

30. A lack of capacities and expertise among inspectors means that enforcement is unpredictable and ineffective, and increases regulatory risks among businesses. For example, poorly trained inspectors may contribute to inadequate inspection

reports that are illegible, incomplete, and lack follow-up. Extensive training must be done throughout the official inspection system to ensure uniform, accurate results at all locations.

31. A key message from this review of inspection practices is that a critical shortage of training resources and opportunities results in a reduction in the quality and capacities of inspectorates. Almost all regulators need more training for their staffs. Training is particularly valuable in economic reform periods when investment is badly needed and regulators are taking on broader responsibilities for inspecting competitive markets.

32. Higher quality inspectorates seem, for example, to routinely use recruitment exams to select new staff that meet minimum skill requirements. Mexico's PROFEPA uses an entry exam to select from the numerous candidates for its positions.

33. The modes of training seem to vary considerably. Some countries use in-house training programs; others contract out training services, while others cooperate with private sector organizations. Most use some combination of both.

- U.S. OSHA has a large Office of Training and Education (OET) that establishes policy, develops and implements technical training programs for OSHA Compliance Officers, and operates the OSHA Training Institute, as a primary training facility for both civil servants and private sector experts. All inspectors and compliance officers are trained in the applicable laws or inspection procedures through some combination of classroom and on-the-job training. OSHA conducts training in-house, uses its own training institute or contracts out training courses. Yet only about 15% of OSHA's inspectors are certified professionals. Its current plan commits to increase the number of staff who had or are currently receiving certification training by 10% per year (for CSP, or Certified Safety Professional, and CIH, or Certified Industrial Hygienist). A new CSHO training program will consist of a sequence of courses offered over a three-year period, and related to the core competencies desired in CSHOs.

- In Mexico, each PROFEPA delegation at the state level has an inspection coordinator in charge of working out training programs. Yet training programs for inspectors are few and in many cases non-existent. When they exist, the programs focus mostly on helping inspectors use the inspection manuals and security procedures and protective equipment. By June 2005, PROFEPA had 650 industrial inspectors located in 32 state offices, but fewer than a quarter of these inspectors had specific expertise in industrial pollution. Recently, a pilot training project was developed with state industrial associations. The program provides state PROFEPA offices with "scholarships" for industrial inspectors to attend the association training programs. At the end of the training the PROFEPA inspectors will receive a diploma.

- In Latvia, inspectors are trained in the application of the European Union (EU) regulations, directives, national laws, national implementing regulations and inspection procedures through in-house training or training at the Latvian School of Public Administration. A Senior Task Manager in Human Resources and Training Matters is responsible for planning and organizing training for employees of the SLI. The training program is planned on the basis of training needs analysis and priorities of the SLI. This is highly organized. A Senior Task Manager in Human Resources and Training Matters and heads of departments conduct the training needs analysis once a year, according to a methodology approved by the Cabinet of Ministers. To promote consistent interpretation of legal norms in different regions of Latvia, the SLI organizes exchanges of experience among its regional offices.

A.4. Accountability for Performance of the Inspectorate

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Incorporation of standards of performance into the regulators' legal duties under law. Performance monitoring of key inspectorates through three mechanisms: tracking against clear targets and goals; assessment of results in annual budget process; and vigorous oversight of actions through due process and appeals reviews.	Adoption of clear performance targets by the head of the inspectorate, and regular consultation with stakeholders on progress in reaching the targets. Progressive construction of database that can be used to track performance against key indicators.	There is no clear sense of the desired performance of the inspectorate, and no means to hold inspectorate accountable for its performance on any dimension. Focusing on few output indicators like collected fines to assess performance. This creates incentives to focus on minor misdemeanors rather than risks.	Develop annual targets and goals for the inspectorate, based on performance indicators of number of inspections to actual results in reducing events/risks. Develop information system for monitoring against performance targets. Consult regularly with regulated community on the performance of the inspectorate. Encourage third-party monitoring of performance.

34. In many developing countries, administrative accountability of inspectorates is non-existent or weak, except in cases of calamity. There are strong public accountability and efficiency reasons for better oversight of the performance of regulatory inspectorates. Consistent with the principles of New Public Management, governments should set uniform standards for performance of inspectorates, monitor inspectorates against these standards, and hold them publicly accountable for their performance. OSHA's Strategic Management Plan, discussed below, is a continuous annual performance evaluation. Latvia's annual reports include a self-assessment of its performance.

35. Three methods of accountability can be used to check the performance of inspectors:

- Financial, through review during the annual budget process.
- Policy, through assessment of performance against goals and targets.
- Judgment of quality of inspectorate actions through appeals procedures and review by courts and other due-process mechanisms.

36. In most developing countries, performance evaluation is weak in all three areas. Many regulatory systems would benefit from common performance assessment standards across the key inspectorates. The OECD recommends that governments develop a strategic center for thinking and performance management of regulation,[12] that could help monitor the performance of inspectors. Box 4 contains some good practices for such units. Permanent organizations, such as Korea's Regulatory Reform Council appointed by the president, the Office of Information and Regulatory Affairs in the United States, and Ukraine's State Committee on Regulatory Policy and Entrepreneurship have the greatest effect and can carry out a medium-term reform program. But ad hoc institutions, such as Kenya's Working Committee on Regulatory Reforms for Business Activity and Serbia's Regulatory Reform Council can also have important results if they are properly organized and supported by expert staff.

Box 4: A Checklist for Choosing the Location of the Central Reform Unit[13]

1. **Have a longer-term agenda and mandate.** Sustained focus and influence over several years is key, particularly in countries where the policy environment tends to be driven by personalities and changes in government. Ad hoc working groups are inappropriate unless they are stepping stones to a more permanent structure.
2. **Have an active inter-ministerial component** to coordinate the parts of the public administration that will have to actually implement reforms over the course of the project. This is a coordinative and cooperative function. Top-down instructions to other ministries are not an effective basis for reforms.
3. **Be authorized, connected, and accountable for results to the center of government** to strengthen policy coordination and oversight capacities.
4. **Have strong relations and an active involvement with the private sector,** and include those parts of the government who are champions of private sector development.
5. **Be credible to donor organizations** on the ground to improve the chances of longer-term financing and technical support.
6. **Command the resources needed to get the job done,** including a dedicated secretariat with the right skills and financing to move reform forward.

[12] OECD (2002) Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance, Paris.
[13] Scott Jacobs (2005) "Freeing the economy: Lessons learned from the program of the Foreign Investment Advisory Service to reduce administrative barriers to investment, 1995-2004," FIAS Occasional Paper, Washington, D.C. (forthcoming).

37. Performance evaluations should be based on an appropriate selection of indicators. Misdirected emphasis of inspectorates on details and small infractions is a key complaint of businesses. In Latvia, for example, according to a recent case study of inspections reform, government inspectorates tended (before reform) to operate with a "control mentality," focusing on enforcing government regulations (however arbitrary), discovering infractions, and imposing fines or other sanctions (e.g., freezing bank accounts, seizing equipment, or even forcing a business to suspend operations).[14] One good practice is to use strategic planning to set medium-term and annual performance targets.

- An advanced performance system is illustrated by the U.S. OSHA. OSHA develops a rolling five-year Strategic Management Plan that sets goals and strategies for the entire institution. OSHA's current goal is to reduce workplace fatality rates by 15% and workplace injury and illness rates by 20% by 2008, a goal set by political decision based loosely on past trends. Each year, OSHA emphasizes specific areas to achieve this broader goal; for example, in 2003-2004 OSHA's goal is a 3% drop in construction fatalities and a 1% drop in general industry fatalities, as well as a 4% drop in injuries and illnesses in construction, general industry, and specific industries with high hazard rates.

- Mexico has a less developed performance system. As a federal unit, the PROFEPA's central office (Subprocuraduria de Inspección Industrial—SII) is responsible for achieving yearly targets agreed to and managed by the Mexican Presidential Office. A system monitors progress, focusing mainly on output indicators (e.g., number of site visits, amount of fines perceived, etc.). SII does not report publicly on its achievements, though. Some data are incorporated into the PROFEPA annual report, which can be downloaded at its website (www.profeba.gob.mx). The Access to Information Law of 2003 is accelerating the publication of internal materials such as inspection and sanctioning manuals. So far, no external evaluation of SII performance has been undertaken.

- Latvia's SLI has developed a five-year Strategic Plan that defines goals and strategies for 2002-2006 on the basis of current statistics of accidents and analysis of the type of occupational accidents and illnesses. In 2004, its strategic goal was to decrease the number of occupational accidents by 5% and to promote the use of preventive measures in enterprises.[15] The strategic priority for 2005 is reduction of illegal employment. The Strategic Plan is supplemented by an Annual Action Plan with quantitative and qualitative performance indicators, priority areas for the year, the focus of preventive inspections, training of SLI staff, areas for development and improvement of the regulatory framework, improvement of SLI performance, cooperation with other state,

[14] FIAS (2004) Case Study: Inspectorate Reform in Latvia 1999-2003, (forthcoming)
[15] Annual Report 2004 of the State Labor Inspectorate, www.vdi.gov.lv

local self-government institutions and non-governmental organizations (NGOs), an increase in public awareness, and international cooperation. Like all Latvia's public administration institutions, the SLI must prepare an annual report on its performance that is public and accessible on its Web site.

38. As the system evolves, performance measures should go beyond input and output measures to results measures (outcomes). A growing number of inspection bodies acknowledge the importance of collecting reliable compliance data. Using compliance data to improve the effectiveness of enforcement activities means that regulatory agencies need to shift away from traditional performance measures, such as their own level of activity (i.e., measuring inputs). Instead, regulatory agencies need to move toward output measures, such as environmental results, health effects, declines in injury rates, and behavioral outcomes that impact more directly on social welfare. Indirect measures might also be useful. Latvia's SLI is carrying out a public survey to find out how society evaluates its work.

39. Accountability can also be improved by general codes of conduct supported by communication initiatives. For instance, in March 1998, the UK government launched the Enforcement Concordat, entitled *The Principles of Good Enforcement: Policy and Procedures*[16] setting out what businesses and other

B. The Inspection Administrative Procedure

B.1. Targeting Inspection Visits

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
The inspectorate maintains databases of sufficient detail to track risks by sector and business, and targets inspections to those activities and firms where risks are highest.	Inspectorate tracks repeat offenders and high-risk sectors, and allocates major share of inspections resources to those areas.	Inspectorate attempts to visit each enterprise on a determined scheduled (once a year), without considering risk or past history.	Set up information system that identifies high-risk sectors and the businesses in those sectors. Set up historical databases to detect trends and patterns of compliance and non-compliance by sectors, regions, etc. Track repeat offenders in high-risk sectors and potential "usual suspects" based on trends and sector- wide patterns. Track accident events and worker complaints by business. Shift inspection resources toward the highest risk sectors and businesses.

[16] http://www.dti.gov.uk/ccp/topics1/enforcement.htm

regulated parties can expect from enforcement officers. It commits inspectors to good enforcement policies such as openness, fairness, consistency, proportionality, standardization of enforcement procedures. Since then, a very large number of national and local authorities have signed the Concordat.

40. There is a strong international trend toward risk-based targeting of inspections. Targeting and frequency of inspections constitute key decisions to be made by an inspectorate. Risk assessment is an essential means of directing regulatory resources where they can have the maximum impact on outcomes. On the basis of this information, regulators can reduce unnecessary inspections and data requirements for less risky businesses. Risk-based inspections also reward businesses that comply voluntarily, and penalize the minority of businesses that do not comply, and hence reduce unfair market competition.

41. Risk-based inspections permit a more responsive and effective inspection strategy. But they can be information intensive, a drawback in countries where reliable information is scarce. Conducting risk assessments requires regulators to understand more deeply the nature of businesses and the external factors affecting the risk the businesses pose.[17]

42. Risk-based approaches can also be applied to the inspection strategy. When the activities being inspected are high-risk (for instance, subject to a catastrophic accident), authorities and inspectorates should focus the inspection system on providing ex ante authorization to operate. However, when the risk is low, it is more cost-effective and efficient to audit the operational and process stages and focus the inspections around possible correction and improvement, or sanctions if non-compliance persists. In many circumstances, it would be more economical to wait for the violation to happen. For example, this might be the case with mild cases of food poisoning or minor accidents to workers involving one day of medical leave or less. In these cases, inspectors could rely more on prosecutors or accident investigators, or on insurance agents in countries where this industry is sufficiently developed.

43. Most inspectorates using risk-based approaches assess risks by sector, and then by businesses in the sector. For example, in the construction industry, buildings higher than five stories may be much more risky for workers than smaller buildings. Some of the construction firms will probably have much higher accident rates than others. In that case, the inspectorate would shift inspections to taller buildings built by those high-risk companies.

44. Risk-based approaches also permit a deeper understanding of how different styles of inspections affect results. Studies of the effectiveness of occupational

[16] http://www.dti.gov.uk/ccp/topics1/enforcement.htm

[17] In certain cases, information confidentiality issues may arise. One approach to manage the risks of harmful disclosures is to require the inspector to provide a written copy of the individual inspection report to the business that is inspected, with a complete list of all documents collected and their nature. Also, inspectorates should not make public any background documents unless the degree of violation is such that the inspection record should be made public during enforcement proceedings.

safety and health regulatory inspections in the United States and Canada have found that short, superficial inspections that check only the firm's injury records have little effect on injury rates. However, more rigorous, frequent inspections can be more significant than high penalties in improving business safety performance.

45. Inspections should be considered as punishments; that is, when a business behaves, it is "rewarded" with fewer inspections. Complaint mechanisms by the public need to be established and the threat of an impromptu inspection must remain. However, in the case of inspections conducted by surprise, the procedural transparency and the control of inspectors' discretion should be tighter.

46. A better option than a blanket inspection system (i.e., all sites need to be inspected) is a randomized system of inspections. This system increases the incentives to comply (even after a recent inspection). However, the drawback is that if the probability of being inspected is very low due to the large number of firms or the low number of inspectors, some rogue firms may decide to take their chances, not comply and try to find a legal solution (pay the fine) or illegal solution (corruption) if inspected.

47. Mexico's environmental inspectorate, Latvia's labor inspectorate, and the U.S. occupational safety and health inspectorate have all moved quickly to embrace risk-based inspections.

- Before recent reforms, OSHA inspections occurred as the result of one of three events: employee complaints, accidents, or random inspection (with a statistical probability of once every 200 years). This untargeted system did not reduce accidents and injuries. OSHA has now moved to sophisticated monitoring and targeting strategies. The main focus of spot inspections today is on employers who have histories of workplace injuries or non-compliance. Inspectors focus on industries that have bad safety records. Targeting is at two levels: selection of priority sectors in the five-year plan, and selection of specific businesses in those sectors. At the sectoral level, OSHA identifies target industries based on a clearly defined set of criteria. Using a national survey of occupational accidents, the criteria target sectors with at least 5,000 total injury and illness cases, a lost workday injury/illness rate (LWDII) of 3.5 or greater, and other factors. At the level of firms, OSHA uses a site-specific targeting (SST) inspection program. Top priorities for inspections include reports of imminent danger, fatalities; catastrophic accidents; employee complaints; investigation of whistleblower activities; referrals from other government agencies; and targeted areas of concern. OSHA has established a system of priorities based on the "worst first" approach under the category of "imminent danger". However, OSHA places the highest priority on events and com-

plaints. Most OSHA visitations are accident- and complaint-driven. Some 60% to 70% of inspections are triggered by employee complaints alone.

- Until recently, an inspection visit by Mexico's PROFEPA covered all areas of its authority—a blanket inspection that wasted resources. Since 2003, the agency has developed a targeted approach for each firm. The PROFEPA headquarters today defines for each firm and source the key issues to be inspected and monitored, and then adapts the checklist of the inspection report to the firm and source. The government's inspection strategy is based on the following principles: targeting of sites is based on a system of prioritizing the activities to be inspected. The priority order is organized by risk/activities and size of firms. The list was developed from the experience of PROFEPA senior officials, and has been fine-tuned over time. Each PROFEPA state delegation sets annually the number of inspections to be made per month according to the risk table. Every month, they report the number of inspections realized, also following the priority order. The targeting and monitoring of achievements provides valuable information for allocating country-wide the limited inspection resources.
- In Latvia, the SLI prepares an annual plan of inspection visits based on its priorities. A computerized rating system was developed for planning targeted inspection visits. The SLI identifies newly established organizations and assesses them according to pre-defined risk criteria to enter data into the rating system for targeting inspection visits. In the past 3 years, almost 50,000 organizations were entered into the rating system. However, not all organizations to be included in the rating system have been assessed yet. The rating system is based on an evaluation/assessment to be completed by inspectors during the first visit to the organization. The organizations are evaluated on a scale of 100 (minimum) to 600 points (maximum) according to several criteria, such as safety risk, danger levels, welfare and social aspects, management of labor legal relations, and potential risk and impact on society at large. Once the rating system is operational, it will be used as follows: If the rating is high, the organization will be targeted for on-site inspection once a year. For medium ratings, inspections will occur every two years. Organizations with a low rating will be subject to alternative monitoring methods.

48. A high-quality inspectorate should have up-to-date data collection and database systems to ensure that it knows which firms are operating in fields under its jurisdiction, where they are, and their compliance history for risk targeting. It should also know about who performed the inspection and its results. Such a management information system is vital for risk targeting, for example.[18]

[18] *Regulatory Inspection Programs,* http://home.nycap.rr.com/dhancox/siena/inspect.htm, pp. 5-7.

B.2. Inspectorate Information System

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Development of an online, integrated management database based on systematic, timely national information collection mechanisms to ensure completeness and reliability. The database should permit allocation of resources on risk-based criteria, tracking of outcomes, risks, and events in the business sector. It should provide public information on risk by sector and enterprise. The system may also be used to monitor performance of inspection units or even inspectors in terms of inputs, outputs and outcomes.	Development of an in-house database of available information, such as accident information and results of inspections that can be built up over time into a more complete picture of risks and business activities.	No database of management information, management decisions made on non-transparent and inconsistent information. Risk of collusion and corruption can develop if the time of the inspection can be predicted by inspected firms.	Develop inventory of data needs in the inspectorate. Assess data availability in the inspectorate and in the business sector. Develop data collection mechanisms to respond to the most urgent data needs. Solicit public-private cooperation in collecting information. Cooperate with other public agencies to gain access to their data. Develop integrated database for making daily management decisions and tracking key variables. Set up friendly user system of scoreboards to monitor compliance results rather than enforcement actions. The system can be made public to provide feedback to the inspected population, to the extent that there's no confidential information.

49. The integrated system can be developed as the central management system for the inspectorate to help target inspections, manage performance of inspectors and units, and shift inspectors among inspected firms to avoid the risk of capture. For instance, the system can avoid the situation in which the same inspector visits the same site regularly, increasing the risk of collusion.

50. The costs of information collection can be high, and cooperation between businesses and inspectorates is too poor in some countries to support information collection. For these reasons, the costs of collecting and handling information have stimulated efforts to explore possible consolidation of databases to reduce costs to governments and businesses. To protect privacy and confidentiality concerns, any such consolidated database should be organized so that regulators are only able to see the information that applies to their sphere of activity. All businesses have concerns over the privacy and confidentiality impacts of an inspection. An inspector often has access to otherwise confidential commercial practices and sensitive business know-how.

Box 5: Mexico's Database of 36,000 Industrial Polluters

Mexico's federal list of industrial sources/risks ("Padrón Official de Fuentes Federales") is composed of:

- 6,403 specific high-risk activities (based on mandatory environmental impact assessments);
- 29,400 hazardous waste sites divided according to the type of risk (i.e., industrial, biological, and environmental services such as transport, disposal, and management);
- 4,000 air emissions sources (i.e., emitting more than 8 million tons/year);
- 300 sites with contaminated soil (in total, they cover 200,000 hectares);
- 32 automotive plants; and
- 20 crossing points designated under the Transboundary Movements of Hazardous Waste Treaty.

The official list has been slowly expanding. In the past six years, 8,000 additional sites/sources were added, for two reasons: First, according to law, major industrial sites are required to complete an environmental impact assessment. As the economy expands and sites become larger, new sources and risks are added to the official list. Second, based on ad hoc visits and complaints, state delegations have the power to register a site considered risky. The latter measure has been particularly useful in fighting the informal sector.

51. Any such database must be specifically tailored to the information needs of the particular inspectorate. The United States, Mexico, and Latvia offer good examples of how such databases are designed and built up over time:

- OSHA's Integrated Management Information System (IMIS) is an information resource for use by OSHA staff and management and by state agencies. The IMIS enforcement database contains information on over 3 million inspections conducted since 1972 and permits searches by establishment name, geographical area, or industrial code. The database is updated daily from over 120 OSHA and state offices. Access to this database is also afforded via the Internet for members of the public who wish to track OSHA interventions at particular work sites or to perform statistical analyses of OSHA enforcement activity. OSHA also has an online database that allows employers (or anyone) to identify the most common citations for each industry, or the industries most cited for any standard.

- Since 1993, Mexico's PROFEPA has had a central information system called SIIP (Sistema de Información Institucional de la PROFEPA). In 2001, SIIP became the official information system connecting all PROFEPA state offices with headquarters in Mexico City. Officials in the state offices feed the system with information after each inspection, and retrieve reports for the state. At the core of SIIP is the official list of the 36,000 federal polluters (see Box 5 above),

identified by address, activities, size, inspections and results of inspections, problems seen, and other relevant information. PROFEPA uses SIIP for three key functions: to elaborate monthly and annual reports by jurisdictions, sources, risks, etc.; to make decisions, in particular to elaborate annual and monthly targets of inspections to be conducted; to plan weekly and daily inspection programs and thus avoid visiting the same firms.

- The SLI in Latvia has developed an information system for communication and data exchange among its central office and regional offices. Considerable investment (around US$110,520 in 2003) was needed to update the information systems, databases, and hardware. The updated computer system also enables online connection to registers held by the State Enterprise Register, the Central Statistical Office and the State Revenue Service. The information system is used to monitor performance indicators defined in the Strategic Plan and the Annual Plan. The system has several databases: organizations subject to its supervision; dangerous equipment used in the country and registered with the SLI; and information from all on-site inspections. Information is gradually accumulated, and it is now possible to evaluate the development over time of compliance by supervised organizations with occupational safety and labor legal relations. This project is part of Latvia's e-government implementation program to ensure data exchange between public institutions.

52. Discretion during the inspection process has both benefits and costs. Discretion is useful because an inspector must react to the specific conditions of the site, which might differ from other sites. Discretion becomes a liability when it increases the risks to businesses of unfair, mistaken, unpredictable or illegal behavior from the inspector. In most developing countries, an important part of regulatory risk is the unaccountable and uncontrolled discretion of regulatory inspectors. This is an important area for reform.

53. Managing discretion requires that everyone—inspectors and business managers—knows what to expect and what comes next. High-quality inspectorates have developed extremely detailed procedures covering every aspect of the inspection from beginning to end. These procedures or field manuals regulate the inspectors themselves. They are usually published, and are used by businesses to protect their rights during the inspection.

    Such consistent and public procedures protect both the integrity of the inspector and the rights of the businesses, and improve the efficiency of inspections. The procedure often depends on filling out a standard checklist. Any issue not on the checklist is not allowed to be reported. A copy of the checklist is left with the firm as a record of a complete inspection.[19]

[19] Best Practice in Compliance Monitoring, IMPEL NETWORK, European Union Network for the Implementation and Enforcement of Environmental Law, 18–21 June 2001, http://europa.eu.int/comm/environment/impel/compliance.htm, p. 13.

B.3. Procedures for Inspector Visits, Including Control of On-site Discretion

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Each inspectorate should publish detailed, transparent, and consistent procedures covering every step of the inspection process, through final resolution of problems. The procedures should be backed up by legal requirements that such procedures be complied with by all inspectors. Inspectors should not have the unilateral authority to set penalties or close worksites.	Each inspectorate should publish guidance for its inspectors, in consultation with the business community, on inspections procedures. Monitoring of inspector actions should be carried out through a public-private process. Easy appeal systems against excessive discretion beyond the guidance material should be set up.	No clear procedures either written inside the inspectorate or available publicly.	Draft a procedures manual that is mandatory for inspectors. Consult with the business community on the manual. Discuss with due process and judicial authorities how procedures can be organized to best support appeals and due process. Train inspectors in basic elements of the process, including an opening conference, the rights of employers and employees, and a closing conference. Require the inspector to leave with the employer an inspection record or book documenting the findings and the authority for the visit. Remove the authority of inspectors to close work sites and set penalties without review by senior officials and opportunity for business response.

54. This practice is such a vital element of a quality inspection that a general recommendation can be made: Each inspectorate should set transparent and consistent procedural standards to reduce abuses and increase faith in the decision-making process. Handling confidential materials is an important part of such procedures. An inspector often has access to confidential commercial practices and sensitive business know-how, and must handle it so as to protect property rights.

55. Ensuring that property rights (including industrial intellectual property) are protected by reducing the authority of the inspector to make unilateral decisions is another strategy to reduce the cost of discretion. Inspectors should not, for example, have the authority to close a workplace without going through due process that protects the business rights. OSHA officers, for example, must ask for a court order to close a site. Nor should inspectors have the right to set penalties. This should be done by senior officials after reviewing the inspector's report and giving the business a chance to respond. For example, OSHA sends a letter to the employer that a penalty is proposed, giving the employer a

chance to comment and present any mitigating factors. If a penalty is imposed, collection of the penalty is turned over to a separate Assessment Department.

56. Discretion of inspectors is also a result of the clarity and detail of the regulations themselves. Regulations cannot be so detailed as to leave nothing to interpretation, but in countries with weak rule of law, the amount of interpretation and discretion allocated to inspectors in the field should be clarified as much as possible in the underlying regulation. That is, developing countries are probably better served by clearer and more rigid regulations than by more flexible but less transparent regulations.[20]

57. OSHA, Mexico's PROFEPA, and Latvia's SLI offer good examples of procedural controls. OSHA inspections are controlled through a variety of mechanisms such as transparency about the purpose of the inspection and the right of the employer to accompany the inspector and document the results. A Field Inspection Reference Manual (FIRM) provides the field offices with a reference document for identifying the responsibilities associated with their inspections. The FIRM is a public document (See table of contents in Box 6).

- When the OSHA compliance officer arrives at the establishment, he or she displays official credentials and asks to meet an appropriate employer representative. Employers may verify the officer's credentials by calling the nearest federal or state OSHA office.

- The typical OSHA inspection begins with an opening conference, during which the inspector explains the type and purpose of the inspection. If applicable, the inspector will also provide copies of any complaints that triggered the inspection.[21] The compliance officer gives the employer information on how to get a copy of applicable safety and health standards that may be involved. The inspector then outlines the scope of the inspection. The opening conference limits the scope of the inspection.

- Upper management usually designates at least one manager to accompany the inspector through the inspection. Inspectors can take photos or videos of the workplace and related activities if needed. If the area being photographed or videotaped contains confidential information or trade secrets, the inspector must label the photos and videos accordingly, upon management request. Employers can take their own measurements and photos along with the inspector.

- During the closing conference (which can take place in person immediately after the inspection or later by phone), the inspector will describe any apparent violations identified during the inspection, as well as any other pertinent issues of concern. The compliance officer gives the employer a copy of the Employer Rights and Responsibilities Following an OSHA Inspection.

[20] The degree of discretion allotted to the inspectorate and to inspectors may evolve as trust is built between society, the government, and the public administration. Inspectors have wide discretion in Denmark, for example, but little discretion in the highly legalistic climate in the United States.

[21] See William Atkinson (2005), Unexpected OSHA Inspections, NPCA website at http://www.precast.org/about/index.htm

Box 6: OSHA Field Inspection Reference Manual: Table of Contents

- The compliance officer will not indicate any specific proposed penalties but will inform the employer of appeal rights.

58. Mexico has also set up clear and strict administrative procedures to avoid excessive discretion by inspectors leading to corruption, and to reduce judiciary problems and failures to sanction due to legal faults during the inspection.[22] The inspection process and procedures are set up in the General Law of Ecological Equilibrium and Environment Protection. PROFEPA has complemented the legal requirements with two manuals: a manual for undertaking inspections (*manual de inspección*) and a manual on adjudication (*manual de dictaminación*).

    These two manuals describe a step-by-step approach to all the actions to be taken and procedures to be followed, from the selection of a firm to be inspected to the turning over of the case to a deputy procurator in charge of deciding whether legal action should be taken. The inspection process is divided into three steps.

- As a first step, the inspection coordinator in each state prepares a daily program of visits according to the monthly target plans, the order of priorities and any complaints received. He/she then hands to the inspector ? or more often to an inspector brigade of two or three inspectors ? the inspection orders indicating the sites to be visited that day. The inspection order must also have the names of the inspectors and the reason for and objectives of the visit. It must be signed by one of the 32 PROFEPA delegates and/or the head of the SII. Importantly, the inspectors unaware of the selection of sites to be visited before they receive the inspection orders.

- The second step starts with the identification of the inspector(s). Each of them has a secure picture ID. During the visit, and in the presence of two witnesses agreed to by the firm, the inspectors fill in an inspection report organized as a checklist. At the end of the inspection visit, the inspection report is signed (a special section provides for the firm's comments and reactions) by the inspector, the firm's representatives and the two witnesses, and a copy is handed to the firm.

- As the third step, the inspector(s) enter an inspection statement into the SIIP indicating the main findings of the visit.

59. In Latvia, all documents, forms, and checklists used for on-site visits are included in the quality management system documents and are standardized. This quality management system was introduced to ensure a unified approach and to regulate on-site inspection procedures. Inspection procedures are also described in the Internal Operation Regulations of the SLI. All Latvian inspectorates were required

[22] The 1988 law had already set up a standard inspection procedure, though important gaps and weaknesses were periodically exposed. For instance, inspectors did not carry a personalized, secure ID.

to develop internal operating regulations according to an instruction of the Cabinet of Ministers. This was one of the key items of the Inspectorate Improvement Program started in 1999. Over time, this has been further developed by the SLI into a Quality Manual on inspection procedures. In these procedures:

- Inspectors may make two types of on-site inspection visits:
  - Sudden visits without prior notification of the organization. These visits are decided on by the department head or supervisors, not by the inspector.
  - Notified visits, whereby the organization is informed of the visit at least one day before.
- Before the visit, the inspector is expected to study all the data available (e.g., history of the organization, number of employees, compliance record, technical standards etc.).
- When the inspector arrives at the organization, a management representative may ask to see the inspector's identity card. The on-site visit starts with an opening meeting with management, when the inspector explains the scope of the inspection and the normal procedures to be followed.
- The next step is to review the documents regarding labor safety, labor legal relations and dangerous equipment. The inspector does not request financial documents or documents containing commercial secrets for review.
- After the documents have been reviewed, the inspector checks the onsite conditions and compares the documentary findings with findings at the site. A representative of the enterprise usually accompanies the inspector during the on-site visit. The inspector may take a photo or video of the workplace with permission of the enterprise's management, while respecting confidential and commercial secrets.
- After the on-site visit, the inspector prepares two copies of an administrative act describing the findings, applicable legal norms and decisions. One copy is left with the enterprise, and the second copy goes into the SLI files.

60. Monetary penalties or more costly measures such as shutting down a business are seen as the natural result of inspections, but in reality the goal should be compliance, not punishment. Penalties make sense only as part of a larger effort to induce compliance. Good practice recommends that inspectorates develop a large and flexible toolbox of actions to encourage compliance. Authorities should be able to wield a variety of enforcement actions (Box 7). It is important to define as precisely as possible these actions and when they are to be used.

B.4. Proportionality and Variety of Sanctions

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
The inspectorate should develop a large and graduated set of options for sanctioning businesses, rewarding fast correction of problems, and gradually moving to coercive solutions proportionate to the offense.	The inspectorate should develop a public document setting out the criteria used for setting sanctions, increasing sanctions for willful and repeat offenders.	Penalties are set by the inspector or inspectorate without advance clarity in the criteria for setting penalties.	Set out the penalty structure to be used, with criteria for each penalty. Consult the penalty structure and criteria with stakeholders. Review the monetary penalties (fines) periodically to avoid having fines devalued by inflation. Set penalties at a senior level after review of all evidence. Reward good behavior such as rapid correction of problems by setting lower penalties. Develop a graduated approach, with warnings and cooperative approaches as a first choice.

61. There are two major issues in setting coercive sanctions: the level of sanctions, and the certainty of sanctions. One is a policy issue, and the other is an issue of the capacities and organizational effectiveness of the inspectorate body itself. The deterrence approach seeks to '"price" unlawful conduct in order to minimize social costs arising from such conduct. It assumes that the regulated community acts rationally and will be deterred when the price of a contravention outweighs the benefits. But because so many kinds of regulatory non-compliance have high rewards and low penalties, the threat of sanctions is often not severe enough to deter non-compliance. Setting the right level of sanctions is more of a cultural challenge than an economic or technical problem. The general principle is that penalties should be commensurate with the social value of the damage done.[23]

62. For small businesses in particular, the burden of assimilating and complying with many complex and technical rules can be unreasonable and undermine confidence in regulators and the regulatory structure.[24] Harsh approaches to enforcement will not improve matters.

63. Just as important as the level of sanctions is the certainty and predictability of sanctions. It is well established in deterrence research that the deterrent effect of sanctions will depend on their certainty, severity, celerity, and uniformity, especially their certainty.

[23] Penalties can include public exposure or non-monetary fines such as social reparation or work.

[24] This is for instance a typical difficulty when SMEs are being required to switch to performance-based regulations. In a process-based system, the cost of understanding rules, training staff to optimize compliance, and ensuring compliance can be greater than the typical method of "following the book" in a command and control approach.

Box 7: Enforcement Actions Vary by Case

- Prohibitions
- Closure
- Orders
- Permit reviews
- Prosecutions
- Injunctions
- Requests for improvement
- New permits
- Court actions
- Inspection plans
- Fees, charges, fines, taxes
- Judicial decisions
- Enforcement notices

Source: IMPEL Network, Report on Best Practice in Compliance Monitoring, June 2001 at europa.eu.int/comm/environment/impe

64. A better approach is to develop a "pyramid" of enforcement options with a wide range of possible actions that an inspectorate can take to improve compliance, (see Figure 2).[25] Encouraging voluntary compliance should always be the first step. But voluntary compliance depends on ensuring that non-compliers do not profit from their non-compliance. Cooperative compliance is contingent upon persuading those of goodwill that their compliance will not be exploited by free riders who will get away with the benefits of noncompliance without being held to account. Deterrent and punitive sanctions must be available in the background for the minority.

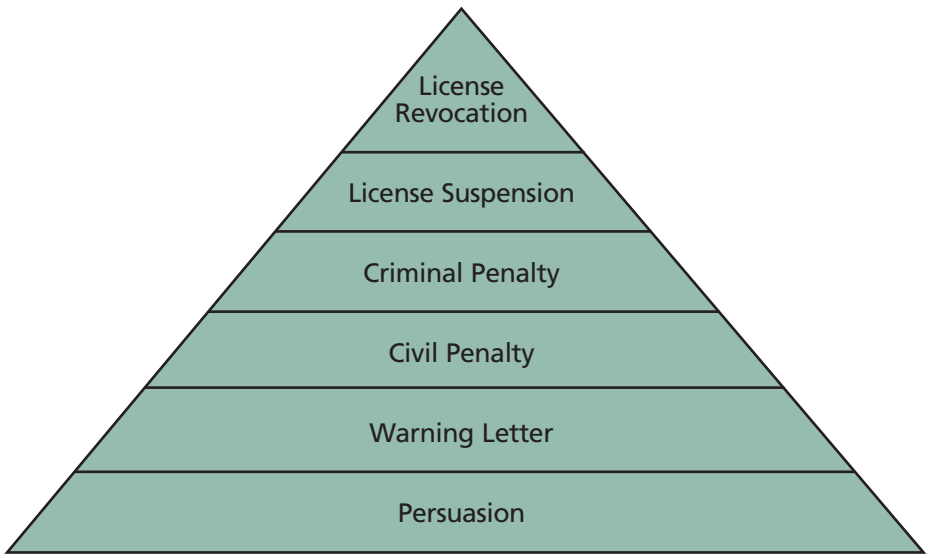
65. One way in which many regulators support efforts to voluntarily comply, such as enterprise codes of conduct and standards, is through voluntary disclosure policies. These are official guidelines issued by regulators as an incentive for companies to undertake effective self-regulation and self-policing. The guidelines usually provide that if an entity discovers violations of the regulation through the operation of its own internal compliance or self-regulatory system, and reports to the regulator those violations and the corrective action taken, the entity will not be liable for fines and penalties.

    For example, the U.S. Environmental Protection Agency (EPA) will refrain from recommending criminal prosecutions and forgo "gravity-based" (punitive) civil fines if a company has voluntarily reported and corrected environmental violations found either through an audit program (as defined in the policy) or through a satisfactory "due diligence" program to prevent, detect, and correct violations.[26]

66. OECD countries in general set penalties transparently. This is the case both in the United States and Mexico. For example, shutting down a work site, a common and serious threat in many developing countries, is possible only with an order from a judge in the United States. The same work site in Latvia (non-

[25] Ayres, I. & Braithwaite, J. (1992), *Responsive Regulation: Transcending the Deregulation Debate*, Oxford University Press, New York.
[26] U.S. EPA's policy on "Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations".

Figure 2: An Enforcement Option Pyramid for Business Regulation



Source: Ayres, I. & Braithwaite, J. (1992), *Responsive Regulation: Transcending the Deregulation Debate*, Oxford University Press, New York, p. 35.

OECD country but EU member), can be shut down at the sole discretion of the labor inspector in Latvia after opportunity is given to correct the problem (however, this authority has not been used in recent years in Latvia). The way penalties are set might be a priority area for future reforms to improve inspection quality in Latvia and elsewhere.

67. After an inspection, the OSHA inspector reports the findings to the area director who evaluates them. If a violation exists, OSHA will issue a citation and notification of penalty detailing the exact nature of the violation and any penalties. A citation informs the firm of the alleged violation, sets a proposed time period to correct the violation, and proposes monetary penalties.[27] OSHA relies mostly on monetary penalties. OSHA decides on penalties using transparent but subjective criteria:

- **Willful**: A willful violation is a violation in which the employer knew that a hazardous condition existed but made no reasonable effort to eliminate it and in which the hazardous condition violated a standard regulation, or the OSH Act. Penalties range from $5,000 to $70,000 per willful violation.
- **Serious**: A serious violation exists when the workplace hazard could cause injury or illness that would most likely result in death or serious physical harm, unless the employer did not know or could not have known of the violation. OSHA may propose a penalty of up to $7,000 for each violation.

[27] OSHA (2003) Employer Rights and Responsibilities Following an OSHA Inspection, 3000-09R, Washington, DC.

- **Other-Than-Serious**: An other-than-serious violation is a situation in which the most serious injury or illness likely to result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to employees. OSHA may impose a penalty of up to $7,000 for each violation.
- **De Minimis**: De minimis violations are those that have no direct or immediate relationship to safety or health and do not result in citations.
- **Other**: A violation that has a direct relationship to job safety and health, but is not serious in nature, is classified as "other".
- **Failure to Abate**: A failure to abate violation exists when the employer has not corrected a violation for which OSHA has issued a citation and the abatement date has passed or is covered under a settlement agreement. OSHA may impose a penalty of up to $7,000 per day for each violation.
- **Repeated**: An employer may be cited for a repeated violation if that employer has been cited previously for a substantially similar condition and the citation has become a final order of the Occupational Safety and Health Review Commission. Repeated violations can bring a civil penalty of up to $70,000 for each violation.

68. Employers are expected to notify the OSHA area director in writing when an abatement has been accomplished. If the employer fails to do this, the area director will contact the employer by phone to discuss the situation. A follow-up inspection determines if the employer has corrected previously cited violations.
69. For Mexico's PROFEPA, sanctions and fines are detailed in the law itself and further detailed in an adjudication manual (*manual de dictaminación*) and a sanctions table.[28] Inspectors cannot establish sanctions. Based on the inspection report, the senior officials establish economic sanctions and technical measures using a table organized by the size and capital of the firm, the type of irregularity and the compliance history of the firm. After setting the sanction, the department sends its Inspection Resolution to another unit under the Subprocuraduria of Legal Affairs who is in charge of the legal procedure, including filing for action by the courts.
70. Importantly, adjudication of sanctions in Mexico follows defined administrative procedures as is the case in most European countries (see Box 8 on next page).
71. In Latvia, the SLI inspector has much wider discretion to decide on the penalty, taking into account any mitigating circumstances, but the enterprise can appeal the decision to the director of the SLI. The employer and the inspector settle on a period when the violation should be corrected, taking into account the risk present and the resources available. Although the inspector can choose to issue

[28] PROFEPA will shortly post the "sanctions table", together with the manual on the Internet, in accordance with the Access to Information Law.

warnings, sanctioning is by far the most common penalty. In 2004, 829 administrative penalties were imposed, out of which 689 were monetary sanctions and 140 were warnings.[29] In the most serious cases, the SLI inspector can decide to suspend the operation of equipment or in extreme cases of the entire manufacturing site, but no organizations or enterprises have been suspended in the last several years.

Box 8: Good Sanctioning Procedures for European Environmental Inspectorates

The following procedures are in place for European environmental inspectorates:

After confirmation of a non-compliant situation, the following initial responses should take place:

- The firm should take action to minimize and mitigate any adverse impact to the environment, and should inform the competent authority.
- The inspectorate should take action to check that any adverse impact is minimized and mitigated, and should require the firm to investigate and report on the reasons for the non-compliance. The inspectorate should also consider carrying out its own investigation.

Once any adverse impact has been minimized and mitigated and the results of the investigation(s) are available, the inspectorate should decide on further actions based on an assessment of the severity of the non-compliance on the basis of:

- its duration, frequency and foreseeability;
- the number of limits exceeded, e.g., for different substances;
- the magnitude of the exceedence(s); and
- the reactions of the firm to minimizing and mitigating adverse impacts to the environment.
- the severity of the non-compliance should be taken into account by the inspectorate when deciding on further enforcement action. These possible actions form a sequence of responses that can be escalated to match the severity of the noncompliance.

The inspectorate can give orders to close down an installation which has been built, operated, or modified without an appropriate permit. The closure order may explain the reasons for closure, including:

- how and by what date the installation is to be closed down,
- what sanctions will be applied if the closure order is violated,
- any criminal consequences which may follow violation.

Fines may be imposed through legal actions taken in the courts or under administrative powers provided for by the legislation in some countries. The operator may be entitled to appeal any of the actions and to seek compensation if the appeal is upheld.

Source: IMPEL Network, Report on Best Practice in Compliance Monitoring, June 2001. http://europa.eu.int/comm/environment/impe.

[29] Data on administrative "sanctions are taken from the 2004 Annual Report of the State Labor Inspectorate, Latvia. www.vdi.gov.lv

B.5. Transparency and Consultation with Affected Businesses

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Inspectorates should spend considerable resources in acting as an information service for businesses—providing texts of regulation and interpretations, assisting in finding solutions, and distributing educational materials. Regulations and inspection procedures should be drafted in a friendly user and understandable way. A Web site should offer materials to explain regulatory and compliance programs, such as press releases, frequently asked questions, publications, industry alerts, technical reports and stakeholder announcements.	Inspectorates should prepare lists of regulations for which they are responsible, and circulate the lists and texts to businesses on a routine basis, not just during inspections. A public-private effort can be set up to facilitate communication. A single point of contact for business inquiries should be set up.	Little or no effort to communicate with businesses about regulatory requirements or to assist in sharing information about how to comply with the rules. Inspectors believe it is not "their" job. Regulations and inspection procedures are hard to understand or provide opportunities for excessive interpretation.	Set up a public-private effort to facilitate communication between inspectors and businesses. Develop a complete set of regulations for which inspectors are responsible as well as the inspection procedures to enforce them, and distribute them widely. Set up a help desk or phone line where businesses can call anonymously to ask questions about how to comply.

72. A vital element of quality inspections is the quality of communications between the inspectorate and the regulated businesses. Many of the recommendations in this guide call for more consultation on the design and operation of inspection functions. Regulators and inspectorates should communicate their rules, processes, and requirements simply and effectively to businesses. Indeed, the success of the inspectorate will be determined largely by how well businesses understand the regulatory requirements.

73. In the three countries reviewed in this guide—United States, Mexico, and Latvia—a substantial trend toward more consultation and communication with affected businesses can be seen. Informing businesses about inspection policy is important, but a larger problem is that the rules themselves are often not easily available. Inspectorates can also help address this problem by telling businesses which rules apply and providing copies of those rules.

74. Consultation and communication are two different activities. Consultation is the proactive collection of views and suggestions from the affected stakeholders before a decision is reached. Communication is making information more easily available on decisions that have already been made. Table 2 below shows several common consultation methods used by public agencies to ask for business views.

Table 2: Consultation Methods and Success Factors

Consultation method	Conditions needed for its success
Publication for comment (making a document available for anyone who wants to comment)	This is a passive consultation method that requires existing relationships with strong, informed, and active business associations that can react quickly to the published material. The material that is published must be clear and concise so that it can be ready by small businesses. Publication should be by methods that are widely accessible. Internet publication is probably not sufficient in most developing countries.
Circulation of regulatory proposals for public comment (asking specific groups to comment)	This is a more proactive method than publication for comment. It requires good relationships between ministries and the business bodies that are consulted. To sustain this relationship, ministries must be responsive to the comments received. This method is business-friendly because the ministry takes the initiative in informing the business body of the issue under consultation.
Business test panels (creating small groups of businesses to discuss specific proposals)	This method is more useful than the other methods for collecting hard empirical information on business impacts of specific policy decisions. It involves a smaller range of businesses, and so selection must be done very carefully. It is useful for testing alternative solutions and for dialogue as regulations change. It is not useful for building consensus.
Business advisory bodies (permanent bodies charged with giving business views on proposals)	This method uses scarce business resources efficiently because it is a "one-stop shop" for consultation by the ministries. Because the advisory bodies are permanent, they build up expertise over time. If they have resources, trained Secretariat staff can be extremely useful in boosting their effectiveness. The selection of members must be done carefully, and membership should change periodically to reflect changes in the business community.

75. Inspection services should spend as much effort in providing information and compliance services to businesses as in carrying out surprise inspections and penalizing noncompliance. Lack of information and the high cost of accessing information are problems everywhere. This is not just a developing country problem. According to the UK's Small Business Research Trust, 50% of small businesses that try to find advice on regulation are unsuccessful in locating it. Some 92% of businesses said they wanted more advice from regulators.[30]

76. The pyramid of enforcement practices shows that businesses are much more likely to accept the legitimacy of inspections when inspectorates are seen as assisting rather than as policing. Providing information services reduces the level of non-compliance, and speeds up remedial actions. At a minimum, all internal policy documents of the inspectorate should be made public, including policies on targeting inspections, on procedures of the inspections, and on penalties. Regulatory compliance guidance and assistance information is usually provided through a wide range of interactions, including:

- a contact point to answer inquiries about regulations. Inquiries can be received via telephone, mail, and electronic mail;
- public hearings, town hall meetings, workshops, and other meetings with stakeholders;
- publications such as compliance guides and good compliance strategies. Such information should be widely distributed; and
- Web sites.

77. In many countries, such information services are also provided by private enterprises acting as consultancy firms that help businesses comply. Unfortunately, this industry has been corrupted in some countries, such as Russia, where the inspectorates themselves create affiliated consulting companies that "help" employers resolve problems, obtain information, and deal with regulations. Employers are steered to those companies affiliated with the inspectors. This difficult ethics problem could be mitigated by forbidding employees of inspectorates to have any interest in such consultancies, and, more effectively, forbidding inspectorates from recommending or suggesting any such firm. Rather, the inspectorate could maintain an open list where such private firms can register, and this list should be give given to employers on request.

78. In the United States, the Food Safety and Inspection Service (FSIS) offers compliance assistance to small meat, poultry, and egg product plants. A good practice is to provide information on regulatory compliance through an e-mail service in which businesses can write to ask questions about compliance. An example is

[30] *Quarterly Survey of Small Business in Britain*, Small Business Research Trust Survey, 2001-2003, London.

the FSIS Regulations service (regulations@fsis.usda.gov), which gives information on laws, regulations, and policies of FSIS inspection programs. FSIS also provides technical guidance on many subjects of regulation, including requirements for plant sanitation, the use of food ingredients and food irradiation sources, and the control of pathogens.

FSIS also operates an extensive, small establishment outreach program, featuring FSIS-sponsored workshops and programs, educational material development, and distribution.

79. One way in which regulators support efforts to comply voluntarily, such as enterprise codes of conduct and standards, is through voluntary disclosure policies. As noted earlier, these are official guidelines issued by regulators as an incentive for companies to undertake effective self-regulation and self-policing.

80. To assist the public in keeping current with OSHA standards, the agency developed "OSHA Regulations, Documents & Technical Information on CD-ROM". The CD-ROM contains an electronic copy of the text of all OSHA regulations (standards), selected documents, and technical information.

81. OSHA uses a variety of cooperative programs and outreach efforts to assist employers and employees in addressing compliance problems. In 2002, OSHA created a Directorate of Cooperative and State Programs and an Office of Small Business to expand compliance programs, training, outreach, and education programs. Such programs include:

- **On-site Consultation Programs.** OSHA offers a free consultation service, targeted at small businesses in high-hazard industries, that assists employers in identifying and correcting workplace hazards and establishing safety and health management systems.

- **Cooperative Programs**. OSHA enters into voluntary relationships with employers, employees, employee representatives and trade and professional organizations to encourage, assist, and recognize their efforts to increase worker safety and health.

- **Compliance Assistance, Outreach, Training and Education, and Information Services.** OSHA develops and provides an array of compliance assistance programs, outreach and assistance products and services, education and training materials and courses that promote occupational safety and health. To help employers and employees better understand their obligations, opportunities and safety and health issues, the agency provides services including education centers, 1-800 number assistance, interactive e-tools and an extensive Web site.

82. As part of a "whole of government initiative," all forms and other requirements to provide or maintain information are rigorously described in the Federal Registry of Formalities. This Internet register has positive security, meaning that only those formalities and their information requirements listed in it are enforceable (www.cofemer.gob.mx).

83. A similar trend is seen in Latvia. Activities related to informing society on labor safety and labor law have grown rapidly in recent years, transforming SLI from a purely "punishing" institution to an institution cooperating with organizations and helping businesses comply. Indeed, across the government, each inspectorate must develop a strategic approach to communicating with the private sector, such as by setting up advisory groups. The SLI gives free consultations to employees and employers on complying with legislation in the field of labor legal relations and occupational safety.

    The SLI Web site (www.vdi.gov.lv) provides the latest information on changes in the legislation, statistics, and best practice information. With information campaigns, the SLI publishes leaflets, guidelines, and fact sheets with information on occupational safety and labor policy. In addition, the SLI organizes labor safety and protection exhibits on a regular basis.

C. Monitoring and Fairness of Inspections

C.1. Complaint Mechanisms

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Inspectorates should offer easily accessible means of filing complaints about businesses or about inspectorate activities. Complaints should be anonymous when necessary to avoid reprisals. Complaints are followed by independent unit of the agency.	Senior official responsible for taking complaints and reporting to the head of the agency.	No channel for complaints from the public, cutting off this source of information. Inspectors can credibly threaten retaliation in case of complaints.	Set up a national phone line to take complaints from citizens or businesses. Designate a senior official to assess complaints and make recommendations to the head of the agency.

84. To exploit information from the regulated businesses (e.g., appeals) and those who benefit from regulation (e.g., complaints), an inspectorate should be open to receive complaints from employees or businesses. Appeal and complaint mechanisms are central to a rule of law system. Civil society and employee complaints provide information for quick action against non-compliance. For example, any employee may file a complaint with OSHA by telephone, in writing, or online at OSHA's Web site (www.osha.gov). The complaints can be treated as either anonymous or identified by employer.

85. Appeal systems also provide ways to redress abuses from inspectors against firms. But, it is also important to avoid the risk of reprisals. Firms may be loath to complain when they believe that retaliation is possible. An important step is to create firewalls around the unit in charge of appeals and complaints, separate from the inspection and adjudicating units.

86. In Mexico, a distinct unit reporting directly to the head of PROFEPA—the General Directorate for Complaints and Claims - is in charge of handling complaints at the national and local levels. Different complaint procedures are available, including through the Internet. Businesses can complain against any aspect of the procedures and in particular over the substance and form of three main inspection documents (inspection order, inspection report or inspection resolution).

    Upon receipt, and after their registration on a special database, the Subprocuraduria of Legal Affairs becomes responsible for resolving all complaints and claims.

87. Since 1995, the (North American Free Trade Association (NAFTA) North American Commission for Environmental Cooperation (CEC) has been able to receive complaints concerning non-enforcement of environmental national laws and regulations.

88. In Latvia, the number of complaints about employers and the SLI itself is rapidly increasing, which might be taken as a sign of success in informing society about its legal and due process rights. In fact, the SLI plans to open a consultation office with dedicated staff whose main function would be working with complaints and visitors. The SLI has a toll-free phone number for consultation and a hotline for anonymous complaints on violations. Any organization or person may file a complaint to the SLI, according to a generic law and appeal administrative acts according to the Administrative Procedure Law (adopted in 2004). Complaints and appeals are reviewed by the SLI and a written response is provided. Complaints about the SLI itself can be submitted to the SLI, the Ministry of Welfare, or the State Civil Service Administration.

89. In most cases, inspectorates have no control over the due process protections outside of the inspectorate, such as independent and judicial reviews. This is as it should be. However, when those protections are not operating as they should, as in many developing countries, the inspectorate acting alone is unable to address the problem.

90. However, inspectorates can take many actions to protect due process rights of businesses. They can explain those rights, they can provide internal appeals services, they can be transparent about the reasons for their own actions, and they can ensure that their procedures permit businesses time to use due process. Many of the good practices recommended in this guide have the effect of protecting business rights.

C.2. Protecting Due Process in Inspections

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Recruit and pay inspectors with financial incentives that are comparable to private sector pay levels for similar skills. Set a "cooling off" period after resignation from the inspector to discourage the private sector from promising jobs to inspectors in exchange for favors. Rotate inspectors to avoid formation of unhealthy relationships with the regulated public.	Inspectorate should ensure that businesses are fully informed about their rights, and should give adequate time to carry out those rights. A mediation process should be created to settle disputes efficiently.	Inspectorate undermines due process rights by violating procedural duties, by failing to clarify the reasons for its actions, and by failing to explain their rights to businesses.	Prepare materials to give to businesses clarifying their rights to appeals and reviews. Review procedures to ensure that adequate time is given for businesses to use due processes. Consult with external authorities such as courts to ensure that procedures support the efficient review of inspectorate actions.

91. In some countries, such as in Belgium, ombudsmen can play an active role in defending inspected rights and promoting reforms to the regulations and their enforcement procedures.

92. About 8% of OSHA's inspections are contested by employers each year. In typical American fashion, there are multiple levels of due process for employers who do not agree with inspectors.

- Employers may request an informal conference with the OSHA Area Director to discuss any issues related to the citation and notification of penalty. At the conference, the OSHA Director can negotiate and enter into an informal settlement agreement or resolve disputed citations and penalties.
- If the employer disagrees with the penalty, he has 15 working days from the date he receive the citation to contest it in writing to the independent Occupational Safety and Health Review Commission (OSHRC).

93. Every country will have its own due process solutions. As in many other regulatory regimes in Mexico, the slow and unpredictable nature of the judicial branch often has compromised the enforcement actions of PROFEPA. In some cases, a long time is needed to recover fines. On the other hand, Mexico's constitution provides a powerful "habeas corpus" injunction system—"Juicio de Amparo"? that has protected businesses and individuals from legal abuses.[31]

94. Latvia's due process protections against inspectorate abuses improved enormously when a dedicated Administrative Court became operational in 2004 under a new Administrative Procedure Law. The Administrative Court, part of

[31] See OECD (1999), Government Capacities to Produce High Quality Regulation in Mexico, Paris www.oecd.org/regreform/backgroundreports. The "Juicio de Amparo" or "Writ of Protection" is Mexico's "habeas corpus" constitutional protection of right and liberties of individuals. In practice, in Mexico the Amparo law provides ample rights to all citizens against all laws, regulations and authorities' decisions that may be deemed to contradict or violate the constitution. During the Amparo appeal, the laws, regulations and decisions are suspended.

Box 9: The Administrative Procedure Law: Improving Due Process and Administrative Certainty

A key to controlling excessive administrative discretion is the administrative procedure law. Many OECD countries are now adopting or amending administrative procedure laws to improve the orderliness of administrative decision-making and to define the rights of citizens more clearly. The importance of these kinds of reforms for improving certainty and reducing regulatory risk in the market, while enhancing democratic accountability, can hardly be overestimated.

This guide points out the importance of the administrative procedure laws to inspection reforms in Latvia and Mexico. The impacts of those laws went far beyond inspections, however. Reforms to the Mexican Federal Law of Administrative Procedures in 1996 established a broad framework of principles for regulatory quality.

In some countries, such as Italy and Spain, the silence-is-consent or tacit authorization rule switches the burden of action entirely: If administrators fail to act within time limits, the citizen is automatically granted approval.

Japan used its new administrative procedure law passed in 1994 to attack the problem of administrative guidance by forbidding the use of coercive guidance and establishing transparency standards for voluntary guidance.

In the United States, the cornerstone of the regulatory system is the 1946 Administrative Procedure Act, which established a legal right for citizens to participate in rulemaking activities of the government on the principle of open access to all.

A series of amendments to the 1958 Administrative Procedure Law was the platform in Spain to increase accountability and transparency across the public administration, that is, to move away from the authoritarian traditions of the Franco regime to new relations between government and citizens. The powers of the Spanish central government organization were redefined to separate the political from the administrative levels throughout the administration.

the judiciary, reviews the appeals of private entities against decisions of public bodies. The Court is the second level of appeal. After the on-site inspection, the enterprise may first request the director of the SLI to review the decision/administrative act issued by the inspector, and then can appeal to the Administrative Court. Some 64 administrative acts issued by inspectors were appealed to the director of the SLI during 2004; 32 of these were further appealed to the Administrative Court, and three were reversed by the Court.

95. OSHRC is an independent Federal agency created to decide disputes about citations or penalties resulting from OSHA inspections of workplaces. The

Commission has three members, appointed by the President and confirmed by the Senate, who serve six-year terms. The OSHA Review Commission is an independent agency to ensure that complaining parities receive impartial hearings. The Review Commission functions as an administrative court, with established procedures for conducting hearings, receiving evidence and rendering decisions by administrative law judges. Its hearings have all the elements of a trial, including examination and cross-examination of witnesses. The Commission also reviews OSHA's interpretations of standards as reflected in its citations, an oversight function that OSHA often opposes.

96. If an employer contests either the time period set for abatement or the citation itself, the abatement period generally does not begin until there has been an affirmation of the citation and abatement period determined by the OSHA Review Commission.

97. Businesses can then choose to file for review by an appropriate U.S. Circuit Court of Appeals.

98. There is no single answer to the corruption problem. Many of the quality practices recommended in this guide—clear procedures, less discretion at the site, better training and financial incentives—will help reduce corruption over time. In addition, the due process and legal review procedures are often seen by businesses as providing some protection against corruption that either harms a business or helps a competitor by reducing compliance with standards.

99. In some developing countries, protecting rights and stopping abuses have required the creation of additional safeguards, such as the national hotline in Mexico that is used by businesses to ensure that an inspector has a legal right to inspect at that time, rather than being a pirate inspector out to raise some weekend cash.[32]

100. Mexico has dealt fairly successfully with a major corruption problem in environmental inspection. Overall, in the past 10 -12 years the criticisms and complaints of corruption problems and excessive discretion by federal environmental inspectors have diminished considerably. This has been a result of businesses knowing the law better and using it to protect themselves at lower cost and more predictability.

101. Other important ingredients for success are the clear division of functions—and in theory the creation of firewalls—between the inspector coordinator preparing the inspection order (i.e., selecting the firms to be visited) and the inspectors. This division has reduced the typical problem of collusion and capture between an inspected firm and its inspector. Separation between the inspectors drafting the factual report and the unit responsible for adjudicating the sanctions and improvement measures has further weakened the dangerous links that are vulnerable to corruption. This is further stressed by the arms-length sit-

[32] OECD (1999), *Regulatory Reform in Mexico: Government Capacity to Assure High Quality Regulation,* p. 30.

C.3. Inspectorate Mechanisms and Procedures to Combat Corruption

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
Separate site choice, inspection, penalty, and oversight functions in the inspectorate. Inform firms that inspectors cannot decide closure or penalties. Avoid collusion and capture of inspectors by firms by regionally shifting rotating inspectors. Develop an ethics program in the inspectorate with ethics training, an ethics manual, a complaints hotline, and authority to refer complaints to authorities outside of the inspectorate. Check incomes through annual declarations. Set a "cooling off" period after resignation from the inspectorate to discourage the private sector from promising for jobs to inspectors in exchange for favors.	Designate a senior official as ethics officer as part of the development of an ethics policy. Create business consultation channels to assess the nature and scope of the ethics problem. Set up an independent telephone hotline to take complaints about ethics problems. Deal with specific inspectors clearly and swiftly. Audit inspectorates by a specialized neutral entity, preferably outside the jurisdiction of the executive power.	Participation by senior management in corruption at lower levels, acceptance of problem as normal, lack of any external defenses against abuses.	Assess extent of problem using international benchmarks and business consultation. Establish medium-term, multifaceted strategy to reduce incentives. Create external monitoring group to respond to specific complaints and problems. Organize corruption auditing systems. Inform the private sector actively about its rights and duties, as well as about possibilities to complain in case of problems.

uation of the Legal Department that handles all legal and enforcement actions —including closure of a site.

102. Another practice that has reduced the unethical activities of inspectors has been the decision to set up inspection brigades of more than two persons who rotate regularly. Moreover, each one of them needs to have an identification card (ID) with a picture that can be verified by inspected firms on an Internet database.[33] Other important measures that seemed to have improved accountability is the systematic monitoring by the central office, in which all procedural steps are recorded and are controlled monthly and annually. PROFEPA headquarters organizes impromptu visits to state delegations as well as to other federal agencies such as the governmental audit department of the Ministry of the Public Service to inspect conformity with procedures.

103. A low-cost way to reduce opportunities for corruption is to rotate inspection staff frequently enough to discourage corrupt relationships. Mexico used this approach to combat the widespread corruption on custom premises before the

[33] A few years ago, firms were prey to "pirate" inspectors with fake IDs.

early 1990s. A drawback of staff rotation, however, is that the movement of inspectors (and their families) increases budget costs and creates additional disincentives to stay in the inspection corps. Staff rotation was used in Mexico for custom officers because the number of border locations was reduced, making rotation easier to implement, and custom procedures were deemed exceptionally important after NAFTA entered into force.

104. In Latvia, the large national Inspectorate Reform (1999-2003) and related activities have had a positive impact on the level of administrative corruption. Transparency International's corruption perception index improved from 2.7 in 1998 to 4.0 in 2004,[34] the period during which the government invested considerable efforts in combating corruption. Today, the SLI operates under a National Code of Ethics for civil servants, a number of laws aimed at preventing conflict of interest and corruption, and a National Strategic Plan for Combating Corrupt. For example, inspectors as public officials submit income declarations each year aimed at controlling incomes of public servants and avoiding illegal income. The State Revenue Service verifies the declarations. Internally, the SLI has established an Ethics Commission to review cases of conflict of interest, corruption and offence of ethical norms. The Audit Unit of the SLI also responds to information and complaints of potential cases of corruption and abuse of authority.

105. OSHA has no specific procedures to combat corruption among its inspectors, but it is under the supervision of the Department of Labor (DOL), which is, in turn, under the general ethics infrastructure of the government. The Office of Government Ethics provides leadership in the executive branch to prevent and resolve conflicts of interest on the part of government employees. Each government agency is required to assign a designated agency ethics official. In DOL this responsibility is assigned to the Solicitor of Labor. In assisting the Solicitor of Labor in this area, the Division of Legislation and Legal Counsel has overall responsibility for administering the department's ethics program. OSHA can ask for ethics training for its officers.

106. Better access to the regulation and redress mechanisms can also be very helpful. In Russia, an NGO has helped business associations raise awareness among entrepreneurs about the laws and regulations affecting their businesses through the introduction of handbooks on corruption and business inspections logs, providing entrepreneurs with the tools necessary to say "no" to extortionate claims from local bureaucrats.[35]

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[34] Transparency International at www.transparency.org. The scale for measuring corruption perception index is from 0 (highly corrupt) to 10 (extremely clean).

[35] Aleksandr Shkolnikov and Andrew Wilson, "Dispelling Corruption Myths: What Works and What Doesn't" Economic Reform, Center for International Private Enterprise, June 2005, Washington, D.C.

D. Coordination of Inspections

D.1. Coordination Among Inspectorates

Ideal Practice	Reasonable Practice	Bad Practice	Steps toward Good Practice
The inspectorate has formal agreements to coordinate with other national inspectorates with overlapping jurisdictions. The inspectorates agree not to ask for the same information more than once from any business, and coordinate data sharing. Look for possibilities to merge inspectorates.	The inspectorate coordinates with other key inspectorates—labor, environment, health—to identify duplicate information requirements and create a program to reduce them.	Little discussion with other inspectorates; no attempt to coordinate information needs and burdensome requirements.	Arrange meetings with other key inspectorates and business representatives to identify areas of duplication. Set up a step-by-step strategy to address most costly areas of duplication and overlap.

107. Inspectorates in national and subnational governments should ensure that their jurisdictions are clearly defined, and, where there is the potential for overlap, duplication, inconsistency, or confusion with other inspectorates, coordination mechanisms are installed to reduce costs to businesses and government.

108. This is not just a national problem. In many countries, large numbers of local authorities also inspect, and the boundary between national and local inspections is often not clear. In addition, there is much inconsistency in the process, content and results of inspections. This can mean wide variations and inconsistencies in the application of national standards.

109. Some major problems are inefficiency during the inspection visits due to overlap and duplication, and conflicts and contradictions between the mandates of different inspectorates. Firms will need to either chose one or comply with both. A good example is the duplication and contradiction with fire extinguishers in Mexico:

- "At least three authorities—the Army, the Labor Ministry and the Civil Protection Agency—regulated differently the location and position of fire extinguishers. In some places, the local and national environmental authorities could also regulate the matter. Due to this, most businesses were out of compliance with at least one of the regulations, if they did not want to buy additional extinguishers."[36]

110. OSHA does not have a general policy on coordination with other inspections of the federal government, but there are an increasing number of coordination activities in specific economic areas that are highly regulated by numerous agencies. For example, inspection of ship scrapping is carried out under a Memorandum of Agreement between OSHA, the Department of Defense, the

[35] Aleksandr Shkolnikov and Andrew Wilson, "Dispelling Corruption Myths: What Works and What Doesn't" Economic Reform, Center for International Private Enterprise, June 2005, Washington, D.C.
[36] FIAS, Solution Design and Implementation Module: Reform of Government Inspections.

Department of Transportation, and the Environmental Protection Agency. OSHA and EPA are committed to "make every effort to coordinate inspections of ship scrapping operations in appropriate circumstances, to facilitate the occurrence of joint visits when possible."

111. Mexico, too, fails to have a general policy on coordination between PROFEPA and other federal or local enforcement agencies. There are a few initiatives, though. A coordination memorandum of understanding is drawn up between PROFEPA and the Ministry of Health to inspect biological waste from hospitals,[37] and there is coordination with the Customs Offices on container inspection in a few major harbors.

112. Among the three cases presented here, Latvia is the most advanced in coordination. Prior to the Inspectorate Improvement Program in 2000, businesses regularly complained about the lack of coordination and cooperation among different inspectorates in Latvia. An Inspectorate Coordination Council (established in 2000) created a solid platform for cooperation of inspectorates and exchange of information. The SLI cooperates with the State Revenue Service, State Social Insurance Agency, State Education Inspectorate, State Sanitary Inspectorate, State Construction Inspectorate, and State Fire and Rescue Service. Joint inspections of the SLI and State Education Inspectorate are common.

113. One of the most powerful reforms of inspections in many countries has been the streamlining of overlapping and duplicative inspectorates through coordination and even merging of the institutions themselves. Croatia has been at the forefront of this approach (see Box 10).

Box 10: Croatia's Inspectorate Reforms

In 1999, Croatia took the unique step of consolidating many inspection processes into a single autonomous agency: the State Inspectorate, which manages a large proportion of the inspections to which an investor is subject. Formerly a department of the Ministry of Economy, the State Inspectorate is today responsible for 11 inspections and 3 "technical" inspections, including those previously conducted by the Ministries of Economy, Forestry and Agriculture, Tourism, and Work and Social Welfare. The system has not only reduced the number of visits that a business is likely to endure, but also has saved considerable budgetary resources. The number of units that conducts inspections has been reduced from 110 to 49, and the number of county offices from 22 to five.

Source: OECD, Stability Pact, Investment Compact, Regulatory Governance in South East Europe. Progress and Challenges. July 2004. http://www.regulatoryreform.com/pdfs/FINAL-RGI%20Report-29-07-04.pdf and United Nations Economic Commission For Europe (UNECE), Committee For Trade, Industry And Enterprise, Development Market Surveillance Activities, 5 August 2005 Trade/Wp.6/2005/10

[37] In application of the technical standard NOM 087.

114. In 2002, with the help of the World Bank and the Swedish Aid Agency (SIDA) the Bosnia-Herzegovina government launched an ambitious plan to reform the inspection system. Different from the Croatian case, the reform focused on improving individual inspectorates without merging them. As a first step to minimize redundancies, all ministries and agencies were required to prepare an inventory of their inspectorates (including those that function extralegally or under questionable mandates) and their mandates. The second step, not yet finalized, is the creation of a single system for all inspectorates. The proposal includes the reduction of overlapping mandates between inspectorates, the coordination of visits, and cross-checking of inspectors' findings. Inspectors will also be required to follow established guidelines and criteria for selecting businesses for inspection. The sanction systems will also be reviewed, and here too, clear criteria will be developed.

115. Coordination means also ensuring best practices across units dispersed across the country and across inspections devolved to local governments. In the United Kingdom, the Health and Safety Executive/Local Authority Enforcement Liaison Committee (HELA) is the national forum for promoting good regulatory practice and consistency in enforcement by local authorities, and between local authorities and the Health and Safety Executive Agency. HELA contributes to the development of policymaking and standard setting.[38]

116. Improved coordination also means that the inspectorates need to provide feedback to those responsible for the policy and design of regulation. Very often, inspectorates are not involved in the development of proposals and options, despite the fact that inspectors have invaluable experience of the impact of regulation on the premises they inspect. An appropriate mechanism is to include them during the review and reform of new regulations. An interesting case is the United Kingdom HM Fire Service Inspectorate, which feeds information directly to policymakers on the operation of the fire service. It is responsible for obtaining information on behalf of the Home Secretary through regular inspection of the fire authorities as well as giving technical advice to brigades on their enforcement role.[39]

[38] Better Regulation Task Force. Enforcement Report April 1999, London, United Kingdom. London.
[39] Ibid.

VI. How to Diagnose Problems with the Inspection Process

117. To improve the enabling environment for business, problems with inspections should be identified in a systematic manner. The use of sound diagnostic methods can assist in addressing the right problems, and consequently adds confidence to decisions about inspection reforms. The basis for identifying symptoms is important for designing solutions and improving credibility among allies and opponents of inspection reforms.

118. The most common tools for collecting diagnostic information about administrative practices include (i) market analysis and economic diagnostics, (ii) stakeholder consultation, and (iii) international benchmarks of domestic performance. Table 3 below indicates their advantages and disadvantages.

119. These different diagnostic methods can be used together in a flexible and iterative approach. A combination of the diagnostic methods will depend on available resources, information, and time as well as the expertise of stakeholders involved in the consultation process. Reformers choosing among the three diagnostic methods should consider the following:

120. Empirical diagnostics can be carried out on a multisectoral basis to provide a comprehensive assessment of the status of the private sector. Sectoral diagnostics provide a narrower view but are also useful. They are most often conducted in the utility sectors, key export sectors, and the financial sector and labor markets.

121. Stakeholder consultations are usually less costly than empirical diagnostics and can provide very specific and targeted information about business perceptions. Governments can develop low-cost tools for interactive and specific information collection that can be applied expeditiously. Such tools include business surveys, surveys of business intermediaries and ad hoc focus groups, such as the example from Vietnam in Box 11. Business surveys in areas such as inspec-

Table 3: Advantages and Disadvantages of Diagnostic Methods for Inspections

Diagnostic method	Advantages	Disadvantages
Empirical diagnostic of constraints to growth	Provides the most objective and comprehensive information on constraints to private sector growth.	If not readily available, can be costly and time-consuming. Can be over-sold in terms of precision, since data limitations mean that conclusions may be imprecise.
Stakeholder consultations, such as surveys and focus groups	Information targets directly the concerns of stakeholders and target groups, such as SMEs. Information collection can be fast and low-cost. Consultation can support dialogue between government and stakeholders that identifies solutions and builds consensus for reform.	Can be a partial and risky diagnostic. Stakeholder perceptions focus on day-to-day problems rather than systemic problems, such as weak competition and protected markets. Information can be biased toward stakeholders with the biggest voice.
International benchmarks	Readily available and low cost to government. Provide basis for comparison of inspection practices and relevant performance relative to other countries.	May not be up to date. Usually based on limited samples. Reliability and detail can vary between countries. No explanation as to underlying causes of bottlenecks and solutions.

tions have proven useful in mapping problems that cut across sectors and ministries. Countries can quickly develop and apply such tools in priority areas to map out and prioritize business concerns. The focus group technique is particularly useful in ensuring that poorly organized groups are heard. It is possible, for example, to hold a series of focus group meetings around the country to lis-

Box 11: Stakeholder Views on Business Problems in Vietnam

The Prime Minister has held annual dialogues with local businesses to identify bottlenecks since 1999. Findings are documented, assigned to specific ministers, and tracked for resolution. A similar dialogue has begun between most province governors and local business, held much more frequently, each one focusing on a specific problem area.

ten to the problems faced by producers in remote areas and in various sectors. The direct nature of this diagnostic technique identifies bottlenecks that are particularly relevant to stakeholders.

122. National performance indicators and international benchmarks may be fastest in terms of access since a large and growing number of them have been published. Some of these surveys are input-oriented (gathering information on the quality of laws, the costs of compliance, or the transparency of government), all of which more or less relate to inspections. National performance indicators and international benchmarks are useful as signposts that provide confidence that reformers are looking in the right direction. Developing a pool of indicators from published data can provide a quick scan of national private-sector performance, and international benchmarks can highlight performance variations between countries. While it is useful to know the country's relative ranking, the next step is to understand why and how it can be improved. Policy change in pursuit of a better ranking is the purpose of benchmarking the investment climate.

123. As a result of the diagnostic a number of symptoms that indicate the need for reform will emerge. The national and international indicators can support the findings, but their interpretation is not always straightforward. While an indicator may initially show evidence for the need for reform, further analysis may reveal that the reason is not wholly attributable to poor inspection practices but to other conditions such as a low education level of entrepreneurs or other levels of government.

VII. Indicators of Quality Inspections: How to Measure Results

124. How do governments know if they are moving in the right direction in improving inspectorate quality? These good practices provide several possible ways to measure progress. A basket of indicators that measure various dimensions of input and output performance is probably the most useful in assessing the performance of the inspectorate regime. One possible approach is to create indicators around the following four goals of inspectorate reform:

- Maximizing compliance with clear government regulations
- Minimizing uncertainty for businesses
- Fighting corruption
- Minimizing costs to businesses and optimize for governments.

125. Possible indicators include those shown in Table 4 on next page.

126. Some indicators should be used cautiously. For example, the percentage of firms appealing penalties might go up in the initial years due to better access to due process. In this case, a rising volume of appeals would be a sign of better quality, not worse.

127. Two ways to monitor progress are (1) to repeat the diagnostics over time to determine how the stakeholder community sees progress, and (2) to compare relative performance on international indicators. The Moldovan government conducts an annual "Cost of Doing Business Survey" that enables it to understand how the business environment is changing, and why. Internationally comparative indicators, while often cruder, can be useful as well.

Table 4: Inspection Quality Indicators

Diagnostic method	Advantages	Disadvantages
Maximize compliance with clear government regulations	■ Time needed by businesses to correct violations (should go down as seriousness of violations is reduced) ■ Percentage of staff that are trained/certified (should go up) ■ Number of repeat inspections (should go down) ■ Number of employee or citizen complaints (should go down)	■ Number of facilities making changes in management practices as a result of compliance assistance (should go up initially, then down after transition period of 3-5 years) ■ Trends in undesirable events such as accidents (should go down) ■ Public perception that incidents in the sector are serious (should go down)
Minimize uncertainty for businesses	■ Number of voluntary requests for compliance assistance from businesses (should go up) ■ Number of business complaints about lack of information (goes down)	■ Number of entities seeking compliance assistance from the inspectorate's help centers (should go up) ■ Businesses who say they can understand regulations (should go up) ■ Business perceptions that there are contradictions between regulations (should go down)

Table 4: Inspection Quality Indicators (continued)

Diagnostic method	Advantages	Disadvantages
Fight corruption	■ Number of internal audits that detect corruption (either up or down, depending on the starting point) ■ Length of time needed to resolve corruption complaints (should go down) ■ Number of inspectors driving expensive sports cars (should go down) ■ Salaries of inspectors versus salaries of equivalent private workers (should be equalized)	■ Percentage of firms and of users reporting bribes (should go down) ■ Business perceptions about incidence of corruption (should go down) ■ Percentage of officials reporting cases of corruption in public services (should go up as reporting is encouraged, then down after transition period)
Minimize costs to businesses and optimize to governments	■ Ratio of inspections of high-risk sectors/businesses to low-risk sectors/businesses (should go up) ■ Number of days spend on each inspection (should go down) ■ Number of requests for information (should go down) ■ Number of inspections coordinated with other inspectorates (should go up)	■ Number of alternative inspection initiatives (third party inspections, self-regulations, etc.) replacing traditional inspection methods (should go up) ■ View of inspections by businesses (should become more positive)

Table 4: Inspection Quality Indicators (continued)

Diagnostic method	Advantages	Disadvantages
Minimize costs to businesses and optimize to governments	■ Number of inspections per inspector (should go up) ■ Number of field inspectors versus number of public servants working for the inspectorate (ratio should go up)	■ Time spent by businesses in reacting to inspections (should go up initially as compliance improves, then down as system stabilizes) ■ Annual/monthly inspections realized versus annual/month inspection planned (ratio should approach 100%)

Annex 1

Case Study of U.S. Occupational Safety and Health Administration[40]

Context

1. The Occupational Safety and Health Administration (OSHA) of the federal government of the United States covers more than 114 million workers at 7 million workplaces with a staff of only 1,100 inspectors. In 2004, OSHA conducted around 39,000 inspections. Accident and illness rates have declined in the past 30 years, but every day in the United States 16 workers die on the job and more than 14,000 experience an injury or illness.
2. In recent years, OSHA has moved to improve the effectiveness of its compliance efforts by "using fair, firm, effective enforcement" combined with partnerships with employers, employees and others and expanding cooperation and collaboration.

A. The Inspectorate as an Institution

A.1 The Mandate of the Institution

3. OSHA is authorized by the Occupational Safety and Health Act, which requires that OSHA "assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources." The Secretary of Labor is authorized to promulgate and enforce occupational safety and health standards. OSHA inspectors are authorized to inspect only for regulations that are adopted under the Occupational Safety and Health Act. Only a few activities, such as mining, that have their own inspectorates are exempt from OSHA regulations and inspections.

[40] This case study was prepared by Scott Jacobs, Managing Director, Jacobs and Associates.

4. In 2004, OSHA had a budget of $450 million and employed 2,236 people, about half of which were inspectors. The main enforcement body of OSHA is the Directorate of Enforcement Programs (DEP), which has five offices:

- The Office of General Industry Enforcement
- The Office of Health Enforcement (OHE
- The Office of Federal Agency Programs (FAP)
- The Office of Maritime Enforcement (OME)
- The Office of Investigative Assistance (OIA)

A.2 Human Resources Management of the Inspectorate

The head of OSHA is appointed by the President, with the consent of the U.S. Senate. As a political appointee, the OSHA head has no civil service protection, and can be fired at any time by the President.

6. Most OSHA staff is comprised of civil servants, recruited and paid under civil service regulations. The median annual salary of OSHA inspectors and compliance officers was around $43,000 in 2004, or 158% of the average annual earnings in the United States

Annual starting salaries for inspectors varied from $29,500 to $35,200 in 1999, depending on the nature of the inspection or compliance activity.

7. OSHA is exploring other financial incentives that can help recruit certified professionals, such as recruitment bonuses, superior qualification appointments, and other incentives to attract highly qualified job applicants who possess professional certifications.

A.3 Inspectorate Staffing and Training Program

8. All inspectors and compliance officers are trained in the applicable laws or inspection procedures through some combination of classroom and on-the-job training. OSHA conducts training in-house, uses its own training institute or contracts out training course. An Office of Training and Education (OET) establishes policy, develops and implements technical training programs for OSHA Compliance Officers, and operates the OSHA Training Institute.
9. The OSHA Training Institute provides training and education in occupational safety and health for federal and state compliance officers, state consultants, other federal agency personnel, and the private sector. For example, the course "Introduction to Industrial Hygiene for Safety Personnel" introduces the student

to the general concepts of industrial hygiene, such as recognition of common health hazards such as air contaminants and noise, hazard evaluation through screening and sampling, control methods for health hazards including ventilation and personal protective equipment, and criteria for referral to industrial hygiene personnel.

10. OSHA has committed through its strategic plan to ensure that its staff have the requisite knowledge, skills, diversity and abilities to address emerging health and safety issues. Only about 15% of its inspectors are certified professionals. Its current plan commits to increasing the number of staff who had or are currently receiving certification training by 10% per year (for CSP or Certified Safety Professional, and CIH, or Certified Industrial Hygienist).[41]

11. In the longer term, OSHA is embarking on a major redesign of its compliance safety and health officer (CSHO) training, which may lessen the need to send employees to outside training vendors to prepare them for professional certification. A new CSHO training program will consist of a sequence of courses offered over a three-year period, and related to the core competencies desired in CSHOs. These core competencies will parallel those necessary for professional certification.[42]

A.4 Accountability for Performance of the Inspectorate

12. OSHA develops a rolling five-year Strategic Management Plan that sets goals and strategies for the entire institution. OSHA's current goal is to reduce workplace fatality rates by 15% and workplace injury and illness rates by 20% by 2008. Each year, OSHA emphasizes specific areas to achieve this broader goal; for example, in 2003-2004 OSHA's goal is a 3% drop in construction fatalities and a 1% drop in general industry fatalities, as well as a 4% drop in injuries and illnesses in construction, general industry, and specific industries with high hazard rates

13. OSHA has committed to analyze the results and effectiveness of direct interventions such as inspection programs to determine their impact on fatality, injury and illness rates. This evaluation program is meant to show where specific actions lead to better results.

B. The Inspection Administrative Procedure

B.1 Targeting Inspection Visits

14. The United States is characterized by highly legalistic administrative systems, and therefore procedures and duties are usually spelled out in great detail.

[41] CSPs are awarded by the Board of Certified Safety Professionals, a nationally accredited organization established in 1969. The internationally recognized CIH credential is granted by the American Board of Industrial Hygiene. There are approximately 6,300 active CIHs worldwide.

[42] Richard S. Terrill, "OSHA's initiative to promote certification will strengthen the agency's voice in the national dialogue about workplace safety and health," OSHA Website at http://www.osha.gov/Publications/JSHQ/fall2002html/certification.htm

15. Before the recent reforms, OSHA inspections occurred as the result of one of three events: employee complaints, accidents, or random inspection (with a statistical probability of once every 200 years). This untargeted system did not yield the results OSHA desired - an overall reduction in accidents and injuries.
16. OSHA has now moved to sophisticated monitoring and targeting strategies. Because OSHA has relatively few inspectors—and because the expectation is that OSHA should cooperate with employers—the main focus of spot inspections today is on employers who have histories of workplace injuries, or noncompliance. Inspectors tend to focus on industries that have bad safety records. These industries include construction, petrochemical and general chemical production, food processing, textiles and heavy manufacturing. Frequency generally reflects regional trends. For example, poultry processing plants in the Southeast and oil companies in the Southwest are inspected more frequently.
17. Targeting works at two levels: selection of priority sectors in the five-year plan, and selection of specific businesses in those sectors. At the strategic level, OSHA identifies target industries based on a clearly defined set of criteria. The criteria are:

- at least 5,000 total injury and illness cases;
- a lost workday injury/illness rate (LWDII) of 3.5 or greater;
- no more than 30% of injuries and illnesses involving days away from work caused by ergonomic events;
- at least 50% of injuries and illnesses involving days away from work so severe that they result in at least six days away from work;
- no more than 10% of the injuries involving transportation incidents (including incidents involving motorized industrial vehicles, such as forklifts and backhoes);
- no more than 10% of the injuries involving assaults and violent acts; and
- not in the construction sector.

18. Industries are classified by 3-digit Standard Industrial Classification (SIC) code. Data used in evaluating the criteria are from the Bureau of Labor Statistics (BLS) Survey of Occupational Injuries and Illnesses.
19. At the level of firms, OSHA uses a Site-Specific Targeting (SST) inspection program. Top priorities for inspections include reports of imminent danger, fatalities and catastrophic accidents, employee complaints, investigation of whistleblower activities, referrals from other government agencies and targeted areas of concern. OSHA has established a system of priorities based on the "worst first" approach under the category of "imminent danger"—the reasonable cer-

tainty that a danger exists that is expected to cause death or serious physical harm. From highest to lowest, these priorities include:

1. Catastrophes & Fatal Accidents—any employee death, or hospitalization of three or more employees.
2. Employee Complaints—when employees feel they are in imminent danger, threatened with physical harm or otherwise working in an unsafe workplace.
3. Programmed High Hazard—specific industry areas have been identified as high hazard by OSHA and are targeted for inspection with greater frequency. Those establishments with lost workday rates at or above the most recently published BLS national rates may be flagged for inspection.
4. Follow-Up Inspections—to ensure cited items have been abated.

20. Most OSHA visitations are prompted by accidents and complaints. Some 60%-70% of inspections are triggered by employee complaints alone.
21. OSHA uses common statistical safety benchmarks to identify the employers it deems most dangerous. It draws on the Data Initiative, a nationwide collection of specific injury and illness data from approximately 80,000 employers that collects data using the "OSHA Work-Related Injury and Illness Data Collection Form." This form is required by law to be completed, and the penalty for not completing it is automatic inclusion on the list of employers targeted for inspection. Information is obtained from the OSHA 300 log of injuries and illnesses, and the current SST initiative is based on data reported for calendar year 2003.
22. Since the inception of this initiative, OSHA has been targeting based on the Days Away, Restricted or Transferred (DART) rate: injuries that have resulted in days away from work, restrictions from normal job duties, or both. The DART rate for the current SST initiative is 6.5 per 100 employees. Of more than 80,000 employers surveyed, approximately 14,000 reported DART rates exceeding 6.5. The average DART rate for all employers nationwide is 2.5. OSHA sent a form letter to employers on the list explaining the SST program and why each was being placed on this list.
23. Companies on the list can find statistics to benchmark their safety performance against the average for their industry peer group at www.bls.gov/iif/oshwc/osh/os/ostb1355.pdf

B.2 Inspectorate Information System

24. OSHA's Integrated Management Information System (IMIS) is an information resource for use by OSHA staff and management, and by state agencies. The IMIS enforcement database contains information on over 3 million inspections conducted since 1972 and permits searches by establishment name, geographical area, or industrial code. The database is updated daily from over 120 OSHA and state offices.
25. Access to this database is also afforded via the Internet for the use of members of the public who wish to track OSHA interventions at particular work sites or to perform statistical analyses of OSHA enforcement activity.
26. The source of the information in the IMIS is the local federal or state office in the geographical area where the activity occurred. Information is entered as events occur in the course of agency activities. IMIS is designed and administered as a management tool for OSHA to help it direct its resources.
27. OSHA also has an online database that allows employers (or anyone) to identify the most common citations for each industry, or the industries most cited for any standard. The database includes the following information:

- *#Cited* represents the number of times the specified standard was cited. The number in the total line is the sum of the number of citations for each standard.
- *#Insp* represents the number of inspections in which the specified standard was cited. For the total line, it represents the number of inspections in which one or more citations were issued. Note that the total is not the sum of the number of inspections associated with each standard cited: multiple standards may be cited in one inspection.
- *$Penalty* represents the total penalty amount currently assessed for the specified (#cited) citations. The number in the total line is the sum of the $Penalty for each standard. The amounts reflect what exists at the current time, taking into consideration any settlement action adjustments which may have taken place.

28. For example, for the sector 3541, Machine Tools, Metal Cutting Types, the Internet user can find that the five most commonly cited standards, with their frequency and average penalty levels, are as follows:

Standard	#Cited	#Insp	$Penalty	Description
19101200	18	6	$2920	Hazard Communication
19100147	7	3	$1763	The Control of Hazardous Energy, Lockout/Tagout
19100215	6	3	$1550	Abrasive Wheel Machinery
19100217	5	1	$2400	Mechanical Power Presses
19100305	5	2	$1500	Electrical, Wiring Methods, Components and Equipment
19100134	4	2	$750	Respiratory Protection

B.3 Procedures for Inspector Visits, including Control of On-site Discretion

29. OSHA inspections are controlled through a variety of mechanisms such as transparency about the purpose of the inspection and the right of the employer to accompany the inspector and document the results. A Field Inspection Reference Manual (FIRM) was developed to provide the field offices a reference document for identifying the responsibilities associated with their inspections. The FIRM is a public document. Its table of contents, including sections on "Conduct of the Inspection" is included below.

30. When the OSHA compliance officer arrives at the establishment, he or she displays official credentials and asks to meet an appropriate employer representative. Employers may always ask to see the compliance officer's credentials. Employers may verify the OSHA federal or state compliance officer credentials by calling the nearest federal or state OSHA office. Compliance officers may not collect a penalty at the time of the inspection or promote the sale of a product or service at any time. OSHA advises employers to call local police if this occurs.

31. Before an inspection begins, the compliance officer is expected to become familiar with as many relevant facts as possible about the workplace, such as its inspection history, the nature of the business, and the particular standards that might apply. This preparation provides the compliance officer with knowledge of the potential hazards and industrial processes that he or she may encounter and aids in selecting appropriate personal protective equipment for use against these hazards during the inspection.[43]

32. The typical OSHA inspection begins with an opening conference, during which the inspector explains the type and purpose of the inspection.[44] If applicable, the inspector will also provide copies of any complaints that triggered the inspection. The compliance officer gives the employer information on how to

[43] OSHA (2002) OSHA Field Inspections, (Revised), Washington, D.C.
[44] See William Atkinson (2005) Unexpected OSHA Inspections, NPCA Web site at http://www.precast.org/about/who_we_are.htm

get a copy of applicable safety and health standards that may be involved. Designated employee representatives are allowed by OSHA to attend the opening conference, unless the employer specifically objects.

33. The inspector then outlines the scope of the inspection, which generally includes a physical inspection of the workplace and records, interviews with employees who have the right to be interviewed privately or with management representatives present, and a closing conference.
34. The opening conference limits the scope of the inspection. If an employer is concerned about an inspector's attempt to expand the inspection beyond what was discussed in the opening conference, the employer can request another opening conference to discuss the intended scope of the expansion. Then, the employer can decide whether to grant that expansion or demand a warrant from a court judge.
35. Upper management usually designates at least one manager to accompany the inspector through the inspection. An employee, required by OSHA and designated by other employees, also walks around with the inspector. If an employer refuses to allow employee representation on the inspection, the continued refusal is construed by OSHA as a refusal to permit the inspection, in which case the inspector contacts the assistant area director.
36. Employee representatives can be chosen in one of four ways. The company's highest ranking union official can select a representative. If there is no union, employees can select an employee member of the company's safety and health committee. If there is no union and no employee representative available from the safety and health committee, employees can select a co-worker. If employees are unable or unwilling to do any of these, the inspector is instructed to consult with a "reasonable number of employees" during the walk-around inspection.
37. Inspectors can take photos or videos of the workplace and related activities if needed. If the area being photographed or videotaped contains confidential or trade secrets, the inspector must label the photos and videos accordingly, upon management request. All such photos and videos are then retained in the company's case file. Employers can ask to see that equipment used by the inspector is calibrated, and can ask to see the readings. Employers can also take their own measurements and photos along with the inspector.
38. OSHA does not have full legal access. Employers are not required to allow inspectors to view all areas of the facility or to release all documents the inspector requests. If an employer refuses access to an area, OSHA is required to get a warrant from a judge. If an employer refuses to allow an inspector to view certain documents, OSHA is required to get an administrative subpoena.

39. During the closing conference (which can take place in person immediately after the inspection or later by phone), the inspector will describe any apparent violations identified during the inspection, as well as any other pertinent issues of concern. The compliance officer gives the employer a copy of Employer Rights and Responsibilities Following an OSHA Inspection (OSHA 3000)[45] for discussion. The employer and employees participating in the conference are then informed of their right to participate in any subsequent conferences, meetings, or discussions related to the inspection and its results.
40. The compliance officer will not indicate any specific proposed penalties but will inform the employer of appeal rights.

B.4 Proportionality and Variety of Sanctions

41. After the inspection, the inspector reports the findings to the Area Director, who evaluates them. If a violation exists, OSHA will issue a Citation and Notification of Penalty detailing the exact nature of the violation and any penalties. A citation informs the firm of the alleged violation, sets a proposed time period within which to correct the violation, and proposes the appropriate monetary penalties.[46]
42. OSHA relies mostly on monetary penalties. An OSHA inspector has no authority to shut down a plant or a worksite without obtaining a court order from a judge. Judicial action can produce a temporary restraining order (immediate shutdown) of the operation or section of the workplace where the imminent danger exists. OSHA can recommend or requests criminal penalties, but very rarely does so. In over 30 years, OSHA has referred only 151 cases to the Justice Department for criminal prosecution, and the maximum penalty that companies face for a "willful violation" of OSHA laws is a misdemeanor. Federal prosecutors have declined to pursue two-thirds of these cases, and only eight cases have resulted in prison sentences for company officials.[47]
43. OSHA decides on penalties using a series of transparent but subjective criteria:

- **Willful**: A willful violation is defined as a violation in which the employer knew that a hazardous condition existed but made no reasonable effort to eliminate it and in which the hazardous condition violated a standard regulation, or the OSH Act. Penalties range from $5,000 to $70,000 per willful violation.
- **Serious**: A serious violation exists when the workplace hazard could cause injury or illness that would most likely result in death or serious physical harm, unless the employer did not know or could not have known of the violation. OSHA may propose a penalty of up to $7,000 for each violation.

[45] Available at http://www.osha.gov/Publications/osha3000.pdf
[46] OSHA (2003), Employer Rights and Responsibilities Following an OSHA Inspection, 3000-09R, Washington, D.C.
[47] Public Broadcasting Service Frontline (2002), "Criminal Prosecutions of Workplace Fatalities," see http://www.pbs.org/wgbh/pages/frontline/shows/workplace/osha/referrals.html

- **Other-Than-Serious**: An other-than-serious violation is defined as a situation in which the most serious injury or illness that would be likely to result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to exposed employees but does have a direct and immediate relationship to their safety and health. OSHA may impose a penalty of up to $7,000 for each violation.
- **De Minimis**: De minimis violations are violations that have no direct or immediate relationship to safety or health and do not result in citations.
- ***Other***: A violation that has a direct relationship to job safety and health, but is not serious in nature, is classified as other.
- **Failure to Abate**: A failure to abate violation exists when the employer has not corrected a violation for which OSHA has issued a citation and the abatement date has passed or is covered under a settlement agreement. A failure to abate also exists when the employer has not complied with interim measures involved in a long-term abatement within the time given. OSHA may impose a penalty of up to $7,000 per day for each violation.
- **Repeated**: An employer may be cited for a repeated violation if that employer has been cited previously for a substantially similar condition and the citation has become a final order of the Occupational Safety and Health Review Commission. A citation is currently viewed as a repeated violation if it occurs within 3 years either from the date that the earlier citation becomes a final order or from the final abatement date, whichever is later. Repeated violations can bring a civil penalty of up to $70,000 for each violation.

44. In issuing citations for workplace safety and health violations, OSHA provides what it considers to be a reasonable "abatement period" (the amount of time the employer is allowed to appropriately stop the violation). OSHA prefers to use the "shortest interval in which an employer can reasonably be expected to correct the violation."
45. Few abatement periods extend beyond 30 days, since OSHA does not consider this length of time to be necessary for abatement of most safety violations. However, the agency might allow abatement periods beyond 30 days for the correction of health violations, such as when extensive structural changes need to be made or when new equipment or parts need to be ordered that cannot be delivered within 30 days.
46. Employers are expected to notify the OSHA area director in writing when an abatement has been accomplished. If the employer fails to do this, the area director will contact the employer by phone to discuss the situation. A follow-

up inspection determines if the employer has corrected previously cited violations. If an employer has failed to abate a violation, the compliance officer informs the employer that he or she is subject to "Failure to Abate" alleged violations. This involves proposed additional daily penalties until the employer corrects the violation.

B.5 Transparency and Consultation with Affected Businesses

47. To assist the public in keeping current with its standards, OSHA developed the "OSHA Regulations, Documents & Technical Information on CD-ROM". The CD-ROM contains electronic copy of the text of all OSHA regulations (standards), selected documents, and technical information.

48. OSHA does not rely only on inspections and penalties. It uses a variety of cooperative programs and outreach efforts to help employers and employees address compliance problems. In 2002, OSHA created a Directorate of Cooperative and State Programs and an Office of Small Business to expand compliance programs, training, outreach, and education programs. Such programs include:

- **On-site Consultation Programs** Through the states, OSHA offers a free consultation service targeted at small businesses in high-hazard industries, which helps employers identify and correct workplace hazards and establish safety and health management systems.

- **Cooperative Programs**. OSHA enters into voluntary relationships (VPP, Strategic Partnerships, SHARP, and Alliances) with employers, employees, employee representatives and trade and professional organizations to encourage, assist and recognize their efforts to increase worker safety and health. These programs promote effective safety and health management and leverage the agency's resources to share safe and healthy best practices.

- **Compliance Assistance, Outreach, Training and Education, and Information Services.** OSHA develops and provides an array of compliance assistance programs, outreach and assistance products and services, education and training materials, and courses that promote occupational safety and health. To help employers and employees better understand their obligations, opportunities and safety and health issues, the agency provides services including education centers, 1-800 number assistance, interactive e-tools, and an extensive Web site.

C. Monitoring and Fairness of Inspections

C.1 Complaint Mechanisms

49. Any employee may file a complaint with OSHA either by telephone, in writing, or online at OSHA's Web site. The complaints can be treated as either anonymous or identified to the employer.

C.2 Protecting Due Process in Inspections

50. About 8% of OSHA's inspections are contested by employers each year. In typical American fashion, there are multiple levels of due process for employers who do not agree with inspectors.

- Employers may request an informal conference with the OSHA Area Director to discuss any issues related to the citation and notification of penalty. At the conference, the OSHA Director can negotiate and enter into an informal settlement agreement or resolve disputed citations and penalties.
- If the employer disagrees with the penalty, he has 15 working days from the date he receive the citation to contest it in writing to the Occupational Safety and Health Review Commission (OSHRC).

51. OSHRC is an independent federal agency created to decide disputes about citations or penalties resulting from OSHA inspections of workplaces. The Commission has three members, appointed by the President and confirmed by the Senate, who serve six-year terms. The OSHA Review Commission is an independent agency to ensure that complaining parities receive impartial hearings.
52. The Review Commission functions as an administrative court, with established procedures for conducting hearings, receiving evidence and rendering decisions by administrative law judges. Its hearing have all the elements of a trial, including examination and cross-examination of witnesses. The Commission also reviews OSHA's interpretations of standards as reflected in its citations, an oversight function that OSHA often opposes.
53. If an employer contests either the time period set for abatement or the citation itself, the abatement period generally does not begin until there has been an affirmation of the citation and abatement period determined by the OSHA Review Commission.
54. Businesses can then choose to file for review by an appropriate U.S. Circuit Court of Appeals.

C.3 Inspectorate Mechanisms and Procedures to Combat Corruption

55. OSHA has no specific procedures to combat corruption among its inspectors, but it is under the supervision of the Department of Labor, which is, in turn, under the general ethics infrastructure of the government. The Office of Government Ethics provides leadership in the executive branch to prevent and resolve conflicts of interest on the part of government employees. Each government agency is required to assign a designated agency ethics official. In DOL this responsibility is assigned to the Solicitor of Labor. In assisting the Solicitor of Labor in this area, the Division of Legislation and Legal Counsel has overall responsibility for administering the department's ethics program. OSHA can ask for ethics training for its officers.

56. The appeals, employee involvement, due process, and legal review procedures, involving an independent review body, are seen by businesses as providing adequate protection against corruption that either harms a business or reduces compliance with standards. In addition, the U.S. Attorney's office is responsible for prosecuting all public official corruption involving local, state and federal officials, including bribery, kickbacks and extortion.

D. Coordination of Inspections

D.1 Coordination Among Inspectorates

57. OSHA does not have a general policy on coordination with other inspections of the federal government, but there are increasing number of coordination activities in specific economic areas that are highly regulated by numerous agencies. For example:

- Inspection of ship scrapping is carried out under a Memorandum of Agreement between OSHA, the Department of Defense, the Department of Transportation, and the Environmental Protection Agency. OSHA and EPA are committed to "make every effort to coordinate inspections of ship scrapping operations in appropriate circumstances, to facilitate the occurrence of joint visits when possible."

- For farm labor-related inspections, a National Committee of the Department of Labor develops an annual coordination plan to coordinate inspections and other activities among several state and federal agencies, including OSHA, the Employment Standards Administration, and the Employment Training Administration. The coordination plan describes the present program responsibilities of OSHA for protecting the safety and health of migrant farm workers and provides general goals for OSHA enforcement activities for the following year as established by OSHA.

Annex 1A

OSHA Field Inspection Reference Manual

TABLE OF CONTENTS

CHAPTER I. PRE-INSPECTION PROCEDURES

CHAPTER III INSPECTION DOCUMENTATION

CHAPTER IV. POST-INSPECTION PROCEDURES

Annex 2:

Case Study of the Mexican Environmental Inspection System[48]

Context

1. Mexico is a federal state, where the federal government, 32 states and more than 3,600 municipalities share legal competencies and enforce an array of environmental laws and regulations.
2. Since the mid1970s, the Mexican government has gradually developed its environmental policy and laws. In 1993, the government reviewed and reformed the environmental legal framework and enacted a new unified law called the General Law of Ecological Equilibrium and Environment Protection (LGEEPA). The 1993 reforms to the inspection system were motivated by a series of explosions in the sewage system of the city of Guadalajara the previous year, which clearly showed that the inspection, enforcement and compliance functions were not working.[49] As part of this wide-ranging reform, the new laws restructured the inspection systems and approaches. This reform was partly motivated by the NAFTA Agreement which in one of its side agreement required that all three parties (i.e. Canada, USA and Mexico) committed to scrupulously enforce their environmental laws.[50]
3. A further revision and improvement was carried out in 1996 when a major decentralization and devolution of powers to states was organized.[51]
4. Today, the environmental legal system is organized at federal level around a framework law and implementing regulations (*reglamentos*). All 32 states also possess environmental laws and subordinate regulations.

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[48] This case study was prepared by Cesar Cordova, Director, Jacobs and Associates.
Prior to the reform, law enforcement was rather low given the absence of significant measures (policies) and tools, and suffered from many of the generic problems, including a high degree of corruption. For example, between 1971 and 1992, i.e. two decades, only over 2,000 inspections had been carried out, and they were mostly characterized by administrative procedures rather than operational or risk-based assessments. This was largely due to the lack of resources dedicated to inspections. See *La Auditoría Ambiental en México*, Procuraduría Federal de Protección al Ambiente, 2000, p. 9

[50] The NAFTA side agreement also established the North American Commission for Environmental Cooperation (NACEC) responsible to monitor it.

[51] The amendments focused on delimiting the attributions between federal, state and municipal authorities. In addition, the changes simplified and improved the procedure for the evaluation and authorisation of environmental impact statements (EIS), provided businesses with greater legal certainty. The response times for these authorisations were reduced significantly, from 240 working days to 60 (120 for a small number of predetermined cases), and the reasons for denial expressly defined, significantly reducing the discretion of environmental authorities.

Box 1: The Environmental Legal System of Mexico

The Mexican legal system is organized under the Constitution under the following laws and subordinated regulations ("reglamentos"):
General Law of Ecological Equilibrium and Environmental Protection (LGEEPA)

Environmental Impact Assessment

1. Air pollution
2. Dangerous waste
3. Registry of emissions and transfer of dangerous materials
4. Internal Regulations of the Secretariat of Environment and Natural Resources

A. The Inspectorate as an Institution

A.1 The Mandate of the Institution

5. The Office of the Environmental Prosecutor (Procuraduría Federal de Protección al Ambiente—PROFEPA) is an independent entity under the Ministry of Environment[52] in charge of enforcing environmental laws. PROFEPA was established as a reaction to the authorities' frustration with the very low level of compliance and the major deficiencies detected in the inspection systems. The new body launched a complete reform of the inspection system, based on two complementary instruments:

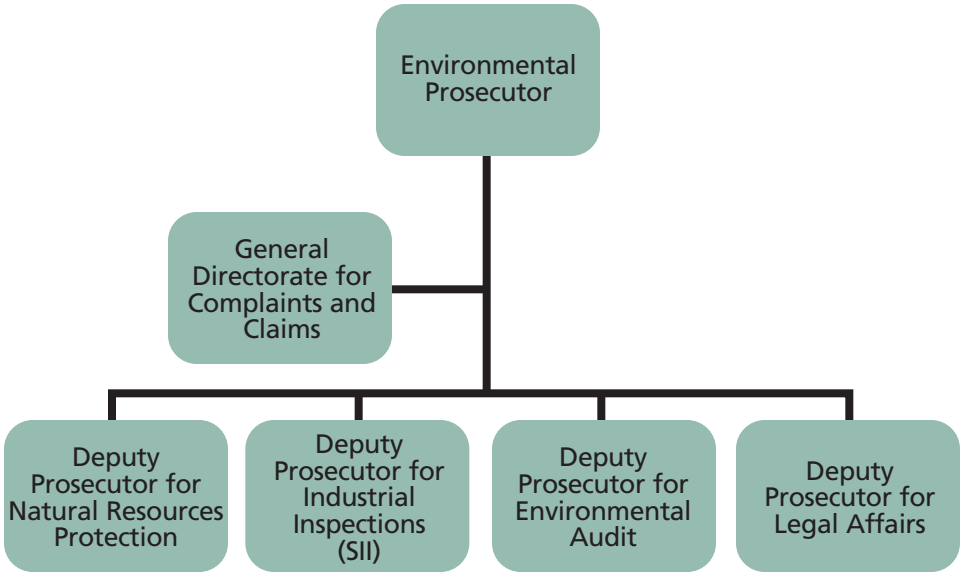
- Environmental audits (Auditoría ambiental)
- Environmental inspections.

6. PROFEPA is responsible for inspecting sites and enforcing the federal legal and regulatory environmental framework. PROFEPA is a decentralized body of the Ministry of Environment (*Secretaria del Medio Ambiente y Recursos Naturales*—SEMARNAT). PROFEPA has local offices-called delegations-in each of the 32 states.
7. At the federal level and for each of its 32 delegations, PROFEPA is organized under four main Sub-procurators (see Figure 1).
8. The Deputy Prosecutor Office for Industrial Inspections (Subprocuraduria de Inspecciones Industriales - SII) is in charge of:

- enforcing environmental legislation for the 36,000 industrial sources listed in the federal inventory (see Box 2);

[52] Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT).

Figure 1: PROFEPA Structure



- processing fines and penalties for non-compliance;
- responding to public complaints;
- managing the Network of National Environmental Laboratories; and
- enforcing international agreements, such as the Basel Convention on Cross boundary Movement of Hazardous Waste.

9. The SII is in charge of undertaking three type of inspections on the federal sources concerning:

- atmospheric pollution;
- soils and earth contamination; and
- industrial wastes.

10. Until recently, an inspection visit covered all three topics. Since 2003, SII has developed a more targeted approach for each firm, considering that some sources have higher risks under one of the three categories. The PROFEPA headquarters today defines for each firm and source the key issues to be inspected and monitored and adapts the checklist of the inspection report to the firm and source (Acta de Inspeción).

Box 2. What are the 36,000 Industrial Sources?

The federal list of industrial sources/risks ("Padrón Official de Fuentes Federales") is composed of:

- 6,403 specific high-risk activities (based on mandatory environmental impact assessments)
- 29,400 hazardous waste sites divided according to the type of risk (i.e., industrial, biological, and environmental services such as transport, disposal, and management)
- 4,000 air emissions sources (i.e. emitting more than 8 million tons/year)
- 300 sites with contaminated soil (in total, they cover 200,000 hectares)
- 32 automotive plants
- 20 crossing points designed for the Trans boundary Movements of Hazardous Waste

The official list has been slowly expanding. In the past six years, 8,000 additional sites/sources were added, for two reasons: First, according to law, major industrial sites are required to complete an environmental impact assessment. As the economy expands and sites become larger, new sources and risks are added to the official list. Second, based on ad hoc visits and complaints, state delegations have the power to register a site considered risky. The latter measure has been particularly useful in fighting the informal sector.[53]

11. The control and inspection of water pollution are the responsibility of the National Water Commission (CAN) is a large autonomous agency under the responsibility of the Ministry of Agriculture. CAN is in charge of the complete water management cycle from production, and irrigation infrastructure to regulation and enforcement.

12. The SII also manages the National Network of Environmental Laboratories. Today the network has five regional laboratories located in the main industrial zones of Mexico. They help state delegations assess and pass judgment on inspection reports.

A.2 Human Resources Management of the Inspectorate

13. The Mexican President appoints the Environment Prosecutor, who is the head of PROFEPA, after his/her nomination by the Minister of Environment. PROFEPA enjoys limited autonomy in hiring and firing. By June 2005, PROFEPA had 650 industrial inspectors in 32 state offices. Only 153 of these inspectors had specific expertise in industrial pollution. The central management of the SII in Mexico City had 85 persons.

14. The distribution of inspectors across states depends on their industrial activities. In some states, natural resources inspectors in charge of natural parks and

[53] During 1993 and 1994, when the official list of federal sources was being set up, a special program to identify and register informal firms was organized.

beaches may support industrial inspectors. On specific visits and in case of unexpected risks occurring in rural states, natural resources inspectors may support industrial inspectors working for industrial zones.

15. Due to budgetary constraints, the number of industrial inspectors has declined in the past few years.
16. A second important challenge is the high turnover of trained inspectors working in the state offices. As industrial inspectors gain expertise, industrial firms hire them, frequently offering to double or triple their public salaries.[54]
17. Indeed, despite efforts concerning the whole federal bureaucracy, the level of salaries of industrial inspectors continues to be quite low compared with the private sector. An industrial inspector earns between US$800 and $900 per month equivalent to five times the minimum salary, which is a very low, far below the equivalent for similarly trained experts in the private sector in Mexico. So far, no performance incentives or bonus system exist.

A.3 Inspectorate Staffing and Training Program

18. Recruitment of inspectors is organized at state levels under the supervision of the SII headquarters. A specific entry exam is used to select from the numerous candidates for the positions.
19. At state level, each PROFEPA delegation has an inspection coordinator in charge of setting up the inspection brigades and elaborating training programs.
20. Training programs for inspectors are few and in many cases non-existent. When they exist, the programs focus mostly on helping inspectors use the inspection manuals and security procedures and protective equipment.
21. Recently, however, a pilot training project has been developed with some state industrial associations. The program consists of providing state PROFEPA offices with "scholarships" for industrial inspectors to attend the association training programs. At the end of the training the PROFEPA inspectors receive a diploma. So far in 2005, four joint training courses have been organized.

A.4 Accountability for Performance of the Inspectorate

As are all federal units, SII is responsible for achieving yearly targets agreed to and managed by the Mexican Presidential Office. An elaborate system monitors progress. SII does not report publicly on its achievements, though. Some data are incorporated into the PROFEPA annual report, which can be downloaded at its Web site (www.profeba.gob.mx). The Access to Information Law of 2003 is accelerating the publication of internal materials such as inspection and sanctioning manuals. So far, no external evaluation of SII performance has been undertaken.

[54] Recently the whole unit of industrial inspectors in Nayarit State left and needed to be replaced completely.

B. The Inspection Administrative Procedure

B.1 Targeting Inspection Visits

23. More than a decade ago, PROFEPA recognized the difficulty (and even the impossibility) of inspecting all firms and activities. The government thus developed an inspection strategy based on the following principles:

- Delegation of powers to states and municipalities, which became the primary enforcers for low-risk activities under specific criteria.
- Priority given to high-risk sources/sites registered in a federal list of priorities (see Box 2 above).
- Selective inspections, where each "source" is catalogued according to its specific risk (i.e., waste, air pollution, soil, etc.)
- Incentives for firms to sign the environmental audit agreements (see Box 3) so that they will take preventive actions.

Table 1: Order of Priorities for Industrial Inspections

	Size of firms			
Activity	Large	Medium	Small	Micro
Petrochemical	1			
Oil	2			
Chemical	3	5	15	52
Gas	4			
Dangerous Waste	6			
Steel and Metals	7	9	17	60
Electricity	8	10	47	63
Painting and coating	11	12	13	55
Chlorine Processes	14			
Industrial and Consumption Alcohol	16			
Glass	18	20	23	62
Cement	19	21	24	57
Limestone	22			
Car And Car Parts	25			
Asbestos	26	28	42	56
Cellulose and Paper	27	45	46	61
Metal Mechanics	29	32	43	53
Electric and Electronic Components	30	33	48	58
Packaging, bottling and Ice Production	31	34	44	54

24. In practical terms, the targeting of sites is based on a system of prioritizing the activities requiring inspections. The priority order is organized by risk/activities and size of firms (see Table 1). The list was developed from the experience of a PROFEPA senior official, and has been fine-tuned over time.
25. Each PROFEPA state delegation annually sets the number of inspections to be made per month according to the table. Every month, they report to SII the number of inspections carried out, also following the priority order.
26. Importantly, the targeting and monitoring of achievements provide the SII in Mexico City with valuable information that enables it to allocate countrywide the limited inspection resources available. For instance, the SII is able to program additional resources and speed recruitment when a state rate of achievement drops abruptly.
27. Another important mechanism to reduce the workload of inspectors (and increase the quality of compliance) has been to encourage firms to sign up for voluntary environmental auditing (see Box 3).

Box 3. Environmental Auditing as a Supplement to Government Inspections

The 1993 framework law gives firms the option of signing up for voluntary environmental audit *(Auditores Ambientales)* programs.[55] In this program, private environmental inspectors (unaffiliated with the businesses that they are inspecting) perform inspections pursuant to a voluntary, contractual agreement with PROFEPA. A firm can choose any accredited inspector listed by PROFEPA. To be listed, inspectors need to follow a specific process required under Mexican government standards. The inspectors may not bring enforcement actions.

In terms of incentives, the inspectors are considered responsible for any environmental accidents or other incidents of noncompliance, facing civil and under certain circumstances penal liability. Once a firm meets the terms of the inspection, it receives a certificate of compliance. A confidential complaints procedure by citizens concerning inspector behavior is available to identify questionable inspector practices. To encourage private firms to use accredited inspectors, the legislation authorizes PROFEPA to provide incentives in the form of access to export quotas and markets, subsidized loans to finance environmental investments related to the inspection, and a decrease in the frequency of government inspections.

So far, 3500 firms representing nearly 20% of the 36,000 are part of the program. In terms of priority of risks, the percentage is much higher.

[55] Jacobs and Associates, (2005), *Case Study on Inspection Reforms in Mexico*. Report prepared for FIAS.

B.2 Inspectorate Information System

28. Since its creation in 1993, PROFEPA has been developing a central information system called SIIP (*Sistema de Información Institucional de la PROFEPA*). In 2001, the SIIP became the official information system connecting all PROFEPA state offices with headquarters in Mexico City. The internal system is hierarchically organized. Only senior PROFEPA and SEMARNAT officials have full access to different databases. On the other hand, officials in the state offices feed the system with information, in particular after each inspection, and retrieve reports for the state.

29. At the core of SIIP is the official list of the 36,000 federal sources. For each one of them, the following cells exist:

- Location of the firms
- Main activities and processes
- Size of the firm
- Inspections realized
- Reasons for the inspections
- Results of the inspections
- Irregularities observed
- Measures mandated to resolve irregularities
- Date of the resolutions
- Amount of sanctions

30. PROFEPA uses SIIP for the following three key functions:

- Elaborating monthly and annual reports by jurisdictions, sources, risks, etc.
- Making decisions, in particular to elaborate annual and monthly targets of inspections to realize.
- Planning weekly and daily inspection programs and thus avoid visiting the same firms.

31. In 2002, SIIP won the national INOVA prize for innovations in governmental services.

B.3 Procedures for Inspector Visits, Including Control of On-site Discretion

32. Another key improvement due to the 1993 reforms and their amendments in 1996 was the setting up of clear and strict administrative procedures to avoid excessive discretion by inspectors leading to corruption, and to reduce judiciary problems and failures to sanction due to legal faults during the administrative procedures.[56]

33. The inspection process and procedures are set up in Chapter II of Title 6 of the LGEEPA. PROFEPA has complemented the legal requirements with two manuals: a manual for undertaking inspections (*manual de inspección*) and a manual to pass judgment (*manual de dictaminación*). These two key manuals describe a step-by-step approach to all the actions to be taken and procedures to be followed from the selection of a firm to be inspected to the turning over of the case to a deputy procurator (*subprocurador*) of legal affairs in charge of deciding whether the legal action should be taken, including turning the case over to the courts.

34. The inspection process is divided into three steps. As a first step, the inspection coordinator in each state PROFEPA prepares the daily program of visits according to the monthly target plans, the order of priorities and any complaints received. The coordinator then hands to the inspector ? or more often to the inspector brigade of two or three inspectors ? the inspection orders (*orden de iInspeccion*) indicating the sites to be visited that day. The inspection order must also have the names of the inspectors and the reason for and objectives of the visit. It must be signed by one of the 32 PROFEPA delegates and/or the head of the SII. Importantly, the inspectors are unaware of the selection of sites to be visited before they receive the inspection order.

35. The second step starts with the identification of the inspector(s). Each one has a secure picture ID. During the visit, and in the presence of two witnesses agreed to by the firm, the inspectors fill in an inspection report (*acta de inspeccion*) organized as a checklist.

36. At the end of the inspection visit, the inspection report is signed (a special section provides for the firm's comments and reactions) by the inspector, the firm's representatives and the two witnesses, and a copy is handed to the firm.

37. As the third step the inspector(s) enter an inspection statement into the SIIP indicating the main findings of the visit and recommending one of three options for action:

- No irregularities.
- Slight irregularities, when the firm may provide additional elements in the next 15 working days (for instance, concerning paperwork problems).

[56] The 1988 law had already set up a standard inspection procedure, though important gaps and weaknesses were periodically exposed. For instance, inspectors did not carry a personalized, secure ID.

- Serious irregularities. In this case, the folder with the inspection report is sent to the Legal Affairs department, which assesses the sanctions according to a manual (see next section). When a very serious and urgent situation is uncovered (e.g., a spill over of dangerous waste), an emergency procedure can be triggered. For such cases, a second visit is automatically programmed, and a special document is prepared if the site needs to be closed.

38. All irregularities with specific sanctions require additional visits. The amount of the fine increases exponentially as compliance is delayed.

B.4 Proportionality and Variety of Sanctions

39. Sanctions and fines are enunciated in the law. They are further detailed in a sanction manual (*manual de dictaminación*) and a sanctions table used by a specific PROFEPA office.[57] Importantly, inspectors cannot establish sanctions. Based on the inspection report, the officials of this area establish economic sanctions and technical measures to be implemented according to a table organized by size and capital of the firm, the type of irregularity, and the compliance history of the firm.
40. After setting the sanction, the department sends its ***Inspection Resolution*** (*Resolucion de Inspection*) to another unit reporting to the Subprocuraduria of Legal Affaires who is in charge of the legal procedure, including filing for action by the courts.

C. Monitoring and Fairness of Inspections

C.1 Complaint Mechanisms

41. As indicated in Figure 1 above, a distinct unit reporting directly to the head of PROFEPA—the General Directorate for Complaints and Claims—is in charge of handling complaints at the national and local level. Different complaint procedures are available, including through the Internet. Complaints may be against any aspect of the procedures, and in particular over the substance and form of three main inspection documents (inspection order, inspection report, and inspection resolution).
42. Upon receipt and after their registration on a special database, the Subprocuraduria of Legal Affairs becomes responsible for resolving all complaints and claims.
43. Since 1995, the NAFTA North American Commission for Environmental Cooperation (CEC) has been able to receive complaints concerning non-enforcement of environmental national laws and regulations.

C.2 Protecting Due Process in Inspections

44. As in many other regulatory regimes in Mexico, the slow and unpredictable nature of the judicial branch often has compromised the enforcement actions of PROFEPA. In some cases, a long time is needed to recover fines. On the other hand, the powerful habeas corpus injunction system—"Juicio de Amparo"—has continued to protect businesses and individuals from legal abuses.[58]

C.3 Inspectorate Mechanisms and Procedures to Combat Corruption

45. In the past 10-12 years, the criticisms and complaints of corruption problems and excessive discretion by federal environmental inspectors have diminished considerably. This has been certainly a result of businesses knowing the law better and using it to protect themselves at lower cost and more predictability.
46. Important ingredients for this success are the clear divisions of the inspection report (*acta de inspección*), where precise criteria are part of the checklist.
47. The division of functions—and in theory the creation of firewalls—between the inspector coordinator preparing the inspection order (i.e., selecting the firms to be visited) and the inspectors has reduced the typical problem of collusion and capture between an inspected firm and its inspector. A further hierarchical separation between the inspectors drafting the factual report (*acta de inspección*) and the unit responsible for setting the sanctions and improvement measures has further weakened such dangerous links that are vulnerable to corruption. This is further stressed by the arms-length situation of the Legal Department, which handles all legal and enforcement actions—including closure of a site.
48. Another practice that has reduced the unethical attitude of inspectors is the establishment of inspection brigades of more than two persons who rotate regularly. Moreover, each person needs to have a picture ID that can be verified by inspected firms on an Internet database.
49. Another important measure that seems to have improved accountability is the systematic monitoring provided by SIIP, whereby all procedural steps are recorded and controlled monthly and annually.
50. PROFEPA headquarters organize impromptu visits to state delegations as well to as other federal agencies, such as the governmental audit department of the Ministry of the Public Service, to inspect conformity with procedures.

[58] See OECD (1999), *Government Capacities to Produce High Quality Regulation in Mexico*, Paris www.oecd.org/regreform/backgroundreports.

D. Coordination of Inspections

D.1 Coordination Among Inspectorates

51. So far, little coordination exists between PROFEPA and other federal or local enforcement agencies. A few initiatives, however, can be noticed:

- A coordination memorandum of understanding between PROFEPA and the Ministry of Health to inspect biological waste from hospitals.[59]
- Coordination with the Customs Offices, Aduanas de Mexico, on container inspection in a few major harbors.
- A memorandum of understanding between the Federal General Prosecutor and PROFEPA to provide mutual help during investigations.
- Specific agreements with states and municipalities, such as the agreement between PROFEPA and the Mexico City to control oil-based waste at petrol stations.

[59] In application of technical standard NOM 087.

Annex 3:

Case Study: State Labor Inspectorate of the Republic of Latvia[60]

Context

1. Latvia's State Labor Inspectorate (SLI) is a state supervision and control institution covering 121,095 organizations employing 955,818 workers.[61] The SLI covers all sectors—businesses, governmental bodies, local self-government, as well as NGOs. The SLI performs its functions with a staff of only 95 inspectors. In 2004, the SLI conducted 9,759 on-site inspections.
2. Since the establishment of the SLI in 1992, the organization has experienced significant changes in the external environment and the legislation under which it operates, and its performance has been steadily improving. One key indicator is that accident rates for workers on the job have declined over the last five years, even though the number of enterprises operating in Latvia increased significantly as the country experienced rapid economic growth after regaining independence in 1991. The functions performed by the SLI expanded over the last 13 years due to a number of factors—rapid economic transformation from a planned economy to a functioning market economy, swift reform of legislation on labor safety, and the process of integration into the European Union.[62]3 During this period, substantial assistance was received from EU programs and other international organizations and bilateral donors. It should be noted that the SLI, along with all other inspectorates in Latvia, was involved in a government-wide inspectorate reform initiated by the Latvian Development Agency

[60] This case study, by Iveta Reinholde in the Corporate & Public Management Consulting Group Ltd. (Latvia) and lecturer in public administration at the Faculty of Social Science, University of Latvia, has drawn on materials available on the Web site of the SLI at www.vdi.gov.lv, interview with the director of the SLI, Mr. J. Berzins, as well as materials on inspectorate reform of 1999-2003. In addition, the following sources were consulted: SLI Strategic Plan for 2002-2006, SLI 2004 Annual Report; SLI 2004 Annual Plan; SLI 2005 Annual Plan.

[61] Annual Report (2004), State Labor Inspectorate. www.vdi.gov.lv

[62] Latvia became a member of the European Union on May 1, 2004.

and the Bureau of Public Administration Reform with support from the World Bank and the Foreign Investment Advisory Service (FIAS). The Inspectorate Improvement Program was mostly implemented during 1999-2003.[63] This reform was targeted at increasing the information available about inspection processes, specifying the responsibilities and rights of inspectors, and establishing clear and unified inspection procedures, including a requirement for a written inspection report after all on-site visits. In general, the reform was aimed at improving the quality of work of the inspectorates and ultimately at improving the business environment in Latvia. Many of the practices described in this case study were developed in the course of this reform.

4. The Action Plan for Improvement of the Business Environment, which envisaged the Inspectorate Improvement Program, was first adopted in 1999 and is still regularly updated. The Latvian governments, in cooperation with major business organizations (National Economy Council, Confederation of Employers, and Foreign Investors' Council in Latvia), monitor its implementation. This document and related approach prove to be an influential tool for monitoring all inspectorates and helping them to refocus their missions—from control and sanctions to consultations and assistance.

A. The Mandate of the institution

A.1 The Institution and its Mandates

5. The mission of the SLI is to ensure implementation of the workplace safety policy required by the Labor Law and other mandatory requirements. The status and duties of the SLI are defined in the special law "On State Labor Inspectorate" (approved in 2002) ensuring the impartiality and independence of the SLI. This law replaced the previous law adopted in 1993. The law precisely sets out the overall mandate of the SLI and the scope of its inspections.
6. Three other laws regulate the substantive operation of the SLI: Labor Law (as of June 1, 2002), Law on Labor Safety (as of January 1, 2002) and Law on Technical Supervision of Dangerous Equipment (as of October 27, 1998). All requirements to be fulfilled by the organizations in the field of occupational safety are included in these laws and implementing regulations adopted by the Cabinet of Ministers. The SLI has does not have any rulemaking powers.
7. In detail, the SLI:

- controls dangerous equipment, usage of individual and collective protective means at the workplace, and usage of dangerous substances at the workplace;

[63] For more details, see Coolidge J., Grava L., and Putnina S. (June 2004). *Foreign Investment Advisory Service Case Study: Inspectorate Reform in Latvia 1999-2003.*

- controls compliance of technological processes at the workplace to mandatory requirements;
- Controls fulfillment of employers` obligations determined by the Labor Law vis-à-vis employees;
- provides consultations on requirements of the Labor Law and other normative acts in the field of labor safety, and technical supervision of dangerous equipment;
- carries out investigations of occupational accidents and participates in investigations of occupational illnesses;
- registers occupational accidents and illnesses; and
- registers dangerous equipment, and issues permissions for usage of such equipment.

8. The SLI consists of a central office and seven regional offices covering the territory of Latvia. The central office consists of the following units:

- Normative Technical Unit
- Market Surveillance Unit
- Information Systems Unit
- Public Relations Sector
- Strategy and Analysis Unit
- Finance Unit
- Legal Unit
- Internal Audit Unit
- Latvian Focal Point of the European Agency for Safety and Health at Work (further on—LFPEASHW).[64]

A.2 Human Resources Management of the Inspectorate

9. The head of the SLI is a civil servant appointed by the Cabinet of Ministers on the recommendation of the Minister of Welfare. As a civil servant, the director of the SLI is protected from political interference by the Civil Service Law.
10. In 2004, the SLI employed 167 persons (95 of these were inspectors). All inspectors are civil servants, recruited and paid under the civil service system. The relatively low salary of civil servants is a key problem for retaining qualified staff,

[64] See detailed organizational chart at the end of this Annex.

not only for the SLI but for the entire public administration in Latvia. The average salary for a staff position at the SLI in 2004 was reportedly 202 LVL/month, around US$400, which is about equal to the average salary for manufacturing in 2004 of 211 LVL/month, around US$405. The low level of salaries is the main reason for the high staff turnover (the average turnover of the staff at the SLI is around 20% a year). At the beginning of 2005, only 90% of staff positions at the SLI were filled.

11. To address this shortage of employees, the SLI is planning to develop a new remuneration system emphasizing the link between qualifications and salary. In the existing system, the salary depends on the inspector's rank within the civil service.

12. The SLI is experimenting with other incentives that help to recruit and retain staff, such as extra vacations, differentiated remuneration within the budget allocation, and additional awards systems.

A.3 Inspectorate Staffing and Training Program

13. A Latvian civil servant should have a university degree to become a civil servant. Because of low salaries, those who choose to work in the public sector often intend only to accumulate experience and then to leave for the private sector. Once they arrive, all inspectors are trained in the application of the EU regulations, directives, national laws, national implementing regulations, and inspection procedures through in-house training or training at the Latvian School of Public Administration.[65] Whenever possible, training opportunities as part of international and national projects are also used. A Senior Task Manager in Human Resources and Training Matters is responsible for planning and organizing training for employees of the SLI.

14. The training program is planned on the basis of training needs analysis and priorities of the SLI. A Senior Task Manager in Human Resources and Training Matters and heads of departments conduct training needs analysis once a year according to a methodology approved by the Cabinet of Ministers. The aim of the needs analysis is to identify necessary training to increase qualifications of inspectors. During 2004, 14 new inspectors finished courses on basic issues of SLI operation. The SLI staff also attended courses at the Latvian School of Public Administration on conflict of interest, administrative process, administrative courts, etc.

15. The SLI organizes exchanges of experience among regional offices to increase the qualifications of inspectors; most experienced inspectors share their expe-

[65] The Latvian School of Public Administration was created to provide training for civil servants and to increase their qualifications. Since its establishment in 1993, the variety of courses has expanded, and now the school offers general courses as well as specifically/tailored courses.

rience with more recent recruits. Such an approach improves unified understanding and consistent interpretation of legal norms in different regions of Latvia. The in-house training is widely used for enhancing inspectors' qualifications. In addition, the SLI financially supports the degree studies of its inspectors at Latvian universities if the degree program conforms to the functions performed by the SLI.

A. 4 Accountability for Performance of the Inspectorate

16. The SLI has developed a five-year Strategic Plan that defines goals and strategies for the period 2002-2006. The strategic planning system improves achievement of objectives, coordinates activities among units, and also performs a control function. Taking into account the current statistics of accidents and the analysis of the type of occupational accidents and illnesses, the SLI identified several areas of focus—capacity building of the SLI, improved consultations for businesses, and better information to society. The work of the SLI builds on two non-inspection tools that it has come to view as powerful: (1) consultations with employers regarding examples of best practice at enterprises; and (2) communication with the mass media.

Box 1: Selected Performance Indicators for 2005 in the Annual Action Plan

Selected performance indicators:

- On-site inspection visits—10 000; including on-site visits to detect illegal employment—2200
- Number of consultation events for employees and employers—200
- Information to mass media—400

The strategic priority of the SLI for 2005 was reduction of illegal employment.The goals for achievement of the priority are as follows:

- The # of on-site visits to detect illegal employment is 2200.
- The number of Illegally employed persons identified is—750

17. The Strategic Plan includes the mission statement of the SLI, its objectives, and main areas for development. It is supplemented by an Annual Action Plan that consists of quantitative and qualitative performance indicators, priority areas for the year, the focus of preventive inspections, training of the SLI staff, areas for development and improvement of the regulatory framework, improvement of the SLI performance, cooperation with other state, local self-government institutions and NGOs, and increased public awareness and international cooperation.

18. In 2004 the strategic goal of the SLI was to decrease the number of occupational accidents by 5% and to promote the use of preventive measures in enterprises.[66] The strategic priority for 2005 was reduction of illegal employment. The SLI reports on achievement of the strategic priorities to the Ministry of Welfare. All public administration institutions, including the SLI, prepare an Annual Report at the end of each year. The structure of the Annual report is based on the outline approved by the government. The Annual Report was introduced to ensure regular overview of the institution's performance. The report is open for public inspection and is accessible on the institution's Web site.

19. Regular analysis of data on accidents, occupational illnesses, violations and sanctions serves as background information for decisions on specific actions to be undertaken to achieve the best possible outcomes. The SLI uses the SWOT (strengths, weaknesses, opportunities, threats) approach to develop of its strategic guidelines. The strategic planning system at the SLI consists of four levels:
    1. Strategic plan
    2. Annual Action Plan or program
    3. Quarterly plans for regional offices
    4. Quarterly and monthly plans for inspectors. These planning documents for inspectors set out their tasks for a particular period according to their time allocation at the SLI.

20. In September 2005, the SLI was organizing a public survey to find out how society evaluates the work of the inspectorate. This survey is its first systemic attempt to identify the perception of the SLI in society at large.

B. The Inspection Administrative Procedure

B.1 Targeting Inspection Visits

21. At the end of each year, the SLI prepares an annual plan of inspection visits based on the priorities defined by the EU, the national government, and the SLI itself, following a review of the labor safety situation. Fulfillment of annual priorities is the main basis for planning targeted inspection visits. For example, the priority of the SLI in 2005 was reduction of illegal employment; but the priority for 2004 was enhancement of internal control of working environment by businesses and other organizations. The EU priority for 2005 was safety in the construction industry. Along with its work on priority issues, the SLI includes in its plan a number of on-site information and inspection campaigns to enable it to take a snapshot of the real situation (to be used for analysis and future planning).

[66] Annual Report (2004), State Labor Inspectorate, www.vdi.gov.lv

22. The number of organizations to be inspected by each inspector is based on the annual plan and inspectors' qualifications. Specific organizations to be visited are identified according to the criteria for targeting inspection visits—annual priorities (see above) and a risk-based rating system (see below). According to the 2004 Action Plan, the SLI planned 9,200 on-site inspections. In practice, 9,759 organizations were inspected.

23. A rating system was developed for planning targeted inspection visits. The SLI identifies newly established organizations and assesses them according to predefined risk criteria to enter data into the rating system for targeting inspection visits. During the past 3 years, 49,657 organizations were entered into the rating system. However, not all organizations to be included in the rating system have been assessed yet. According to the SLI, the rate of assessed organizations in different regions varies from 36% (Latgale region) to 61.5% (Eastern Vidzeme region).[67]

24. The rating system is based on an evaluation/assessment to be completed by inspectors during the first visit to an organization. The organizations are evaluated on a scale of 100 (minimum) to 600 points (maximum) according to seven criteria:

    1. **Safety risk**—The inspector assesses occupational safety and any potential safety risks at the workplace.

    2. **Danger**—The inspector assesses risks that may arise in the process of work with dangerous items, e.g., noxious chemicals and electrical safety. The main attention is devoted to assessing how dangerous it is to work in this organization.

    3. **Health risk**—The inspector assesses whether working conditions may harm health in the long term and cause occupational illnesses.

    4. **Health danger**—The inspector assesses whether danger for health exists at the moment, when employees are working. Inspector devotes his/her attention to situations when employees are working with chemicals in absence of proper ventilation systems or without individual protective means that may cause health risks.

    5. **Welfare**—The inspector assesses the management of social aspects such as social benefits (e.g., health insurance), rest areas, etc.

    6. **Management**—The inspector assesses management of labor legal relations. Attention is devoted to observance of mandatory requirements of the Labor Law, such as employment contracts, control over working hours, etc.

    7. **Safety of society**—The inspector assesses the potential risk and impact on society at large.

[67] Ibid.

25. Once at least 80% of organizations have been evaluated under this system, all rated organizations will be divided into three categories. Once the system is operational, it is expected to be used as follows: If the rating is high (i.e., occupational safety risks are high), the organization will be targeted for on-site inspection once a year. For medium ratings, the organization will be inspected once in two years. Organizations with a low rating will be subject to alternative monitoring methods.
26. The SLI has developed guidelines for application of the rating system as part of its Quality Management System documentation. These documents are available upon request at the SLI. The guidelines explain the assessment procedure and also contain checklists to be used by inspectors.

B.2 Inspectorate Information System

27. The SLI has developed an internal information system for communication and data exchange among the central office and regional offices. Considerable investments (e.g., around $110,520 in 2003) were made to update the information systems, databases, and hardware. The updated computer system enables online connection to the national registers held by the State Enterprise Register, the Central Statistical Office and the State Revenue Service. For example, data exchange with the State Revenue Service is crucial for combating illegal employment and so-called "envelope wages" (when full taxes are not paid). The information system is also used to monitor performance indicators (qualitative and quantitative) defined in the Strategic Plan and the Annual Plan.
28. The SLI has the following databases:

- **Organizations** subject to its supervision.
- **Individuals internal to the SLI**. This database is used for personnel management purposes in the SLI. It has information on inspectors, qualifications, and training.
- **Dangerous equipment**. This database contains information on dangerous equipment such as elevators, lifting machines, and machines used in metal processing. All dangerous equipment is registered with the SLI.
- **On-site inspections**. This database includes information on organizations inspected at least once, information from all inspections conducted by year; administrative acts, administrative sanctions, and registered cases of occupational illnesses and accidents at the workplace. The acquired new data are filled in the database after each on-site visit.

29. Information has been gradually accumulated, and it is now possible to evaluate the development over time of compliance by supervised organizations with occupational safety and labor legal relations.

30. The information system of the SLI supports implementation of the quality management system at the inspectorate. Both systems ensure monitoring and control over each inspector's visit to an organization and the subsequent decisions made. In 2005, the SLI started a technical project financed by the EU Structural Funds on integration of the SLI information system into a joint public administration information system. This project is part of the e-government implementation program to ensure data exchange between public administration institutions.

31. The SLI also operates as the National Focal Point of the EU Agency for Safety and Health at Work. The National Focal Point is part of a European network for information exchange on occupational safety issues. The web page of the National Focal Point is www.osha.lv

B.3 Procedures for Inspector Visits, Including Control of On-site Discretion

32. The allocation of the working time of inspectors is:

- 30% for planned targeted inspection visits of a preventive nature;
- 30% for unplanned inspection visits in reaction to multiple complaints and information received by hotline;
- 10% for training and enhancement of qualifications;
- 20% for administrative/paperwork, and consultation with enterprises, individuals and visitors; and
- 10% for vacation.

33. All documents, forms, and checklists used for on-site visits are included in the quality management system documentation and are standardized. The quality management system was introduced to ensure a unified approach and to regulate on-site inspection procedures as well as to regulate all internal processes. Inspection procedures are also described in the Internal Operation Regulations of the SLI. All Latvian inspectorates were required to develop internal operating regulations according to an instruction of the Cabinet of Ministers.[68] This was one of the key items of the Inspectorate Improvement Program started in 1999. Over time, this has been further developed by a number of inspectorates, including the SLI, into a full-blown Quality Manual reflecting inspection procedures, as well as other internal planning and reporting processes.

[68] Instruction No. 1, "*On preparation of internal operating regulations*" (adopted January 18, 2000), was approved by the government during inspectorate reform. Approval of this instruction was envisaged by the Action Plan for Improvement of Business Environment.

34. The Quality Manual is updated regularly, and recently the SLI has started development of an electronic version of the Quality Manual. The Quality Manual is available at the SLI upon request. The quality management system, together with the system of allocation of working hours, ensures that inspectors are required to report on each on-site visit and makes it possible to monitor which organization the inspector is visiting at that particular moment.
35. Inspectors may make two types of on-site inspection visits:
    1. Sudden visits without prior notification of the organization. These visits are decided on by the department head or supervisors.
    2. Notified visits, whereby the organization is informed of the visit at least one day in advance.
36. Before the visit, the inspector is expected to study all the data (e.g., history of the organization, number of employees, compliance record, technical standards etc.), available on the organization in the databases of the SLI or databases of other public administration institutions and to become familiar with the enterprise. Also, during the planning of visits, the data of previous inspections is studied and taken into account.
37. When the inspector arrives at the organization, a representative of management may ask to see the inspector's identity card. The on-site visit starts with an opening meeting with management, when the inspector explains the scope of the inspection and the normal procedures acts to be followed. The next step is a review of documents regarding labor safety, labor legal relations and dangerous equipment. The inspector does not request financial documents or documents containing commercial secrets for review.
38. After the documents have been reviewed, the inspector checks the on-site conditions and compares the documentary findings with findings at the site. A representative of the enterprise usually accompanies the inspector during the on-site visit. The inspector may take a photo or video of the workplace with permission of the enterprise's management, while respecting confidential and commercial secrets. The SLI inspectors usually take photos and video in cases when occupational accidents are being investigated.
39. After the on-site visit, the inspector prepares two copies of an administrative act describing the findings, applicable legal norms and decisions. One copy is left with the enterprise, and the second copy goes into the SLI files.

B.4 Proportionality and Variety of Sanctions

40. The SLI inspector has the discretion to decide on the penalty, taking into account any mitigating or fortification circumstances. The penalty is determined by the inspector on the spot, but the organization can appeal the decision to the director of the SLI. The most common violations usually result in sanctions, but the SLI can sequence the sanctions. The first sanction level might be a warning. If the organization does not improve conditions, the next sanction level might be a monetary penalty. Several types of sanctions are applied in sequence:
    1. Warning
    2. Monetary penalty
    3. Suspension of the equipment or production unit
41. Violations are most common in the field of labor relations when workers are employed without an employment contract or when legal norms on working time are violated. In labor safety, organizations most often violate norms on regular technical inspections of dangerous equipment, training for personnel, and failure to investigate occupational accidents.
42. In a case of non-compliance, the employer and the inspector settle on a period when the violation should be corrected, taking into account the risk present and the resources available. At this stage, the inspector controls how the organization responds to the problem by improving its working practices to avoid further violations.
43. In the most serious cases, the SLI inspector can decide to suspend the operation of equipment or in extreme cases of the entire manufacturing site. There have been cases when inspectors have revealed factors that are dangerous and hazardous for the health and life of employees. This is entirely at the discretion of the inspector, however, no organizations or enterprises were suspended in the last several years.
44. In 2004, 829 administrative penalties were imposed, of which 689 were monetary sanctions and 140 were warnings.[69] The monetary penalty can vary from $175 to $8,770), according to the Code of Administrative Offenses. The specific monetary penalty depends on the discretion of inspector as well on mitigating circumstances. In the first eight months of 2005, some 140 warnings were issued on possible suspension of operations, and 178 warnings for suspension of production units, machines and dangerous equipment. No organization had its entire operation suspended in 2004.

[69] All data on administrative sanctions listed the paragraph are taken from the Annual Report (2004) of the State Labor Inspectorate. www.vdi.gov.lv

B.5 Transparency and Consultation with Affected Businesses

45. The growth and focus of activities related to informing society on labor safety and labor law indicate that the mission of the SLI in the past years has transformed from being purely a "punishing" institution to an institution cooperating with organizations and helping businesses to develop compliance programs and capacities. The SLI gives free consultations to employees and employers on complying with legislation in the field of labor relations and occupational safety. Review of complaints, provision of consultations to visitors, and delivery of information on the phone are basic tasks of the Legal Unit of the SLI.
46. The Web site of the SLI (www.vdi.gov.lv) provides the latest information on changes in the legislation. Legislation (EU and national) on occupational safety and labor law can be downloaded. The Web page also provides statistics and best practice information.
47. Along with information campaigns, the SLI publishes books, leaflets, guidelines, brochures, booklets, and fact sheets with information on occupational safety and labor policy. Printed materials are a valuable information source for both employees and employers. In addition, the SLI organizes labor safety and protection exhibits on a regular basis. In 2005, the third such conference will be organized. This preventive work of the SLI is not targeted only to employers and employees, but also to young people who are entering the labor market. For example, a competition for posters on the theme "Protect your ears from noise" was announced in September 2005.

C. Monitoring and Fairness of Inspections

C.1 Complaint Mechanisms

48. The SLI has a toll-free phone number for consultation and a hotline for anonymous complaints on violations. Around 37% of all calls concern actual violations of legislation. The SLI analyzes and checks the information received on hotline and toll-free phone. Because the number of complaints is increasing, the SLI is planning to open a Consultation Office with dedicated staff whose main function would be working with complaints and visitors (thus taking these responsibilities from the Legal Unit).
49. Any organization or person may file a complaint to the SLI, according to the law On order for filing complaints, recommendations and applications with the public administration and local self-government institutions (October 27, 1994) and appeals to administrative acts according to the Administrative Procedure Law (February 1, 2004). Complaints and appeals can be submitted either in

writing (formal letter, or e-mail) or orally (hotline, or during consultation hours). Complaints and appeals are reviewed by the SLI, and a written response is provided. The number of complaints has steadily increased. For example, there were 2,598 complaints in 2002, 3,042 in 2003, and 3,219 in 2004.[70] If people are complaining about the SLI itself, they may complain to the SLI, to the Ministry of Welfare, or to the State Civil Service Administration.

50. There are three categories of complaints:
    1. Complaints about violation of laws at an enterprise (e.g., salary have not been paid for several months, or employees are working without a contract);
    2. Complaints about an on-site visit or an inspector's behavior;
    3. Complaints about decisions/administrative acts issued by the inspector.

51. In the first category, the SLI receives complaints from all sectors of economy. Usually, the number of complaints increases if an enterprise is under insolvency procedure, and employees are complaining to the SLI about unpaid salaries. The overall tendency over time is that employees more often ask the SLI to protect their labor rights.

52. The increasing number of complaints over the years shows that information campaigns of the SLI have reached their audience. Society is becoming more aware of its rights and duties under labor laws and labor safety legislation.

C.2 Protecting Due Process During Inspections

53. After the on-site inspection, the organization has the right to contest the decision issued by the inspector:

- The enterprise may request the Director of the SLI to review the decision/administrative act issued by the inspector. This appeal must be submitted within 30 days.
- If the organization does not agree with the decision of the Director of the SLI, it has a right to appeal to the Administrative Court within 30 days.

54. A dedicated Administrative Court became operational in Latvia as of February 2004 when a new Administrative Procedure Law came into force. The Administrative Court reviews appeals of private entities against decisions of public bodies. This court has gained the confidence of the public and businesses, as evidenced by a growing number of appeals against administrative acts of different public entities. The Court is a part of the judiciary and independent from the ministries and inspectorates.

[70] Annual Report (2004), State Labor Inspectorate. www.vdi.gov.lv

55. SLI statistics show that 64 administrative acts issued by inspectors were appealed to the director of the SLI during 2004.[71] Of these, 45 administrative acts were left in force. Thirty-two administrative acts were further appealed to the Administrative Court; 16 of these were left in force, but the Court reversed three decisions.

C.3 Inspectorate Mechanisms and Procedures to Combat Corruption

56. The SLI as a civil service institution operates according to the National Code of Ethics for civil servants and under a number of laws aimed at preventing conflict of interest and corruption. The SLI also complies with a National Strategic Plan for Combating Corruption. The SLI has established an internal Ethics Commission to review cases dealing with conflict of interest, corruption, and offenses against ethical norms.

57. The Audit Unit of the SLI also responds to and checks information and complaints concerning potential cases of corruption and abuse of authority. The Audit Unit was created to ensure the efficiency of the internal control system. In 2004, the Audit Unit performed audits of the following internal management systems:

- Prevention of conflict of interests
- IT security and safety
- Planning of staff training
- Planning, implementation and control of priorities
- Security of personal data
- Flow of documents.[72]

58. As public officials, inspectors submit declarations of income each year. The State Revenue Service verifies these declarations. The declarations are aimed to control incomes of public servants and to avoid illegal income or income of an unclear nature.

59. The Inspectorate Reform (1999-2003) and related activities have had a positive impact on the level of administrative corruption. According to Administrative and Regulatory Cost Survey data in 2003, only 3.6% of all businesses gave a gift or paid a bribe in an on-site inspection by the SLI.[73] Transparency International's corruption perception index improved from 2.7 in 1998 to 4.0 in 2004,[74] the period of time in which the government invested considerable effort in combating corruption.

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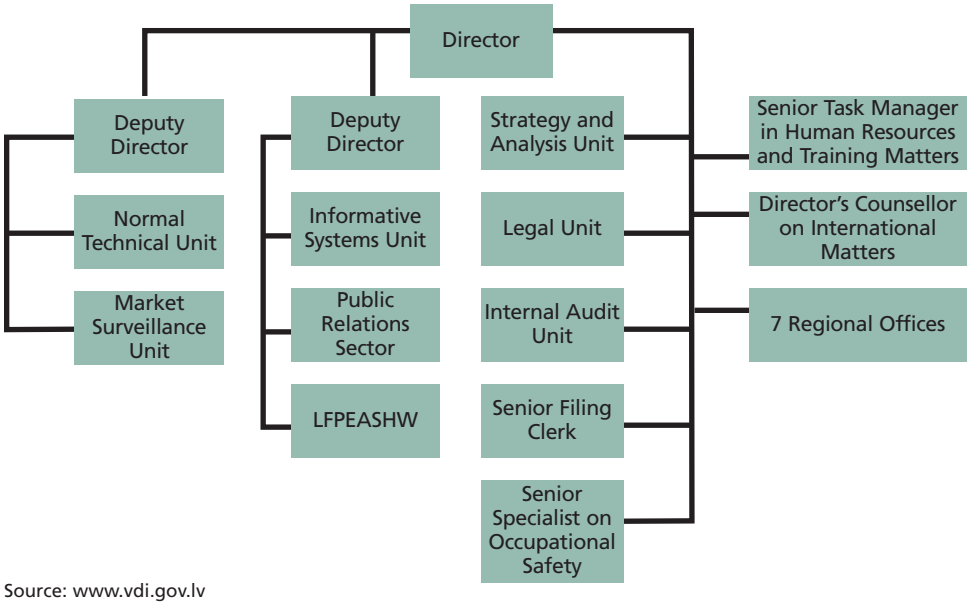
[71] Ibid.
[72] Ibid.
[73] Coolidge J., Grava L., Putnina S. June 2004, *Foreign Investment Advisory Service Case Study: Inspectorate Reform in Latvia 1999-2003,* p.33.
[74] Transparency International www.transparency.org. The scale for measuring corruption perception index is from 0 (highly corrupt) to 10 (extremely clean).

D. Coordination of Inspections

D.1 Coordination Among Inspectorates

60. Prior to the Inspectorate Improvement Program in 2000, businesses regularly complained about the lack of coordination and cooperation among different inspectorates in Latvia. The Inspectorate Coordination Council (established in April 2000) created a solid platform for cooperation of inspectorates and exchange of information. The SLI cooperates with the State Revenue Service, State Social Insurance Agency, State Education Inspectorate, State Sanitary Inspectorate, State Construction Inspectorate, and State Fire and Rescue Service. Joint inspections of the SLI and the State Education Inspectorate are common, especially before the beginning of a new academic year in the schools.

Figure 1. Organization of the SLI



Source: www.vdi.gov.lv