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## Inspector Discretion and Industry Compliance in the Street-Level Implementation of Building Codes

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INSPECTOR DISCRETION AND INDUSTRY COMPLIANCE IN THE  
STREET-LEVEL IMPLEMENTATION OF BUILDING CODES

A Dissertation

Submitted to the Graduate Faculty of the  
University of New Orleans  
in partial fulfillment of the  
requirements for the degree of

Doctor of Philosophy  
in  
The Department of Political Science

by

William P. McLean

B.A., Arkansas State University, 1994  
M.A., Arkansas State University 1995

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## Abstract

This dissertation examines inspector discretion and industry compliance in the street-level implementation of building codes. In particular, this study examines the effects that agency-level, individual-level, and environmental variables have on the choice of inspectors to exercise discretion. Unique to this study is the examination of policy congruence between building departments and street-level inspectors as a predictor of industry compliance with regulatory policy. In addition, the various effects of building department enforcement philosophies, departmental capacity for enforced compliance, and environmental variables are considered. The findings indicate that regulatory policy implementation and impact are complex phenomena. There is no single, best predictor for determining what influences inspector behavior and industry compliance. Rather, this study shows that it is a multiplicity of factors, in concert, that shape regulatory outputs and outcomes. From this dissertation we can learn lessons that can be applied to other policy areas to create a better understanding of inspector discretion, improve industry compliance with regulations, and achieve more effective street-level implementation and understanding of policy impact.

## **Chapter 1: Introduction**

Regulation in America has a long and storied history. However, regulation as we know it today has only existed for a few decades. Current regulation has seen an explosion in activity toward both public and private entities. Given the most recent developments in regulation, there has been little time to develop concrete knowledge about the ways that regulatory agencies behave. According to Kagan (1994) the only consistent findings suggest that agencies vary in size and the manner in which they apply regulations. The inability to develop systematic theory has led scholars to engage in case studies of individual agencies, often over short periods of time. Case analysis has significantly hindered progress in the understanding of how regulators exercise discretion, utilize different administrative styles and, more importantly, ascertain factors contributing to industry compliance with government regulations.

Most of the emphasis in existing research is on a principal-agent model that emphasizes the role of political principals (e.g., the president, Congress) in department or agency behavior at the national level. The alternative theoretical formulation is a bottom up model of agency discretion. Although these actors may formulate and adopt policies, how they are implemented and what impacts they have may largely be determined elsewhere, by lower level officials. It is the later stages of policy-making that are the focus of this research.



## **The Policy Process**

The policy process is a complex phenomenon, one often related to systems theory (Easton 1965). Over time analysts have tried to simplify it using various models. For example, Kingdon (1984) conceives of policy-making as a cyclical process.

According to Ripley (1985, 31), simplification such as this helps, “to render what is incredibly complex and idiosyncratic in any individual case into a set of relationships that are both simpler and more recurrent.” It is important that we try to develop parsimonious models of the policy process for purposes of general understanding and theory development. Like Ripley (1985) and Shull (1999), this study views policy-making as a process that involves interaction among a variety of governmental and nongovernmental actors.

This study specifically examines two interrelated aspects of the policy-making process, *implementation* and *impact*. When considering policy-making as a process or cycle, implementation and impact are consecutive stages in the policy cycle model that posits a logical sequence of activities affecting the development of public policies.

The two stages of the policy process that are examined in this study follow policy adoption, with implementation preceding impact, but with feedback from the various stages completing the non-recursive model.

Implementation and impact are related; program implementation subsequently leads to program performance and thus impact. By examining implementation and impact (or outcomes) in the same analysis, this study can begin to solve one of the

major shortcomings of the public policy literature: examining each phase of the policy process separately. According to Meier (1994) most political scientists stop their studies with the adoption of public policies; implementation studies are deemed to be part of public administration, and policy outcomes to be in the realm of economics or specialists in program evaluation. This study helps rectify this situation by examining policy implementation and impact in the same analysis.

When examining policy implementation, this study focuses upon the specific actions that regulatory inspectors exhibit in their jobs, including such actions as interpreting legislation (e.g., exercising discretion) and delivering services (e.g., providing benefits, services, and/or coercion). Implementation assumes that a policy has been stated and a program created. Implementation refers to how officials carry out the adopted program. When discussing policy impact, this study considers the success the regulatory program has achieved in obtaining compliance from the regulated industry. Impact can be conceptualized as results or consequences of a program. Moreover, impact can be thought of as reflecting both short and long-term results. I now discuss these two stages in greater detail.

*Implementation.* The study of policy implementation (especially implementation of regulatory policy) has certainly attracted significant scholarly attention within political science (Bardach 1977; Edwards 1980; Goggin 1990; Hedge , 1989; Mazmanian and Sabatier 1983; Nakamura and Smallwood 1980; Pressman and Wildavsky 1984; Ripley and Franklin 1986). Of particular interest in implementation studies are those actors who have traditionally been thought of as the “official”

implementers of policy (Caputo and Cole 1979; Maranto 1993; Nathan 1983; Waterman 1989). Research also has provided insights about particular policies and their implementation, such as Church and Nakamura's (1993) study of implementation strategies in Superfund; Bryner's (1995) study of the Clean Air Act of 1990 and its implementation; and Harris and Milikis's (1984) study of regulatory change at the EPA and FTC. However, we are still left with only a narrow understanding of implementation at the local level. This is because many studies of implementation focus on federal programs but much actual policy implementation is state and local.

When examining implementation, scholars are usually referring to the stage of the policy process immediately after passage of a law. Implementation, viewed most broadly, means administration of the law in which various actors, organizations, procedures, and techniques work together to put adopted policies into effect in an effort to attain policy or program goals (Lester and Stewart, 2000). Previous definitions of implementation have ranged from this broad conceptualization to more the more limited or dichotomous view that implementation is either achieved or not achieved. In addition to these two definitions, implementation can be thought of as a process, an output, and an outcome. For example, implementation can be conceptualized as a process, or a series of decisions and actions directed toward putting a prior authoritative legislative decision into effect. Implementation also can be defined in terms of outputs, outputs being the extent to which programmatic goals are supported, such as the level of expenditures committed to a program or the number of violations issued for failure to comply with the implementation directive. Finally,

at the highest level of abstraction, implementation of outcomes implies that there has been some measurable change in the larger problem that was addressed by the program, public law, or judicial decision.

In summary, implementation as a concept involves all of these activities. Although it is a complex phenomenon, it may be understood as a process, an output, and an outcome.

*Impact.* Implementation occurs ostensibly to reach the goals of some policy or statute. To analyze public policy enforcement without some attempt to address whether or not the policy has been successful would be an incomplete analysis. As mentioned earlier, the study of policy impact also involves the analysis of implementation. According to Ripley (1985) political scientists are particularly well equipped to handle formative evaluations of public programs. However, and as noted earlier, most political scientists stop at the adoption stage of the policy process. This evaluation mixes implementation phenomena and some short-run impact phenomena.

As with most academic conceptions of impact this study starts by asking the question, “What did the program do?” (Borus, 1979; 3). More specifically, when discussing impact, this study asks: “Is the building industry compliant with state or local building codes and regulations?” The most commonly utilized definition of impact involves economic consequences, phenomena, and, for the most part, measurement at the individual program level. In addition, impact also can be conceptualized as political impact at the government level. Furthermore, societal impacts are composed or are an artifact of aggregating individual level information

(Meier 1994; Knaap, Kim, and Fitipaldi 1996; Ripley 1985; Machmias 1979, 1980).

This study is not addressing impact only for the theoretical purpose of explaining why particular factors produce compliance, but for practical reasons as well. Compliance has always been of utmost importance in regulatory policy. This is due in part to such highly charged issues as public welfare, safety, and education. At times, noncompliance has resulted in the welfare and safety of citizens being jeopardized. Thus, assessing the impacts of policy, both governmental and societal, are important activities for social scientists.

Public policy may have several types of consequences. The two most commonly discussed impacts are governmental and societal (Shull 1999). Governmental impacts refer to the effect of government actions on individuals or groups, such as the impact of environmental policy on the chemical industry. Societal impacts refer to a much broader impact, such as the impact of environmental policy on the quality of life of poor Americans. According to Shull (1999) societal outcomes are often associated with well-being or standard of living. Developing measures of impact has often proven elusive to researchers, especially measures of societal impact. This study is primarily concerned with governmental impacts because, as noted above, it is very difficult to attain measures of societal impact.

Before going any further, there is a need to draw a distinct line between policy outputs and policy outcomes. Policy outputs are the things actually done by agencies in pursuance of policy decisions and statements. The concepts of outputs focus one's attention on such matters as amount of taxes collected, miles of highways built,

welfare benefits paid, traffic fines collected. Outputs usually can be readily counted, totaled, and analyzed statistically. Examining outputs may indicate, or seem to indicate, that a lot is being done to implement a policy.

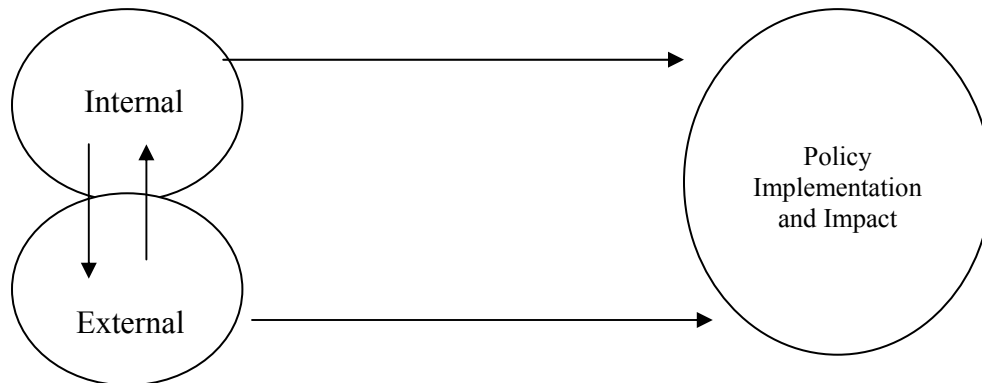
Policy outcomes, in contrast, are the consequences for society, intended and unintended, that stem from deliberate governmental action or inaction. Social-welfare policies can be used to illustrate this concept. It is fairly easy to measure welfare policy outputs such as amount of benefits paid, average level of benefits, and number of people assisted. But what are the outcomes, or societal consequences, of these actions? Do they increase personal security and contentment? Do they reduce or enhance individual initiative? While this line of questioning could continue, the point is made: outcomes are important but hard to determine. Among other things, as students of public policy, we want to know whether policies are accomplishing their intended purposes, whether society is changing as a consequence of policy actions and not because of other factors such as private economic decisions, and whether it is changing as intended or in other ways. Policy impacts are an amalgam of outputs and outcomes.

### **Influences on Implementation and Impact.**

Theories of public policy abound (see Dye 1966; Sabatier 1988; Meier 1994). This study borrows tenets from these theories, drawing especially from the work of Meier (1994). The basic theme behind the theory in this study is that public policy results from the interaction of actors with internal and external factors and forces

### **Figure 1.1**

### Important Factors in the Study of the Policy Process



The figure proposes two major clusters of factors that should be considered in the analysis of public policy: internal and external. Internal factors include what happens inside government, and is concerned with government actors. External factors consist of what happens outside government, with a primary emphasis on non-governmental actors. Governmental and non-governmental actors have the potential to exert political influence in policy-making. While this may seem like a simplistic representation, it does provide an overview of the most important variables and relationships to which researchers should be sensitive. The clusters are partially independent and partially overlapping in that it is not always possible to delineate where one cluster begins to exert influence and the other cluster ceases to exert influence. It is worth noting that the arrows, which signify influence or in some sense causation, run in both directions between the variable clusters. This suggests not just that internal and external factors shape policy activity, but it also suggests that the various dimensions affect each other. In the paragraphs that follow I discuss the major concepts and conclude with a

discussion of the effect of these factors on policy implementation and impact at the “street” or local level (Lipsky 1980).

Over time, regulatory policy has been viewed from three different perspectives (for complete discussions of these perspectives see Weingast and Moran 1983; Meier 1985). The first perspective views regulatory agencies as being vested with large amounts of discretion that plays the primary role in enforcement of regulatory policy. In this view professional values, policy expertise, bureaucratic entrepreneurs, and agency structure are all thought to affect policy outputs (Wilson 1980; Katzman 1980, Brehm and Gates 1997). Going further, a second view argues that regulatory agencies are dominated by their environments; interest groups, legislative committees, economic forces, and technological change all are important in determining policy outputs (Stigler 1971; Lowi, 1969; Mazmanian and Sabatier, 1980). The third and most recent perspective focuses upon political control of the bureaucracy. In this principal-agent perspective, policy outputs are determined by political actors, most notably the president, Congress, and the courts (Wood and Waterman 1991; Shull and Garland 1995; and Durant 1992).

*Internal.* A major facet of importance to implementation and impact of public policies is the internal structure of agencies and government, such as standardization of employee behavior, agency leadership, budget adequacy of the agency, technical expertise of the agency, enforcement style of the agency, employee experience on the job, and employee satisfaction with the job. This structure refers to the inside of agencies in both a structural and process sense. Agencies have a



particular structure and a specific set of operative processes at any given time. These facets lead them to implement policies that have general policy consequences, as does the pattern of relationships between these governmental units and non-governmental interests. In addition, agencies also must deal with other institutions and actors inside government. Not only do these specific features and actors require systematic attention, the interactions that take place within the internal environment of agencies deserve study as well.

*External.* Another facet to be considered in this study of implementation and outcomes is the general environment external to government. It is argued that all policy decisions are set in the context of general external environmental factors and that these factors are likely to influence a good deal of what else happens. Students of bureaucracy traditionally have pointed to a variety of external or environmental factors that shape administrative behavior. The political environment has the potential to shape administrative decisions. Moreover, it has been suggested that interest groups or pressure groups influence administrative behavior (Meier 1993, Pertschuk 1982, Wood and Waterman 1993, Bernstein 1955).

According to open systems theory, bureaucratic survival and effectiveness depend on external legitimacy. As a result, bureaucracies are influenced by the environments in which they exist, and in response, they seek to manipulate those environments (Thompson 1967; Meier 1993). The external environment has been described as composed of two broad types, task environments and political environments (Keiser and Soss 1998). The task environment refers to the material

conditions that bureaucracies have to work with as they pursue their goals. The political environment is self-explanatory, composed of actors outside government that exert political force upon agencies and inspectors. This study focuses upon a series of patterns involving a variety of factors (e.g., unemployment, industrial forces, growth, political pressure, interest group pressure) that may influence the policy process. This analysis relies heavily on the various traditions of regulatory theory in relation to policy implementation and impact. The focus is on these interrelationships in understanding why implementation and impact vary in regulatory enforcement.

### **Focus of the Study**

The study of street-level bureaucrats began as an attempt to further expand the conceptualizations of the policy process to include an often-overlooked factor, the actual policy implementers. According to Lipsky (1976, 136), street-level bureaucrats are “individuals in organizational roles requiring frequent and significant contacts with citizens.” Specifically, a street-level bureaucrat is defined as a public employee whose work is characterized by the following three conditions: (1) he or she is called upon to interact constantly with citizens in the regular course of the job, (2) although he or she works within a bureaucratic structure, independence on the job is fairly extensive. One component of this independence is discretion in making decisions; but independence is not limited to discretion. The attitude and general approach of the street-level bureaucrat toward the citizen may affect the individual significantly. These considerations are broader than the term discretion suggests, and (3) the potential impact on citizens with whom he or she deals is fairly extensive. Lipsky

(1980) describes teachers, police officers, and social workers as typical local level street-level bureaucrats. The present study focuses on building inspectors, who are another important group of street-level bureaucrats.

Bureaucrats, especially line or street-level personnel, have often been viewed in a negative light and are regarded as “low-level employees” (Lipsky 1980). But, given the reliance upon state and local governments to implement federal mandates, these personnel have become important to the success of programs. They often have great discretion to decide both whether and how a particular policy (often a rule or statute) will be implemented. With the growth of local government (both policies and employees), it is more likely that citizen contact will be with a street-level bureaucrat, rather than a high-ranking government administrator. The reality is that multi-tiered governance has led to an increased role for street-level bureaucrats.

The justification for studying street-level bureaucrats is straightforward. To begin with, street-level bureaucrats are often overlooked in the policy process. As noted earlier, numerous studies continue to observe only administrators and elected policy makers. Second, street-level bureaucrats, and usually local rather than national ones at that, are the people responsible for actually delivering governmental policy. Third, their jobs are full of daily decisions that have the potential to influence policy outcomes. Fourth, there continues to be divergent findings concerning the nature of bureaucratic actions. Some scholars, for example, find that inspectors generally go by the book, while others find that inspectors are quick to exercise discretion (Vogel 1986; Brakeman , 1985; Bardach and Kagan 1982; Stigler 1971; Noll 1985). Lastly,

despite its importance, there has been only gradual theoretical and empirical progress in research concerning street-level implementation (see Lipsky 1980; Levine, Musheno and Palumbo 1980; Handler 1986; Musheno 1986; Meier, Stewart and England 1991; Kelly 1994; Brehm and Gates 1997; and Smith 1997).

This research empirically examines the policy process at the street level, with a primary focus upon implementation and impact. It is important that the public policy field recognizes that street-level bureaucrats, the decisions they make, their methods of dealing with problems, and the tools they apply in their jobs, affect public policy in their particular domains. This is not to say that public policy does not often originate in national policy-making institutions or that upper-level administrators hold no influence over policy implementation. Instead, it is recognition that street-level personnel serve an important role in interpreting and applying American public policy.

This study investigates street-level public servants, what they do, and how effectively they handle the challenges of their difficult jobs. In various settings in the United States, these street-level bureaucrats are confronted with some of the most critical and controversial problems facing the nation. These individuals are “in the trenches” working to make sure that regulations are being enforced to make the nation a safer place to live. More specifically, this study helps rectify the current status of local-level policy implementation, one in which there has been little progress in understanding these workers, the behaviors they exhibit in doing their jobs, and how to improve their job function.

## **Research Questions**

Beginning from the standpoint that the study of street-level bureaucrats offers the most promise in better explaining policy implementation and impact, I address several interrelated questions about implementation and impact. First, do regulatory inspectors exercise discretion? Second, to what degree are regulatory inspectors' behavior congruent with regulatory agency officials objectives or policy (e.g., are the inspectors exercising discretion)? Third, what factors influence regulatory inspectors to exercise discretion? In particular, this study examines the effects that internal (e.g., agency leadership, budgetary capacity) and external variables (e.g., political pressure, interest group pressure) have on the choice of inspectors to exercise discretion. This first set of interrelated questions examines issues related to implementation behavior. Specifically, it allows me to examine the extent to which the actions of implementing officials (street-level bureaucrats) are consistent with policy decisions. Furthermore, this focus allows an examination of the factors that shape implementation behavior of regulatory inspectors.

Going further, this study introduces a new empirical measure that makes this project unique in public policy studies. Specifically, I examine the level of policy congruence between building departments and street-level inspectors as a predictor of industry compliance with regulatory policy. There are several questions that I will explore that are related to industry compliance, and thus, policy impact. The first, as mentioned above, what influence does inspector discretion play in industry compliance with regulations? Second, are there alternative factors that have the

potential to influence the compliance of regulated entities with regulations? In short, is it possible that building department enforcement philosophies, departmental capacity for enforced compliance, and local situational factors are determining factors in industry compliance? This set of questions potentially helps to determine what impact these various factors have on regulated entities, focusing on the strategies pursued by a wide range of actors and the strategic actions that take place among these actors in regulatory policymaking. The above questions are quite general and there are a number of issues involved in the questions posed above that will be addressed in subsequent chapters.

### **Significance of the Research**

This study is unique in two ways. First, it goes much further than previous studies of inspector discretion. The analysis does not become entangled in the normative debate concerning the merits of discretion. Rather, this study focuses on the factors that influence the decision of regulatory inspectors to exercise discretion. Moreover, this study addresses regulatory inspector discretion in an empirical manner. It also is unique in that it considers the role that policy congruence between local building departments and local inspectors play in the achievement of compliance from the regulated industry, rather than just focusing on enforcement styles. This is not to say that studies focusing on enforcement styles have not born much fruit. There is much evidence to the contrary (May and Burby, 1998; May and Feeley, 2000). Rather, it is to say that there is possibly another avenue by which to explore factors that influence regulatory compliance.

One often-overlooked regulatory task is the function that state and local governments perform in enforcing the building codes that protect life, safety, and property from loss or damage. This task is considered more important in some areas than others (e.g., those at higher risks from earthquakes and other natural disasters). Given the variation in the risk from natural disasters, there are different levels of attention to the building code in various parts of the country. Yet, even where mass destruction results from these natural disasters, it is hard to generate and sustain attention to regulatory policies that could lessen the impact of these tragedies. Highly visible natural disasters relate to the much more mundane task of building codes.

May and Feeley (1999) have aptly described regulatory functions as “taking place in the backwaters of state and local government.” State governments are largely responsible for public safety. However, it should be pointed out that just because regulatory issues fail to achieve high salience, it is no reason to ignore them. To the contrary, ignoring them insures that as long as natural disasters continue to occur, failure to enforce building codes will inevitably lead to greater physical damage and possibly injury or loss of life.

Federal law has exerted very little influence on the administration of the building code. For the most part enactment and enforcement of the building code has remained a purely state and local concern. More recently, states (roughly 33 out of 50) have begun to exercise preemptive power in the enforcement of building codes. The federal government has played virtually no part in the development of modern building codes because issues of health, safety, welfare, and morals remain largely

state and local government concerns. One can see with limited federal and involvement, state and local governments and especially local building officials often operate unfettered in their jobs.

The National Board of Fire Underwriters, a private organization, published the recommended *National Building Code* in 1905, which was intended to guide local governments in their attempt to enact legislation regulating the manner and types of construction within their boundaries. The code was the result of a number of severe losses suffered by fire insurance companies in the latter part of the 19<sup>th</sup> Century and the early part of the 20<sup>th</sup> Century. The recommended *National Building Code* was the only model code in existence until 1927 when the Pacific Coast Building Officials' Conference, the immediate predecessors to the International Conference of Building Officials, published its *Uniform Building Code*. This code, still in existence today, is used extensively in the western states. While the *National Building Code* has become obsolete, the *Uniform Building Code* still remains.

In 1945, the *Southern Standard Building Code* (now the *Standard Building Code*) was published by the Southern Building Code Congress. This code, still in use today, is predominantly in effect in the southeastern and southwestern states. A third model code, the *Basic Building Code* (now the *Basic/National Building Code*), was published by Building Officials and Code Administrators International in 1950. It is most widely established in the northeastern and mid-western states.

All three of these model codes are structured similarly. The development and change within the codes themselves are also very similar. All three publish new



editions on a three-year cycle. The manner in which modifications to the codes are enacted varies from organization to organization, but it is fair to say that they all attempt to keep up with the rapidly changing field of modern building construction. All three code organizations also employ a staff which is available to local municipalities who subscribe to their services for questions and advice (Legal Aspects of Code Administration, 1984).

It is posited here that the study of building code implementation can contribute to theories of discretion in regulatory bureaucracies. Building code implementation offers a particularly helpful case for studying the use of bureaucratic discretion because (a) it is a policy that is implemented by state and local governments and (b) it is a policy that vests high levels of discretionary authority in state administrators. Although the problems and challenges in building regulation are often ignored in the study of regulation, they are illustrative of the more basic issues of day-to-day enforcement or regulatory policies in local settings.

### **Overview of the Project**

Chapter Two introduces the theory and conceptualization behind my hybrid model of bureaucratic decision-making. Chapter Three provides a discussion of the data, methods, and measurement of the specific concepts and variables. Chapter Four analyzes the various factors that influence inspector discretion. Chapter Five contains analyses of the various factors that influence industry compliance with the regulatory policies. Chapter Six provides an overall discussion of the results of this study. In

addition, this chapter provides the conclusions and discusses the implications of this research, and it offers suggestions for future research.

## Chapter 2: Theory and Concepts

This chapter surveys scholarly thinking and past empirical research on discretion in regulatory enforcement and regulatory compliance. The discussion of past scholarly work has a twofold purpose. First, the chapter highlights some of the unsettled controversies among academics that are relevant to the analyses in subsequent chapters. Second, past theories of discretion and compliance suggest certain *a priori* expectations about the nature of bureaucratic discretion in regulatory policy, aiding in the development of hypotheses and expectations with respect to bureaucratic decision-making and compliance.

Some scholars have concluded that bureaucrats are resistant to change, and that they are often unresponsive to internal and external pressures (Sundquist 1981; Lowi 1979; Wilson 1967). Other scholars claim that bureaucracies do respond to internal and external pressures, but they only do so under certain circumstances (Lipsky 1980; Kagan 1994; Scholz 1994; Kiewiet and McCubbins 1991; Downs 1967). Thus, this chapter emphasizes past scholarly work and examines bureaucratic responsiveness to internal and external pressures. The first part of this chapter presents a theoretical framework, called open-systems theory, for understanding bureaucratic discretion in a democratic system. However, this chapter also integrates tenets of top-down and bottom-up theory, both of which have proven useful in explaining bureaucratic discretion and regulatory compliance. The integration of these two theories leads to a

conceptual and hybrid model of bureaucratic decision-making that will aid in understanding inspector behavior and the role that regulatory inspectors play in compliance. Lastly, this chapter concludes with hypotheses and expectations regarding factors that influence inspector discretion and regulatory compliance.

### **Theories of Policy-Making**

Over time political scientists have developed numerous models, theories, approaches and schemes for analyzing policymaking (for an excellent evaluation of the various approaches to the study of public policy see Sabatier 1999). To be sure, Anderson (2000) has criticized political scientists for displaying more facility and zeal for theorizing about public policy making than for actually studying policy and the policymaking process. *Ceteris paribus*, theories and concepts are still beneficial in directing studies of public policy. Moreover, theories and concepts facilitate communication among scholars. In short, theories and concepts help scholars systematically study the policymaking process. Scholars thus have some guidelines and criteria of relevance to focus their effort and to prevent aimless meandering through fields of political data. Before going into a more specific discussion of policy making, it is important to define *policymaking*.

Policymaking is different from decision-making. While there is no singularly agreed on definition of policymaking, most are similarly structured. Policymaking typically encompasses a flow and pattern of action that extends over time and includes many decisions, some routine and some not so routine. Rarely will a policy be

synonymous with a single decision. It is the course of action, the pattern or regularity that defines policy, rather than an isolated event.

The theoretical approaches discussed below and utilized throughout this study include systems theory and process theory both of which are interrelated. They are useful to the extent that they direct our attention to important political phenomena, clarify and organize our thinking, and suggest explanations for political activity or, in this case, public policies. Utilizing these approaches has several advantages: (1) the systems and process approaches not only focus attention on the environment, but they also focus attention on the officials and institutions who make policy decisions and on the factors that influence and condition their actions; (2) the sequential nature of these approaches helps one capture and comprehend the flow of action of the actual policy process; (3) these approaches are flexible and open to refinement and change; (4) the approaches present a dynamic and developmental, rather than static and cross-sectional, view of the policy process; and, (5) neither of the approaches is “culture bound.” Each lends itself to manageable comparisons, such as how various policies are implemented or how impacts vary across various policy domains.

*Open-systems model.* Public policy may be viewed as a political system’s response to support and demands arising from its environment. The political system, as Easton defines it, comprises those identifiable and interrelated institutions and activities (what we usually think of as governmental institutions and political processes) in a society that make authoritative allocation of values (decisions) that are binding on society. The environment consists of all phenomena--the social system,

the economic system, and the biological setting--that are external to the boundaries of the political system. Thus, at least analytically, one can separate the political system from all other components of a society (Easton 1957).

Inputs into the political system from the environment consist of demands and supports. Demands are the claims for action that individuals and groups make to satisfy their interests and values. Support is rendered when groups and individuals abide by election results, pay taxes, obey laws, and otherwise accept decisions and actions undertaken by the political system in response to demands. The amount of support for a political system indicates the extent to which it is regarded as legitimate or as authoritative and binding on its citizens.

Outputs of the political system include laws, rules, judicial decisions, and the like. Regarded as the authoritative allocation of values, they constitute public policy. The concept of feedback indicates that public policies (or outputs) made at a given time may subsequently alter the environment and the demands arising there from, as well as the political system itself. Policy outputs may produce new demands which lead to further outputs and so on in a never-ending flow of public policy.

Open systems theory developed out of a need for scholars to analyze a political system in dynamic terms. By doing this, not only do we see that a political system gets something done through its outputs, but we also are sensitized to the fact that what the system does may influence each successive stage of behavior. Systems theory enables scholars to interpret political processes as a continuous and interlinked

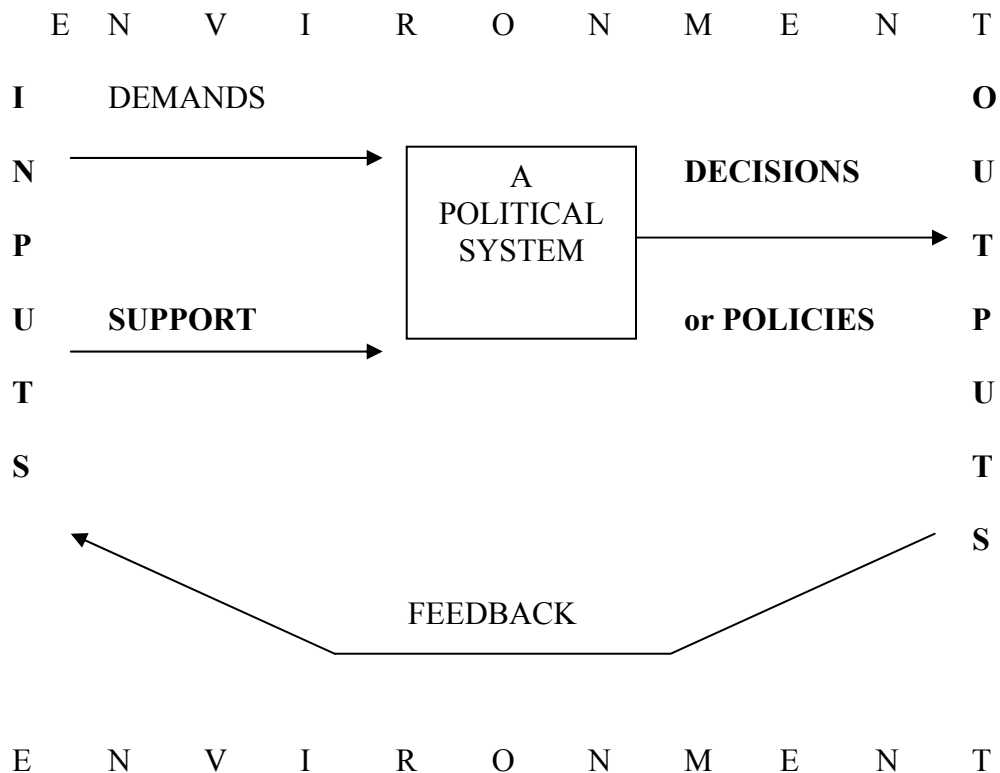
flow of behavior (see Figure 2.1 for a basic graphic representation of an open systems model).

In the Eastonian tradition, open systems theories of administration suggest that implementation of policies should reflect the systematic effects of structural, environmental, and political conditions on bureaucratic discretion. In the policy process administrators distribute benefits in relative obscurity. Nevertheless, bureaucratic decisions that may appear unremarkable actually play a critical role in the politics of “who gets what, when, and how” (Laswell 1936). Public agencies write rules that dictate how general legislation will be used in specific situations, and they apply these rules to particular individuals (Meier 1993; Kerwin 1994). Through both of these processes, they refashion the broad mandates of legislatures into the policy outcomes that citizens actually encounter (Goodsell 1981). In this sense, policy implementation represents a continuation of the political process--a form of “policymaking by other means” (Lineberry 1977, 71). Thus we are led to think of policymaking in terms of a cyclical process. The cyclical process is discussed below.

*Process model.* The “stages heuristic,” as this framework has been called, has been one of the most influential frameworks for understanding the policy process. As developed by Jones (1970), Anderson (1975), and Brewer and deLeon (1983), it divided the policy process into a series of stages. Various treatments of the policy process lay out stages of that process with various nominal labels attached to help organize discussion and analysis. Such stage-oriented discussions do not form the

direct basis for hypothesizing causal relationships although such hypotheses may emerge. Rather, they are approximated chronological and logical guides for observers

**Figure 2.1**  
**Open-Systems Model**



who want to see important activities in some ordered pattern or sequence. Such organizational helpers are useful, in fact essential, for anyone trying to plow through the complexities of policymaking and policy analysis. At best, such maps--even with their rough spots and simplifications--lend some clarity to the observer as he

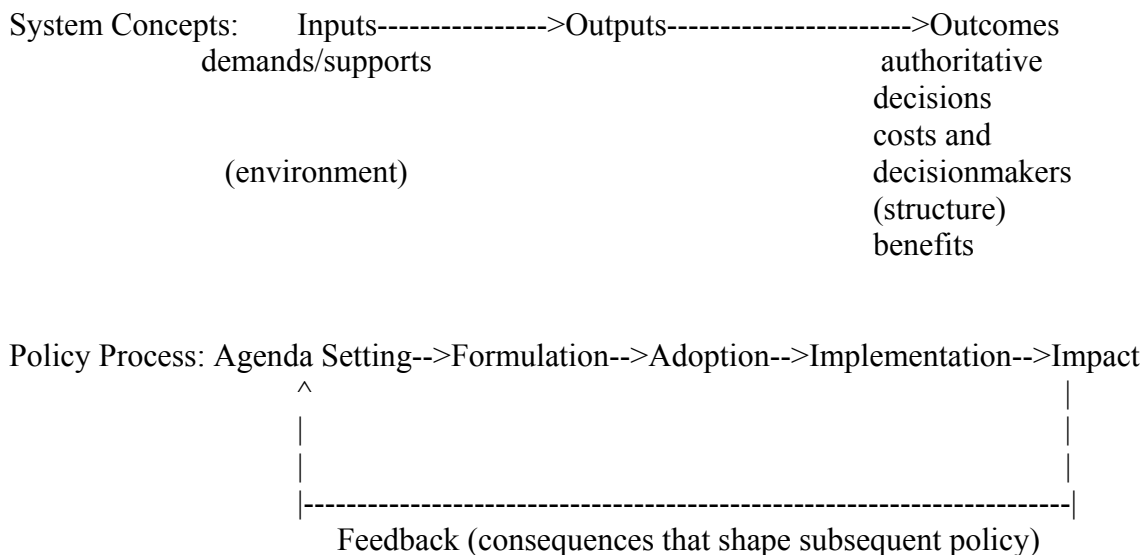


or she grapples with a complicated and sometimes murky set of interactions and processes.

To repeat various authors' versions of policy stages and the policy process would be an exercise in redundancy. There are many versions, most of which bear striking resemblance to each previous version. Let it suffice that most analysts agree on the central activities requiring attention. While there are differences, Figure 2.2 provides a guide to the stages of the policy process. Figure 2.2 also lays out the basic flow of policy stages, major functional activities that occur in those stages, and the products that can be expected at each stage if a product is forthcoming. Naturally, a policy process may be aborted at any stage. Beginning a process does not guarantee that products will emerge or that a stage will be "completed" and so lead to the next stage. Figure 2.2 presents the general flow of stages, activities, and products that can be expected in a policy that is generated and transformed into a viable and ongoing program. "Stages" are the names attached to major clusters of activities that result in identifiable products if they reach conclusion. "Functional activities" are the major subroutines of actions and interactions engaged in by policy actors. "Products" are the output, or end result, of any general stage. As suggested earlier, many of these activities merit scholarly attention. However, this study focuses on the latter stages of this process (implementation and impact) and what factors influence these stages, the activities that take place within these stages, and the actors that operate within these stages.

## FIGURE 2.2 THE POLICY PROCESS

### Interrelationship of Political System and Policy Process



Note: Actor importance varies at different stages in the policy process; includes environment (political culture, pluralism, apathy, economy and other elements outside government, non governmental actors) and structure (governmental actors' preferences, resources, activities, federalism, constitution, checks and balances). (Source: Steven A. Shull)

### Theories of Bureaucratic Decision-Making

There is a general consensus that over time the complexity of government has increased (Light 1995). The roles and powers of administrators at all levels of government have expanded in the policy-making process (Lipsky 1980; Kerwin 1994; Goodsell 1984). Bureaucrats have become policy makers in their own right (Shumavon and Hibbeln 1986). However, given this role of expanded government and bureaucratic proliferation, there has been little empirical progress in understanding bureaucratic behavior or the bureaucratic role in public policymaking.

As noted above, there has been little progress: Instead research has taken a normative tack, and it became involved in the debate over the “good” or “bad” nature of bureaucrats. This debate has no doubt shaped many of the theories of bureaucratic decision-making. Depending upon which side of the normative controversy that scholars chose, they were likely to write justifications that were in support of their particular position regarding bureaucratic behavior. This enduring debate in political science and public administration, concerning the role that politics and discretion should play in the administration of policies, had begun as early as the 1800s and it continues. What follows is a brief synopsis of the various theories of bureaucratic decision-making.

It has been shown that regulatory inspectors often enjoy a certain degree of autonomy as they exercise discretionary authority that has been granted to them by legislative and executive institutions (Kerwin 1994; Lipsky 1980; Brehm and Gates 1997). There is a general consensus that regulatory inspectors exercise some degree of discretion. However, and as noted above, the agreement among scholars stops there and the normative arguments about the good or bad nature of bureaucratic behavior begin.

Many of the works concerning the negative aspects of bureaucratic behavior flow directly from Woodrow Wilson (1888) and his politics-administration dichotomy. The dichotomy implies that the relation between elected institutions and the bureaucracy should be purely top-down and essentially static through time. Politics and administration are assumed to be separable, hierarchically arranged

endeavors. Elected politicians make policy for administrations through their non-elected subordinates in the bureaucracy. However, these subordinates should not be susceptible to any political influences beyond initial lawmaking. This view also implies that policy-making should be detailed and explicit so that policies can be administered without ambiguity by experts in the bureaucracy. According to this view, elected officials should not direct the bureaucracy in a manner inconsistent with original legislative intent. And, elected officials should not delegate policy-making authority to the bureaucracy. The underlying assumption is that bureaucracy is not a representative institution and that all bureaucratic policymaking occurs beyond legitimate democratic channels.

Many of these works concerning bureaucrats have been case studies and they have clustered around the negative aspects of human behavior (Wilson 1967; Lowi 1979; Sundquist 1981). For the most part, these scholars have suggested that discretion violates the basic tenets of democracy as set forth by the Constitution. Lowi (1979) went so far as to describe the exercise of discretion as “policy without law.” Essentially these studies have posited that discretion opens the possibility of abuse of too much discretionary authority with the result being the serving of narrow interests.

While there has been a lot of attention focused on negative behavior, other scholars have argued that bureaucratic discretion is not a bad thing (Downs 1967; Kiewiet and McCubbins 1991; Scholz 1994; Kagan 1994). These studies have typically argued for the necessity of the flexibility needed in dealing with different situations, primarily to adapt them to local concerns. Lipsky (1980) makes a very

strong case for this perspective. He has argued that since bureaucratic resources are scarce, workers are overwhelmed by the demands placed upon them, and must develop coping strategies. This research highlights the propensity of the bureaucrat to serve the easiest client as opposed to the client that demands more attention and resources. In this vein, all of the strategies pursued by the self-interested bureaucrat are intended to make their lives easier rather than more complicated. Still others have contended that bureaucrats make decisions to benefit clients with broad legislative or administrative policy goals (Meier, Stewart and England 1991; Handler 1986).

As highlighted above, two perspectives, clearly the extremes, top-down or principal-agency and bottom-up or street-level decision-making, have dominated theories of bureaucratic decision-making. It should be recognized that the principal-agency approach considers discretion illegitimate and that the street-level perspective considers discretion legitimate or simply a reality. Given the discussion above, it becomes quite evident that scholars cannot agree, in a normative sense, about the role that bureaucrats should play in policy making. There may be no definitive answer to the normative question, "Is discretion good or bad?" However, the absence of a clear answer should not stop investigation of the topic. To the contrary, this disagreement highlights further the need for greater examination of the actions and behaviors of street-level bureaucrats and how those actions influence policymaking.

This study takes an objective approach to the study of bureaucratic behavior. Moreover, it does not seek to make normative judgments regarding bureaucratic behavior, but rather it attempts to explain bureaucratic behavior using aspects of both

the top-down and bottom-up approaches. It is necessary to examine both theories critically (top-down and bottom-up) to further understand the tenets of each to fully develop a theory that can explain bureaucratic behavior and help in our understanding of policymaking.

*Principal-Agency or Top-Down Theory.* Numerous studies of bureaucracy have focused on political control of the bureaucracy. Most of these studies have ranged from studying one policy actor or, in a few cases, numerous policy actors. In most cases, the extant top-down literature has examined the president, the Congress, or in some instances the courts (Wood and Waterman 1994; Moe 1982, 1985; Sabatier and Pelkey 1987; Sabatier and Jenkins-Smith 1993). As noted in Chapter One, principal-agency or top-down theory developed during the early 1980s. The basic tenet guiding top-down theory is that elected officials have political incentives to control the bureaucracy. In the top-down literature, bureaucrats have been portrayed as irrational, inefficient, and unresponsive. It has widely been argued that the exercise of power by bureaucrats is undemocratic and usually arbitrary and capricious. Bureaucrats are often viewed as the source of all problems in policy-making. To be sure, the evils of discretion have long been discussed in a normative fashion in the extant top-down studies. This normative debate began with how much policymaking authority Congress should delegate to the bureaucracy. While not the first, Theodore Lowi (1979) suggested that broad, ill-defined delegations of congressional authority left the bureaucracy unaccountable and democracy imperiled. James Q. Wilson (1967) was more concerned with policy outputs when he argued that bureaucratic power had not

resulted in the formulation of coherent policies. He followed this up in 1975 by identifying the expansion of administrative power as the “bureaucratic problem.” Top-down theory has broad based appeal because it often uses quantitative data. Furthermore, scholars have developed considerable evidence that elected officials exert a great deal of influence over the bureaucracy (Moe 1982, 1985; Weingast and Moran 1983; Cohen 1985; Scholz and Wei 1986; Scholz, Twombly, and Headrick 1991; Hansen 1990; Wood 1988, 1990, 1991, 1992; Wood and Waterman 1991, 1993; Waterman and Wood 1992, 1993; and Wood and Anderson 1993).

The top-down perspective usually begins with the selection of a policy decision, and then it examines the extent to which the programmatic objectives are being achieved. Mazmanian and Sabatier (1983) highlight the essential features of a top-down approach which starts with a policy decision by governmental officials and before asking the following questions: (1) To what extent are the actions of the implementing officials and target groups consistent with policy decisions? (2) To what extent were the objectives obtained over time (i.e., were the impacts consistent with objectives)? (3) What were the principal factors affecting policy outputs and impacts, both those relevant to the official policy and other politically significant ones? and (4) How was the policy reformulated over time on the basis of experience? Not covered by Mazmanian and Sabatier (1983), but certainly a tenet of the top-down approach, is the fact that it emphasizes democratic governance through elected officials (Goodsell 1995; Brehm and Gates 1997).

*Bureaucratic Discretion or Bottom-Up Theory.* Also discussed in Chapter One was bottom-up perspective or street-level decision-making. This perspective emerged in the late 1970s and, as suggested by its name, it is quite different from the top-down approach. Numerous scholars have emphasized this perspective in their research (Lipsky 1971, 1977, 1980; Ingram 1978; Barrett and Fudge 1981; Brehm and Gates 1997). While negative stereotypes of discretion abound, bottom-up scholars have recently brought more positive views of discretion to the forefront. A primary argument put forth by scholars advocating the use of discretion is that discretion is needed to adapt to given situations facing the agency. According to these scholars, the importance of discretion for effective enforcement far outweighs the threats of “capture” and corruption that arise when field officers have discretion. For example, Francis Rourke (1984:37), stated, “...without administrative discretion, effective government would be impossible in the infinitely varied and rapidly changing environment of twentieth century society.” While others have argued that bureaucratic discretion is needed in modern and complex society (Bryner 1967; Kiewiet and McCubbins 1991). Furthermore, Eugene Bardach and Robert Kagan (1982) have argued that bureaucratic discretion provides needed flexibility in the regulatory process.

The bottom-up approach allows one to identify a specific policy network or implementation structure. Second, and probably most important, because the focus is on the strategies pursued by a wide range of actors, a bottom-up perspective is able to give full consideration to all actors involved and the strategic interaction that takes



place among those actors, rather than focusing upon the strategies of program proponents.

Essentially, the bottom-up perspective is most useful where there is no dominant piece of legislation but rather a large number of relatively independent actors, or where one is primarily interested in the dynamics of different local situations. Unlike the top-down perspective, the bottom-up approach places much less emphasis on democratic governance, given the propensity for civil servants to be relatively unaccountable to elected officials (for instances of discretionary actions such as rulemaking see Kerwin 1994). The bottom-up approach assumes that bureaucrats have greater discretion than does the top-down approach.

*A Hybrid Model of Bureaucratic Decision-Making.* Both approaches (top-down and bottom-up) have intuitive appeal. Richard Elmore (1985) has argued eloquently that researchers should stop trying to settle on a single framework for analyzing public policy. The important issue is not whether the framework of analysis is right or wrong. It is less important to agree about a single method for the analysis of problems than it is to be clear about the consequences under which one framework might be adopted over another.

Like Sabatier (1986), this study posits that we need to consider both approaches (top-down and bottom-up) or a synthesis of both approaches, because both perspectives offer promise for the study of public policy. To be sure, numerous scholars have used both the top-down and bottom-up approaches in concert, arguing that neither should be used in complete isolation (Shull and Garland 1995; Fiorino

1991; Mazmanian and Sabatier 1983). This study employs a synthesis of the two models to explain inspector behavior, the principal-agent or top-down model and the bottom-up model, as noted above, both of which have support in existing research.

This study employs tenets of a top-down approach. Specifically, it examines regulatory inspectors' policy congruence with higher level (e.g., agency) policy objectives. Following the synthesis of Mazmanian (1986), this top-down approach will allow the study to focus upon the following: (1) the effects of socio-economic (and other changes) external to the policy network/subsystem of actors' resources and strategies; (2) the attempts by various actors to manipulate governmental programs in order to achieve their objectives over time; and (3) actors' efforts to use various policy instruments as they learn from experience.

Through the bottom-up approach, this study examines the strategies employed by relevant actors as they attempt to deal with the issue consistent with their objective (e.g., obtaining compliance). This bottom-up approach allows systematic examination of factors that have the potential to influence regulatory compliance. The bottom-up approach is particularly appropriate in regulatory policy domains where there is no dominant piece of legislation, where there are relatively large numbers of independent actors, and where there is great variance in different local situations, all of which apply in this study.

In the context of a complex system of policy implementation, it is not enough to just determine the nature of bureaucratic behavior (e.g., do inspectors exercise discretion?) or to determine the impacts of specific policies (e.g., is the regulated

industry compliant?). The purpose of this research is to go much further. This study instead will determine the factors that influence inspectors' discretion and identify factors that influence industry compliance.

As noted above, the exercise of bureaucratic discretion has been a central and enduring issue in the fields of public administration and public policy. Questions about the scope of bureaucratic discretion, how and to what extent it should be controlled, and how it can be reconciled with the values of democratic governance have been and will continue to be debated. Moreover, regulatory compliance has been a salient topic of discussion in public administration and public policy circles. Questions abound about the most appropriate method(s) for achieving compliance from regulated industries to questions regarding the reasons for noncompliance with regulations. Before discussing either of these concepts (discretion and compliance) any further, it is important to define.

*Discretion.* This study is primarily concerned with regulation at the local level. As noted by Lipsky (1980) and a host of other scholars, street-level workers are often confronted with nebulous, complicated, and, in some cases, dangerous situations. In performing their duties, street-level bureaucrats often face competing factors which have the potential to influence their decisions. In weighing these factors, workers are exercising discretion. As one can see, discretion is at the heart of street-level worker decision-making. Many public employees must exercise discretion to adequately fulfill the duties of their respective jobs.

Discretion has certainly been an important issue from the perspective of the individual street-level worker. In this context, Vinzant and Crothers (1998, 37) define discretion as “the ability to make responsible decisions,” and “the power of free decision or latitude of choice within certain legal bounds.” Still others have defined discretion as latitude in creating formal rules and procedures as discretion (Meier 1993; Kerwin 1994). Moreover, others have considered the adaptation of street-level bureaucrats to local situations as discretion (Lipsky 1980; Keiser and Soss 1998). This study views the adaptation of regulatory inspectors to various enforcement situations as discretion. These definitions provide a useful starting point for exploring a number of important dimensions of frontline worker discretion.

First, the preceding definition of discretion embodies the concept of choice. Discretionary acts involve making choices among alternatives. The decision-maker has latitude in making choices in the sense that no one factor forces the selection of one alternative versus all others. It is the judgment of the choice maker, then, rather than some mechanistic process that explains the selection of one particular alternative.

Second, the definition suggests that although the decision-maker has latitude, discretion is constrained by external factors. Discretion is more than autonomous choice making; it involves making decisions within certain legal bounds or responsible criteria. While no factor may be causing a particular selection, the range of discretionary alternatives is bound by external variables. Choices are not made at will or with complete freedom. Rather, discretion is limited.

Third, the concept of discretion implies that there is (or may be) variation among the factors that constrain discretion. That is, the dictionary definition does not indicate that there are specific legal bounds or detailed criteria by which responsible decisions can be determined in all cases. Instead, there may be differences among individuals, groups, communities, agencies, clients, or other actors in a particular situation in terms of how they would define the constraints on discretion.

A fourth aspect of discretion offered here does not derive from the definition offered earlier; it is derived from direct observations of street-level workers in action. Discretion manifests itself in two somewhat distinct dimensions: *process* (the means of how a goal is to be accomplished) and *outcome* (the ends or what goal is to be sought). While this distinction between process and outcomes is in one sense a highly artificial one, it can be an analytically useful way to think about the kinds of choices that street-level public servants are called upon to make (Vinzant and Crothers 1998; Crothers and Vinzant 1994).

It is, for example, sometimes necessary for workers to make decisions about *what* to do. There may be a range of options that can be seen as responsible or within certain legal bounds in a given situation, so the worker has to decide which outcome or objective to pursue. Such discretion is termed *outcome* discretion. Workers also are called upon to exercise discretion in deciding *how* to achieve a goal. In some cases, law, routine, procedure, or some other factor may require the outcome or objective to be sought, but there is a range of means by which the goal can be realized. Such discretion is termed *process* discretion. Process and outcome discretion can be

exercised singly or together. In other words, sometimes workers exercise both outcome and process discretion in the same situation when they must make choices about both *what* will be done and *how* it will be done.

In short, discretion is anything but simple. Discretion is constrained choice among competing alternatives; it may involve decisions about what to do, how to do it, or both. As such, discretion is a neutral concept in that it is neither good nor bad in and of itself. Instead, it is the context of its use that establishes its meaning and reasonableness.

As highlighted above, discretion is either considered illegitimate (in top-down models), legitimate as such (in bottom-up models), or simply recognized as a reality. This study accepts this second view and does not accentuate only the negative aspects of human nature. As noted by Brehm and Gates (1997), it is largely meaningless to think of agencies as organizations under centralized control. The bureaucrats studied by Kaufman (1960), Lipsky (1980), and others exercise wide latitude over policy. Discretion comes into play throughout the many stages of the policy-making process, especially at the implementation level. Furthermore, they suggest that it is also largely meaningless to think of bureaucracies as unitary actors with homogeneous preferences. To the extent that bureaucrats hold homogenous preferences among themselves and wield significant degrees of discretion about how to achieve those preferences, agencies will never behave as a cohesive unit.

This general definition and discussion of discretion raises several important questions. First, under what circumstances do street-level bureaucrats exercise

discretion? Or, why do some bureaucrats exercise discretion and others do not? Why do we not as a society simply eliminate their discretion and thereby avoid the whole problem of having to determine whether it is reasonable or appropriate?

It is posited here that reasons beyond laziness or an underlying wish to destroy the agency's mission motivates street-level workers to exercise discretion. Thus it is not always self-serving reasons that lead inspectors to clash with prescribed laws and agency policies. Street-level bureaucrats do not act in concert with or counter to agency wishes because of laziness or subversion; they act because they often have a different interpretation of outcomes and because they are possibly being responsive to different principals other than those thought of in the traditional principal-agent models. In other words, while traditional principal-agent theorists (e.g., Moe 1997; Downs 1966) assume that executives and management incentives and rules are in the best interest of the policy goals of the entire agency, they often are not. This reasoning is flawed, because it assumes a single hierarchical principal.

As with many instances in social science, the real world is not always neat and easily explained with a simple model. In practice, there are multiple principals that street-level bureaucrats may choose to be responsive to. The sheer nature of street-level employment requires continual contact with the public, and it may lead to the public becoming a principal, a phenomenon which is much different than the traditional hierarchical principal perspective. This reliance upon the public for cues may lead to the bending or breaking of rules of the hierarchical principals. There is a definite propensity for this to happen when there is a disagreement between the

definition of successful outcomes of elected officials and upper agency personnel and the outcomes at the street level. What is viewed by traditional public administration models as negative use of discretion by managers and lawmakers may be perceived as a positive use of discretion by the street-level worker because both are viewing the success of a different principal.

Disagreement among principals in an organization may explain why street-level workers choose to bend, ignore, or break the rules set by the traditional hierarchical principals. This explains why some behavior which appears to be in the best interest of the client does not necessarily mean following the agency rules to meet agency goals. Other goals offer a counter “incentive” to following the traditional hierarchical principal. That does not necessarily mean that street-level workers are engaged in activities to thwart or harm an agency’s mission. Rather, they are engaged in what is viewed as “positive” shirking or sabotage.

In an enhanced principal agency model, Brehm and Gates (1997) suggest that street-level workers respond to policies in one of three ways: they work, shirk, or sabotage agency policy. To summarize the authors, when street-level bureaucrats “follow” the rules, they are working, and working is viewed as positive because it is in concert with the wishes of elected and/or agency officials. Furthermore, it is assumed to be democratic because elected officials represent the people. When street-level workers “bend” the rules, they are engaging in shirking which is viewed in a negative light because they are circumventing the wishes of their superiors. Lastly, when street-level employees “break” the rules, they are sabotaging agency policy and



producing a negative work output which is more than just shirking. Brehm and Gates make another normative judgment in this instance. They judge negative outputs to be the most destructive to a representative democracy because not only do they subvert the wishes of the elected representatives, they waste valuable resources that could be used to further their goals (Brehm and Gates 1997).

While Brehm and Gates' basic premise, that street-level workers do more than shirk and that decisions originate from several contextual factors may be correct, their framework is largely incomplete and reflects poorly on street-level workers. The enhanced principal agency model does not account for all the possibilities of street-level decision-making. Street-level workers may produce both positive and negative work outputs independent of whether they are working, shirking, or sabotaging agency rules (Leland and Maynard-Moody 1998).

Others have gone further in explaining inspector behavior. Specifically, Michael Lipsky's seminal work in *Street-Level Bureaucracy* (1980) explored several of the questions posited above. Lipsky argued that workers such as police officers, social-service workers, and the like, *must* exercise discretion for several reasons. First, discretion is required to apply rules in specific cases because "street-level bureaucrats often work in situations too complicated to be reduced to programmatic formats" (Lipsky 1980, 15). Second, Lipsky suggested that some situations require public employees to make judgments about people: "Street-level bureaucrats work in situations that often require responses to human dimensions of situations" (Lipsky 1980, 15). Third, because "street-level discretion promotes workers' self-regard and

encourages clients to believe that workers hold the key to their well-being,” the practice of discretion is reinforced (Lipsky 1980, 15). In other words, workers need to feel they can make the decisions that are necessary for them to perform their jobs. Finally, Lipsky (1980) noted that some public employees operate largely independent of direct supervision as they carry out their tasks. A supervisor cannot physically be present nor be called to the scene to oversee all decisions. While Lipsky’s conceptualization of the inevitability of discretion is descriptively accurate, there still continues to be various theories advanced that either further his basic principles or are in total contrast to his original ideas.

Given the discretion that is exercised by street-level bureaucrats, public employees have become the ultimate implementers of public policy (Lipsky 1980; Vinzant and Crothers 1998; Frederickson 1986). Working for public agencies, their jobs involve decisions on a daily basis that have the potential to shape policy outcomes. The term “street-level bureaucrat” was first used by Lipsky (1980), and it is used interchangeably throughout this text with local-level and also line-level personnel. Street-level bureaucrats have been described as workers that meet face-to-face with clients in everyday work situations. These street-level workers have become key actors in the policy process through their ability to exercise discretion when servicing clients.

Scholars also have argued that discretion at any level of bureaucratic work is nearly impossible to avoid (Lipsky 1980; Vinzant and Crothers 1998). The primary argument posited by many scholars is that discretion cannot be eliminated from street-

level work because the work environment involves complex tasks for which it is impossible to prescribe rules, guidelines, and instructions to cover all possible contingencies. Indeed, it has been shown that street-level workers operate in less than ideal circumstances (Lipsky 1980; Vinzant and Crothers 1998). Street-level workers are faced with unforeseen problems and situations that are multifaceted, intractable, and politically and emotionally charged. Regulatory inspectors serve as a good example since they do not carry around an instruction manual on what, when, and how to intervene with the regulated industry. It would be difficult to develop such a manual because it would prove difficult to list all of the possible scenarios. Moreover, inspectors are often confronted with conflicting and vague information. Agency rules are often conflicting and nebulous because of numerous principals that cannot agree on the means for implementing a particular policy. It has even been suggested that inspectors are forced to exercise discretion because the principals writing the rules leave them vague in order to compromise, avoid conflict and leave the decisions up to those who carry them out (Leland 1999).

Street-level workers are forced to make decisions while, at the same time, balancing the principles of accountability, equity, and effectiveness. Furthermore, the difficulty of these decisions is compounded by the need to keep citizens, clients, elected officials, and management happy. At this point in time, we know little about the decision-making processes of street-level workers. This study furthers knowledge about street-level decision-making by offering insights from street-level worker perspectives.

In idealized images of the rule of law, public administrators apply universal policies to all citizens in a consistent and neutral fashion. Many contemporary accounts of bureaucracy, however, bear little resemblance to this image. Discretion has come to be recognized as an inescapable feature of public life (Hawkins 1992), and students of bureaucracy now tend to agree that administrators exercise a considerable amount of choice in policy implementation (Lipsky 1980; Meier 1993; Kerwin 1994). As noted earlier, some scholars now point to a positive role for discretion, arguing that bureaucrats use it primarily to respond to clients' special needs, to pursue more equitable outcomes, and to allocate resources where they are most needed (Jones 1978; Goodsell 1981).

As noted earlier, discretion to some scholars signals the potential for abuses of authority. Due to a variety of material, legal, and social factors, administrators tend to hold significant power over their clients (Handler 1992). According to Keiser and Soss (1998, 3-5) the exercise of discretion has typically raised two types of concerns for scholars. First, administrators may use their discretion to limit access to policy benefits and authoritative processes--a "less visible mode of fiscal retrenchment" that Michael Lipsky (1980) terms "bureaucratic disempowerment." Second, because administrative decisions may be influenced by moral or political judgments, discretion may be used in ways that harm or discriminate against specific categories of clients (Prottas 1979; Lipsky 1980; Hasenfeld 1987).

These general problems of discretion give rise to additional concerns when responsibility for implementing policy is parceled out to the fifty states or when

responsibility for a state policy is given to county or city governments. In these cases, local bureaucratic discretion may work to undermine the goals of legislators at a higher level of government. In addition, if the factors that shape administrative choice vary across locales, then citizens in some places may have access to benefits that are denied to their neighbors in other political jurisdictions.

For these and other reasons, students of public policy have increasingly pointed to the need for general theories of administrative behavior that can explain variation in the use of discretion. The importance of developing explanations for the use of discretion in intergovernmental programs has become even more apparent in light of recent movement toward federal government devolution of power (Handler 1995; Sawhill 1995).

*Compliance.* Compliance and the enforcement patterns used in attempts to achieve it have been major themes in research on regulation, particularly that now-substantial body of work that has been concerned with health and safety, environmental pollution, and the regulation of industrial processes (Clarke 2002). Although there are important variations, these share significant features: the regulation of largely material hazards by substantial agencies with relatively long traditions, addressing problems which, though they change as industries develop, also involve well established hazards. Agencies and their inspectors hence face the difficulties of keeping all their regulatees up to standards and researchers have focused on how this can be achieved over time with regulators who present a wide variety of different faces: (e.g., cooperative, antagonistic, recalcitrant, incompetent.) Most of

these studies address “normal regulation,” that is established regulation, investigating in considerable empirical detail how agencies achieve what they achieve. The achievement may or may not be substantial compliance, what techniques are employed, and what constraints limit them.

Compliance therefore refers to several different features of the regulator/regulated relationship. Most evidently, it involves the agency getting the regulated to do what is asked, to comply, but this immediately raises a catalog of issues that are at the heart of this literature concerning what the inspector believes is reasonable to ask for in the light, not only of his/her powers and resources (notably time) and of established law, regulation and standards, but also of his understanding of the capacity and willingness of the regulated to comply. And when the demand is made, perhaps after a formal periodic announced or unannounced, inspection, how is the regulated supposed to achieve compliance? This raises a second meaning of the term. After an inspection the inspector(s) will identify what they want done for the regulated entity—a factory, a nursing home—to come into a state of compliance. This may involve very little in terms of numbers and significance of items, or it may involve many items and include major undertakings involving time and money for the regulated. The inspector hence has to decide how to pitch what practical compliance means.

One popular belief is that compliance, with development management regulation, fails when local governments lack the capacity to compel compliance by finding violations and by demanding that they be corrected (Burby 1998). Slowly, these beliefs have evolved to consider another perspective. From this latter perspective, it is

believed the key to creating compliance lies not so much in detecting and correcting violations as in creating conditions under which violations are less likely to occur and need correction (Burby 1998; Bardach and Kagan 1982; Kagan 1994; Scholz 1994). Thus, in developing enforcement plans, regulatory administrators are forced to decide which of these two perspectives to emphasize.

To emphasize enforced compliance, administrators would need to concentrate on increasing the enforcement capacity by adding more and better trained personnel and by expending more effort on various enforcement tasks. Some of the tasks of enforced compliance that have been examined are: surveillance to detect development without a permit and review of development and building plans (Kelly 1998; O'Bannon 1989; Schilling and Hare 1994).

Placing an emphasis on fostering voluntary commitment would involve efforts to communicate with regulated firms and with individuals to make sure they understand what the law requires. Some of the activities that have been proposed include: negotiating with contractors to persuade them to comply (Ahlbrandt 1976; Kagan 1994; Scholz 1994).

Receiving a definitive answer from regulatory experts about the most appropriate approach to fostering voluntary compliance from regulated entities is difficult. Indeed, regulatory experts cannot reach a consensus concerning the most appropriate approach. One faction advocates careful monitoring of compliance, uniform and strict application of code and permit requirements, and sanctions such as stop work orders and fines to deter violations. This is an approach that Burby (1998) have termed

“systematic”. A second faction argues for relaxing requirements when the goals of regulations will not be compromised and for when relaxed requirements and incentives are used to foster good working relationships with firms which will then comply in order to maintain favorable treatment by enforcement personnel. This is a term that Burby (1998) refer to as “facilitative.” To be sure, credible arguments have been made for both approaches. However, at this point, there has been little evidence about which is most effective in enhancing the commitment to comply voluntarily with regulatory requirements.

In this context of a diverse policy system, it is not enough to recognize that discretion during implementation affects policy outcomes. Students of public policy require empirically grounded theories that can explain inspectors’ exercise discretion, and that can explain why discretion in the administrative process produces particular outcomes in some circumstances but not in others. In what follows, I provide evidence that some forces that influence inspector discretion come from inside the bureaucracy while others flow from external factors and the environment of particular agencies. Furthermore, I also provide evidence that compliance with regulations is tied to a number of factors including those internal and external to the agency and inspectors’ environment.

My analysis builds on two traditions of theory that suggest different reasons why the use of discretion may vary systematically among inspectors. The first tradition argues that administrative choices will be shaped by the internal characteristics of public agencies, characteristics such as resources and bureaucratic values. The second



tradition emphasizes external factors, asserting that a bureaucracy's political and task environments will shape the use of discretion.

As highlighted above, it has been recognized widely that the problems and challenges faced in building code regulation are neglected in studies of regulation. However, it is posited here that they are illustrative of the more general issues of local regulatory enforcement. It has been noted that there are notable compliance problems in a number of regulatory policy areas (Burby 1998). To explain shortfalls in regulatory compliance, this research examines some of the traditional factors that have been posited to exert influence on compliance. Included in this examination are the possibilities that the challenges in bringing about compliance arise from the lack of cohesion between agencies and inspectors, the severe limitations on resources in most code enforcement agencies, the enforcement approaches chosen by agencies, and the regulatory and political environments in which inspectors and agencies operate.

### **Chapter 3: Data, Methods and Measurement**

When thinking about issues of regulatory policies, many people consider highly salient issues like facilities for housing criminals, environmental degradation, and insurance requirements. These issues receive a lot of consideration because they generate media attention, especially when there is a policy problem, crisis, or scandal. However, for many regulatory issues it is hard to generate media attention and to occupy a prominent place in the minds of citizens. Public safety regulated by enforcement of building codes is one such policy area.

#### **Hypotheses and Expectations**

*Discretion.* As noted above, two general theories of bureaucratic action provide a starting point for analyzing patterns of inspector discretion. The first argues that the uses of bureaucratic discretion will be driven by internal characteristics of the bureaucracy. According to Ripley (1995) “internal” refers to the inside of government in both a structural sense and a process sense. The government has a particular structure and a particular set of processes at any given time. These facts have general policy consequences, as does the pattern of relationships between governmental units and nongovernmental interests.

The second places greater emphasis on external or environmental characteristics of the bureaucracy. The idea of operating in different “task” and

“political” environments is fully developed by Kagan (1994). This external perspective treats inspectors as fungible actors responding to outside stimuli. In addition to internal characteristics, scholars have noted that a variety of environmental factors shape administrative behavior. According to open systems theory, bureaucratic survival and effectiveness depend on external legitimacy. As a result, the environments in which they exist influence bureaucracies, and, they seek to manipulate those environments (Thompson 1967; Meier 1993). Lastly, this study controls for several local situational factors that may influence the exercise of inspector discretion.

Essentially, two sets of hypotheses are central to the research. One concerns the role of internal influences (e.g., job satisfaction, experience, agency resources) in shaping the use of discretion by street-level bureaucrats. The second concerns the role of external or environmental factors (e.g., political pressure, corruption) in affecting the behavior of line-level personnel.

There is considerable evidence to suggest that individual street-level bureaucrats vary in how they carry out rules and procedures. It has been suggested that administrators may fail to implement that agency’s rules because they do not know about them (Prottas 1979; Brehm and Hamilton 1996). When confronted with significant time constraints and an excess of rules and procedures, bureaucrats also tend to pick and choose among the rules of an agency (Lipsky 1980, 1984). For all these reasons, it seems likely that inspectors will vary considerably in their adherence to agency policies.

The analysis of inspector discretion focuses on three broad-based assumptions:

(1) inspectors will differ greatly in the exercise of discretion; (2) both internal and external factors will play an integral role in the exercise of inspector discretion; and, (3) internal factors will be more influential than external factors in shaping the exercise of inspector discretion.

*Internal Factors.* Internal conditions will be the most important factors in influencing the exercise of street-level discretion. The causal logic is that the choice to exercise discretion is most heavily influenced by factors that are internal to inspectors' environments. There are several internal factors that have the potential to influence inspector behavior, and each is discussed briefly below.

To begin with, standardization of inspector behavior has the potential to influence inspector behavior. Agencies have attempted to counteract local influences with numerous techniques and strategies, most of which include procedures for controlling and "pre-forming" decisions, detecting and discouraging deviation, and developing the will and capacity of field officers to conform to central guideline (Kaufman 1960). Agencies have the ability to shape implementation procedures through standardization of inspector behavior. Standardization can be achieved in a number of ways such as inspection checklists, performance reviews, and training. The analysis below addresses oversight and flexibility and the influence of each upon inspector discretion. The specific hypotheses regarding internal factors are as follows:

*H1: Inspectors employed at agencies with standardized procedures for overseeing inspector behavior will exercise less discretion.*

Also concerned with bureaucratic responsiveness to internal factors, is the idea that an agency's enforcement strategy has the ability to shape individual inspector behavior. The notion of agency flexibility is primarily concerned with what officials do once they have decided that the actions of the regulated enterprise constitute "violations." As noted by Kagan (1994), many regulatory agencies claim that they strive for an intermediate or "flexible" style of rule interpretation and enforcement: legalistic and tough in some cases, accommodative and helpful in others, depending on the reliability of the particular regulated enterprise and the seriousness of risk at hand.

*H2: Inspectors working for agencies advocating a flexible approach to enforcement will be more likely to exercise discretion in the enforcement of regulations.*

Further explaining internal factors is the idea that agency leadership will influence the exercise of inspector discretion. It is shortsighted to suppose that "external" explanatory factors (the agency's legal mission and powers, its task environment, and its political environment) completely determine agency behavior. Within this space, inspector discretion has the potential to be influenced by administrative leadership. It is possible through communication and support for top officials to have their policies translated into desired day-to-day decisions of street-level workers. This leadership has the ability to provide support, encouragement, and, possibly more importantly, technical expertise in the implementation of building codes. The particular hypotheses to be tested here is:

*H3: Strong agency leadership will limit the discretion that inspectors exercise.*

In addition to being responsive to principals, scholars studying bureaucracy also have recognized that resources play a major role in shaping administrative performance (Sabatier 1988; Barrileaux, Feiock and Crew 1992; Sigelman 1984). This is true for many bureaucracies because they tend to have inadequate resources to meet the demands placed on them. Scarcity pushes administrators and bureaucrats into a variety of strategies for conserving and rationing limited resources (Lipsky 1980). Among the limited resources of street-level inspectors are money and technical information or expertise. Resources necessary to function adequately must be provided. If an adequate budget is not provided to engage in such things as inspection and prosecution, then inspectors are forced to develop coping mechanisms to function and achieve some degree of compliance--the ultimate goal of the agency and most inspectors. Thus, inspectors with few monetary resources often are not able to implement the policies by the book as intended. Instead, they exercise discretion in their daily functions. Or, the inspectors may choose to shirk, engaging in yet another form of discretion. The underlying hypotheses are as follows:

*H4: As budget adequacy increases, the likelihood of inspectors exercising discretion will decrease*

*H5: As technical expertise of agencies increases, the likelihood of inspectors exercising discretion will decrease.*

Moreover, it is possible that several personal factors internal to the inspector's environment, factors such as job satisfaction and experience, have the potential to

influence inspector behavior. Research on employee attitudes toward their work organizations has yielded a variety of labels (Romzek and Hendricks 1982). In particular, the concepts of satisfaction, commitment, and involvement are widely used. Job satisfaction provides organizations with employees who are committed to agency objectives. Romzek and Hendricks (1982) have found that satisfied employees are likely to be loyal to the organization and to be conscious of the organizations' expectations for involvement. Thus it is expected that:

*H6: Job satisfaction will limit the amount of discretion that inspectors exercise.*

Gormley (1996) also has written extensively on the prospect for experience to affect inspector attitudes and behavior. It has been suggested that more recently hired staff members may be more inclined to go by the book (exercise less discretion) either to impress their superiors or because they do not trust their own judgment. Furthermore, Hedge (1988) in a study of mine safety regulation found, that more experienced inspectors wrote fewer tickets (or notices of violation), suggesting that more experienced inspectors practice a more flexible approach. The expectation here is:

*H7: Inspector experience will increase the amount of discretion that inspectors exercise.*

Political pressure has the ability to shape inspector behavior because regulation is a political process. Kagan (1994, 399) notes that "regulation often reflects the views of the winners in a political debate over how stringent an agency's legal mission

should be stated, the powers it will have, the discretion administrators will be granted.” Policy implementation often reflects the political environments in which bureaucracies operate (Downs 1967). External political institutions create bureaucracies and retain control over the terms and duration of a bureaucracy’s existence (Meier 1993). Partly because of this dependency, formal political principals tend to exert some influence on the behavior of bureaucrats (Barrileaux and Miller 1988; Wood and Waterman 1994; Ringquist 1995; Scholz and Wei 1986). The assumption is:

*H8: When local elected officials become involved in inspector decisions regarding enforcement decisions those inspectors will adopt a more legalistic style, exercising less discretion.*

In addition to political pressure, inspectors have the potential to be influenced by incidences of scandal or corruption. Kagan (1994) has suggested that scandals or corruption have the ability to influence inspector behavior. Political leaders often respond by holding hearings, replacing agency heads, and calling for new, more rigorously enforced regulations. A recent scandal is a reasonably good predictor of a more zealous, legalistic enforcement style, at least for a while. Scandals, including revelations of unpublished violations or regulatory incompetence, can have the same effect (Bardach and Kagan, 1982: ch.7). The underlying assumption is as follows:

*H9: Building departments that have experienced incidents of corruption or scandal recently will restrict the discretionary powers of inspectors.*



*External Factors.* External factors will shape the exercise of inspector discretion, but, these factors will not exert the same level of influence as internal factors. Following the line of argument developed by Kagan (1994), the logic is that the environment often sends mixed or conflicting signals, giving agency administrators several degrees of freedom (Kagan 1994). Given this lack of unification, it is unlikely that these factors will have the same effect that internal factors do in shaping inspector behavior.

Interest groups also exert influence on inspector behavior. There is considerable evidence to suggest that citizens and citizens' groups have been able to shape the behavior of a wide variety of administrative agencies with regulatory responsibilities (Rosener 1982; Godschalk and Stiftel 1981; Rosenbaum 1983). Previous research (primarily concerned with rail and air transportation) resulted in the formulation of "capture theory." According to Kagan (1994) the idea was that repeated contact with representatives of a single industry, one intensely interested in regulatory policy and appointments, would draw regulatory officials toward an "industry orientation" by which their view of the public interest coincided with that of the dominant firms in the regulated industry. A basic feature of those industry-stabilizing regulatory programs was that politically unorganized consumer interests rarely exerted pressure on the agency, counteracting industry influence.

Some scholars argue that capture theory has collapsed as a general proposition (Quirk, 1981; Wilson, 1980). Even in economic regulation, increasing political participation by representatives of consumer groups often has pressured agencies to

enact stringent policies, overriding industry objectives (Anderson, 1981). According to Kagan (1994), in many protective regulatory programs, organizations advocating stringent regulation actively monitor compliance and participate in rule-making and enforcement proceedings. In addition, Wilson (1989) has found that interest groups often influence the selection of agency personnel. The underlying assumption is:

*H10: When interest group advocacy for strong enforcement of building code provisions is exerted on street-level inspectors they will be less likely to exercise discretion when dealing with the regulated industry.*

Furthermore, local situational factors have the ability to influence inspector actions. Essentially, the variables population and construction of new homes are being used as proxies for economic conditions and for the capacity of cities and counties to adopt and implement building codes. As previous studies have indicated, measures of growth can serve as a good indicator of the degree of professionalization of staff for which larger cities have more specialized functions (May and Burby 1994; May and Feeley 1994). According to May and Feeley (1999), growth can have counter-acting effects. On the one hand, increased growth creates a demand for regulatory controls, and it provides resources because building departments are typically funded from fees for building permits. On the other hand, the resources often do not keep up with the demand thereby straining agency capacity to implement regulations. The expectations are:

*H11: As population density increases, the amount of inspector discretion will decrease.*

*H12: As new home construction increases, the amount of inspector discretion will decrease.*

Now, I turn to the second primary focus of this research, regulatory compliance.

*Regulatory Compliance.* Essentially all regulatory agencies are faced with the fundamental tasks of monitoring regulations and pursuing compliance. There are several reasons to examine regulatory compliance, with the primary reason being that shortfalls in regulatory enforcement are often cited as obstacles in preventing illness, loss of life, and even loss of property in natural disasters. As noted by Burby (1998), it is often assumed that once regulations are enacted, they are largely followed. That presumption, however, turns out to be unwarranted. Due to lack of attention, gaps in compliance go largely unnoticed even by professionals. Moreover, there continues to be much disagreement among public policy scholars about what should be done to rectify this situation and to improve enforcement programs. Viable solutions for how to enhance compliance have been few and far between for regulatory officials as well as for regulatory scholars. In this study, references to compliance are concerned with industry adherence to regulations. This study is operating under the assumption that compliance can be conceptualized as a matter of degree rather than a simple distinction between compliance and non-compliance (Coombs 1980; DiMento 1986; Kagan 1994). What follows are several hypotheses related to regulatory compliance.

Like Burby (1998), to examine the implications of the choices that planning and other administrators face in crafting enforcement programs, data were gathered on enforcement and compliance with building codes from a national sample of city and county code enforcement officials. For each jurisdiction in the sample, measures of the overall degree of compliance were developed. Furthermore, information also was

obtained about the code enforcement agency's capacity to detect and correct violations and about its actions taken to foster voluntary compliance.

Much like the theoretical underpinnings guiding the examination of discretion, this research also is informed by two schools of thought regarding the factors that shape regulatory compliance. The first places heavy emphasis on the internal characteristics (e.g., enforcement approaches) of agencies and their potential to affect regulatory compliance. The second focuses on those things that are external (e.g., politics) to an agency's environment and on the potential of these factors to influence regulatory compliance.

The analysis of regulatory compliance focuses on three broad-based assumptions: (1) there will be great variance in the levels of compliance from jurisdiction to jurisdiction; (2) both internal and external factors will play an integral role in regulatory compliance; and, (3) internal factors will be more influential than external factors in exerting pressure to comply with regulations.

*Enforcement Styles.* The extant literature dealing with industry compliance has focused on the variance of regulatory enforcement styles (Kagan 1994; Burby 1994; May and Burby 1998; May and Winter 1999) and their ability to achieve industry compliance. Over time a number of qualitative distinctions have been made concerning different aspects of regulatory enforcement. The dominant distinction has been between what is labeled as by-the-book enforcement entailing a legalistic approach and what is labeled as cooperative enforcement involving a flexible approach (for various descriptions, see Ayres and Braithwaite 1992; Bardach and

Kagan 1982). For purposes of this study, I distinguish the behavior of inspectors from the choices of regulatory agencies. The behavior of inspectors is considered an enforcement style, and the agency-level choices are considered an overall enforcement strategy. In concert, these various strategies seek to bring about compliance with regulations.

Enforcement style has been discussed infinitum in the regulatory enforcement literature. To be sure, regulatory agencies also make choices that are important components of regulatory enforcement. There is a lot of disagreement over the most appropriate choices for fostering compliance by regulated entities. One camp argues for the close monitoring of compliance, for uniform and strict application of code and permit requirements, and for the use of sanctions such as stop work orders and fines to deter violations. The second group of scholars argues for relaxing requirements when the goals of regulations will not be compromised and for using this and other incentives to foster good working relationships with firms which will then comply in order to maintain favorable treatment by enforcement personnel. Both sides have presented viable arguments for both approaches. However, there has been little empirical evidence to tilt the balance in favor of one approach over the other in enhancing the commitment of regulated entities to comply. The data allow me to test the viability of a number of agency enforcement approaches in bringing about regulatory compliance.

*H13: Flexible enforcement approaches will increase levels of compliance.*

*H14: Enforcement approaches emphasizing incentives will enhance the effectiveness of enforcement.*

*H15: Agencies promoting standardized fieldwork approaches to enforcement will promote greater regulatory compliance.*

*H16: Coercive enforcement approaches will not be effective in enhancing compliance from regulated entities.*

*Discretion/Cohesion.* In addition to enforcement styles this study also examines the role of inspector discretion and cohesion. In this study enforcement style is simply the degree of discretion that inspectors exercise in their day-to-day interactions with the regulated industry. This is a simplistic, yet unfettered, conceptualization of style.

Much of the literature dealing with policy congruence (agreement of agencies and inspectors on objectives to be pursued) and with the need for cohesion to achieve industry compliance has been case study in nature (Miller 1992; Bianco and Bates 1989). Is policy congruence important for achieving industry compliance or are agency enforcement approaches, capacity for enforced compliance, and environmental variables or situational factors more important in obtaining industry compliance? This question also has important theoretical and practical implications, but little systematic evidence exists to confirm the fact that policy congruence is important in obtaining industry compliance. Intuitively, it makes sense that congruence would be important for compliance, but it has not been tested empirically. It is possible that congruence varies with the ability level of inspectors. If inspectors are not skilled, congruence may be important; however, if inspectors are skilled, the use of discretion may produce better outcomes since rules cannot be applied to all situations.

Several practical concerns are also to be addressed here. If policy congruence is not important for obtaining industry compliance, then there is little reason for

building departments/agencies to limit the discretion of their inspectors. It is posited that this should be viewed as an optimistic expectation. Since discretion is inherent in the job of most street-level bureaucrats, it would indicate that the exercise of discretion has not hindered industry compliance with regulatory rules. Furthermore, this finding would confirm previous research findings that enforcement styles and environmental variables are more important in explaining industry compliance, and it can lead to some systematic evidence concerning the study of regulatory policy. Conversely, if policy congruence is important for obtaining compliance from the regulated industry, then there is reason for agencies to pursue congruence from the inspectors they employ. This is not to say that the exercise of inspector discretion guarantees noncompliance from the regulated industry. To the contrary, several regulatory theorists have posited that cooperative enforcement that requires inspectors to exercise discretion will lead to more compliance (Scholz 1994; Kagan 1994). Under this scenario, agency policy emphasizes use of discretion by inspectors, thus allowing inspectors to be flexible while at the same time maintaining congruence with agency directives.

*H17: Inspectors exercising greater degrees of discretion will be more effective in achieving regulatory compliance.*

*Agency Capacity.* Agency capacity (e.g., budgets) for enforced compliance refers to the resources that are devoted to dealing with regulatory compliance. One means of assessing capacity is the financial resources of a government unit. Indeed, high government spending has been shown to reduce levels of water pollution

(Ringquist 1993) and other environmental problems at the state level (Lester and Lombard 1990). This analysis provides an opportunity to test several types of agency resources and their effects on regulatory compliance.

*H18: Agencies possessing greater levels of resources will attain higher levels of regulatory compliance.*

While it may seem that Hypothesis 17 is inconsistent with Hypotheses 4 and 18, it is not the case. The purpose here is to provide more insight into various approaches that foster regulatory compliance by testing two competing theories regarding the most effective means for obtaining compliance from regulated industries. The hypotheses are both stated in positive terms given that scholars on both sides of the debate have provided evidence supporting their various contentions regarding methods for achieving compliance.

*Environmental Variables.* In examining compliance, I control statistically for several situational factors that can affect the efficacy of local enforcement efforts. As with Burby (1998), it has been suggested that local situational factors can be critical for compliance with regulations. Particularly, this study controls for the political environment of the local government within which enforcement decisions are made, the degree of corruption, and the size and rate of growth of the community. It has been suggested that enforcement decisions that are highly political send mixed signals to the regulated. This, in combination with smaller and slower growing communities, fosters a political climate that is likely to resist strong enforcement (Burby , 1998).

*H19: Those areas with greater interest group involvement will have higher level of compliance.*



*H20: Those areas with a more politicized task environment will have lower degrees of compliance.*

*H21: Those areas with slower growth and smaller populations will experience lower degrees of compliance.*

The preceding discussion has served to highlight scholarly thinking and past empirical research on inspector discretion in enforcing industry compliance with regulatory policies. In addition, it has cast some light on many of the normative disputes regarding the role of inspector discretion in implementation and in the most effective means for obtaining regulatory compliance. It is important to examine this past scholarly thinking to inform our theories and expectations regarding the potential factors that influence inspector discretion and industry compliance. The following chapter will further refine the arguments for the expected relationships between the various factors and give detailed information about the data sources and measurement of the various concepts.

### **Data and Sample Origin**

To examine the implementation of building codes, I utilize data on enforcement of and compliance with building codes from two national surveys. The survey data for this dissertation are the product of two complimentary mail surveys conducted during the summers of 1995 and 1996 respectively. The first conducted by Burby, May and Patterson (1998), surveyed local building officials throughout the United States for their opinions and practices toward code enforcement issues in their jurisdictions and the degrees of compliance they believed they obtained from regulated entities. The first survey of local building code administration is a national sample of local building departments and county code enforcement officials. The first sample frame was

constructed by the National Conference of States and Building Codes (1992) for a study conducted for the Federal Emergency Management Agency. It consisted of 1,350 local governments selected in a complex, multistage sampling procedure weighted on the basis of population and seismic risk. By eliminating the over-sample of earthquake-prone areas, the size of the sample frame was reduced to 990 cities and counties. The sample frame was updated in the spring of 1995 through a telephone survey conducted to obtain the names of local officials responsible for building code enforcement and their correct mailing addresses. The national survey consisted of an initial mailing and three follow-up mailings during the summer of 1995. Responses were obtained from 819 governments (an 83 percent response rate). The resulting data provide a highly accurate, nationally representative picture of code enforcement in local governments.

The results of this survey provide the sample frame for a second data collection effort by Jose Cabral, a research fellow at the University of New Orleans, in the following year. From the 819 responses, weighted to be representative of building departments nationally, 200 were selected randomly and asked to participate in a second survey. Of these, 121 responded positively to the request. Building inspectors in each of the cities were surveyed for the specifics of everyday inspection practices as well as more general questions about their attitudes toward code enforcement. The construction of the second sample frame began in the Fall of 1994 with the objective of observing the enforcement strategy applied in the field by inspectors for purposes of categorization of and gathering the opinions of inspectors and administrators about the

factors that affect enforcement strategies. To this end, participant observation, specifically the technique of “the complete observer,” and open-ended, face-to-face interviews were conducted with building inspectors and administrators.

After the interviews the sample population was chosen. The study population is composed of building inspectors in the United States. The selection of the sample presented a challenge given the large number of building departments in the United States (about 40,000 local jurisdictions) and the potential number of inspectors that would conform to the sampling frame. The sample frame was chosen from the original 819 local building departments discussed above. Two hundred jurisdictions were randomly selected from the database, and officials from each of these departments were contacted concerning the willingness to administer the survey to inspectors in their respective departments. Of the 200 departments contacted through three separate mailings, 121 responded positively. Sixty nine building departments participated in the survey (for a response rate of 57%). A total of 287 inspectors participated in the survey.

### **Methodology and Measurement**

To test my hypotheses, and focus on the building agency as the unit of analysis, inspector data were averaged to come up with agency inspector variable scores. I utilize Ordinary Least Squares Regression (OLS) models of inspector discretion in the implementation of building codes and contractor compliance with building codes in the United States for 1995. I use the models to explain variation in the exercise of inspector discretion and industry compliance with building codes.

Moreover, OLS allows me to empirically examine factors that influence discretion, going much further than the traditional normative practice of discussing the positives and negatives of exercising discretion. This analysis has the potential to give more than just a cursory view of the behaviors in which street-level bureaucrats engage. Furthermore, the initial analysis contributes directly to the subsequent analysis of industry compliance. The measurement and analysis of discretion will provide an empirical answer to the oft-asked normative question: Is discretion good or bad? By including discretion in a statistical model that examines compliance with the building code, I am also able to arrive at a more reliable answer to the discretion question that is often the topic of normative discussions regarding bureaucratic behavior.

In what follows, is a detailed discussion of the variables that comprise the two models. While some of the variables are the same in the two models, they will be listed twice for purposes of clarification.

### **Dependent Variable-Model 1: Discretion**

Inspector discretion is composed of a 7-item scale regarding inspector's actions in differing field enforcement situations, with higher scores on the scale indicating greater use of discretion. The items are concerned with whether inspectors range from strongly disagreeing to strongly agreeing with various statements regarding the use of discretion in field enforcement situations. This seven-item additive scale has a Cronbach's alpha of .79 (see Appendix A for all descriptive statistics regarding this measure of discretion and all subsequent variables employed in each of the models), indicating the robust reliability of this measure.

However, it is not only the statistical reliability of this scale that gives one confidence that the concept of discretion is properly measured. The questions in the survey cover a variety of real enforcement situations in which the inspector has the choice to exercise or refrain from using discretion. For example, inspectors are asked to respond to the following: “The provisions of the Building Code are too complex and numerous; as a result I enforce mainly those that I consider are most effective in protecting life safety” (see Appendix B for exact question wording regarding all items in the additive scale and all other variables employed in both models). Given the above question, it is quite obvious that this battery of questions properly measures the concept of discretion. In addition, these questions fit well with how the concept of discretion has been defined in various texts as were noted earlier in Chapter 2. These questions do measure whether inspectors have “the power of free decision or latitude of choice.” In addition, these questions measure whether street-level bureaucrats “adapt to local situations.”

### **Independent Variables-Model 1**

*Standardization of Inspector Behavior.* This independent variable is measured with an eight-item additive scale. The Cronbach’s alpha for the scale is .66. Higher scores on the additive scale indicate greater standardization of inspector behavior. The various items consist of things such as the use of inspection checklists and forms, and annual performance evaluations.

*Agency Leadership.* Essentially this variable is measuring inspectors’ perception of a particular agency’s leadership capabilities. Like the two previous independent

variables, this measure also is an additive scale, and it is composed of twelve items that result in a Cronbach's alpha of .88. Higher scores on this scale indicate stronger/better leadership from an agency.

*Bureaucratic Resources.* Two measures of bureaucratic resources or capacity are utilized here. The first concerns the perceived **level of technical expertise** of building agencies. This measure ranges from 1 to 5 with a score of 1 indicating low levels of technical expertise and a score of 5 indicating high levels of technical expertise. The second measure of bureaucratic resources concerns the perceived **adequacy of the budget** for the Building Department to perform its mission. Like the first measure of bureaucratic resources, the adequacy of the budget is also measured on a 5-point scale with a score of 1 indicating an inadequate budget and a score of 5 indicating an adequate budget.

*Job Satisfaction.* The concept of job satisfaction is measured with a 10-point scale. On this 10 point scale inspectors are asked to rate their satisfaction with their job on a scale of 1 to 10 with 1 indicating low satisfaction and 10 indicating high satisfaction.

*Inspector Experience.* Like job satisfaction, inspector experience consists of one question. Inspectors are simply asked to indicate the year in which they began working for the Building Department. This is then subtracted from the year 1995 to indicate the number of years of experience for an inspector with higher scores indicating more experience.

*Enforcement Approaches.* Several enforcement approaches reported by building agencies are examined in the model. The first, **use of flexible enforcement tools**, such as being able to relax standards based on extenuating circumstances, is composed of a six-item additive scale. Each item in the scale is concerned with the degree of discretion that the particular agency allows inspectors to exercise in differing enforcement situations. The Cronbach's alpha for the scale is .60. Higher scores on the scale indicate greater allowances of agency flexibility for inspectors.

The fourth measure of agency approaches to enforcement also is an additive scale. The 3-item scale measures the **use of fines over the last 12 months**. The Cronbach's alpha for the scale is .64.

*Politicization.* This independent variable from the first mail survey of 819 jurisdictions is concerned with how often local elected officials become involved in Building Department decisions on building code cases. The responses to this question may vary from 1 to 5 with 1 indicating elected officials never becoming involved and 5 indicating the elected officials often become involved.

*Interest Group Pressure.* This measure of political pressure is essentially an index of interest group advocacy regarding code enforcement. The theoretical range of this variable is 0 to 12 with higher scores indicating greater advocacy for stronger code enforcement in this particular jurisdiction.

*Scandal/Corruption.* This independent variable is concerned with incidences of corruption in the process of code enforcement during the past ten years. The

responses to this question range from 0 to 1 with 0 indicating no incidences of corruption and 1 indicating at least one and incident of corruption.

*Population Density.* This control variable is simply measured as resident population in thousands by state in 1995 with higher numbers indicating more dense populations.

*Construction of New Homes.* This measure of growth is derived by calculating the percentage of housing units built during the previous ten-year period with higher scores indicating greater residential growth.

### **Dependent Variable-Model 2: Compliance**

The second dependent variable examined is industry compliance with the building code. This variable is a measure of departmental evaluations of the effectiveness of the building code enforcement program. The effectiveness of the program ranges from 1 to 10 with lower scores indicating lower degrees of compliance from the regulated industry and higher scores indicating higher levels of compliance from the regulated entity. While it may seem troublesome to some to allow bureaucrats to evaluate themselves, the opposite has proven true; bureaucrats have not engaged in exaggerated self-assessments. Inspectors in such programs as sedimentation control in North Carolina have proved to be quite objective and accurate in their self-assessments.

### **Independent Variables-Model 2**

*Enforcement Approaches.* Several enforcement approaches are examined in the model. The first, **use of flexible enforcement tools** such as being able to relax



standards based on extenuating circumstances is composed of a six-item additive scale. Each item in the scale is concerned with the degree of discretion that the particular agency allows inspectors to exercise in different enforcement situations. The Cronbach's alpha for the scale is .60. Higher scores on the scale indicate greater allowances of agency flexibility for inspectors.

The second, **use of various incentives to attain compliance**, is a six-item additive scale composed of such items as less frequent inspections. The Cronbach's alpha for the scale is .50 with higher scores on the scale indicating greater utilization of incentives to attain compliance.

The fourth measure of agency approaches to enforcement also is an additive scale. The 3-item scale measures the **use of fines over the last 12 months**. The Cronbach's alpha for the scale is .64.

The fifth measure of enforcement approaches is concerned with the **use of standard deterrent enforcement tools**. The 13-item scale is composed of such items as revocation of building permits. The Cronbach's alpha for this additive scale is .76.

The final measure of enforcement approaches taps the concept of **the degree of standardization and supervision of the work of field inspectors**. This 9-item additive scale is comprised of such items as inspection checklists and forms. The Cronbach's alpha for the scale is .68.

*Discretion.* My measure of inspector discretion is composed of a 7-item scale (and it is the same measure employed as the dependent variable in the previous model) regarding inspector's actions in differing field enforcement situations, with higher

scores on the scale indicating greater use of discretion. The items are concerned with whether inspectors range from strongly disagreeing to strongly agreeing with various statements regarding the use of discretion in field enforcement situations. This seven-item additive scale has a Cronbach's alpha of .79

*Agency Capacity.* The measure of perceived agency capacity is a 4-item scale composed of such items as the adequacy of staffing. The additive scale has a Cronbach's alpha of .70.

*Politicization.* This independent variable is concerned with how often local elected officials become involved in Building Department decisions on building code cases. The responses to this question may vary from 1 to 5 with 1 indicating elected officials never becoming involved and 5 indicating the elected officials often become involved.

*Interest Group Pressure.* This measure of political pressure is an index of interest group advocacy regarding code enforcement. The theoretical range of this variable is 0 to 12 with higher scores indicating greater advocacy for stronger code enforcement in this particular jurisdiction.

*Scandal/Corruption.* This independent variable is concerned with incidences of corruption in the process of code enforcement during the past ten years. The responses to this question range from 0 to 1 with 0 indicating no incidences of corruption and 1 indicating at least one incident of corruption.

*Population Density.* This control variable is simply measured as resident population in thousands by state in 1995 with higher numbers indicating more dense populations.

*Construction of New Homes.* This measure of growth is derived by calculating the percentage of housing units built during the previous ten-year period with higher scores indicating greater residential growth.

In the preceding discussion, I have outlined the variables used in both models. Both of the models will be tested in the following two chapters. Multivariate findings will be presented and a discussion of the findings from Model 1 will be offered in Chapter 4 and a presentation and discussion of the findings from Model 2 will be offered in Chapter 5.

#### **Chapter 4: Inspector Discretion**

The delegation of broad, policy making powers to regulatory inspectors has become one of the more important and interesting developments of contemporary American government. The power has been given to these regulatory inspectors in the optimistic expectation that government will be able to accomplish an increasingly wide range of public purposes. Some of the policies are pursued under broad statutory statements of general purpose that offer little more guidance than to serve the “public interest,” while other statutes give specific, detailed instructions to administrative agencies (Bryner 1987).

Regulatory programs concerned with safety regulation in particular, have been based on extremely ambitious goals to prevent harm and to bring under government monitoring to virtually all commercial and industrial activity. These statutes promise dramatic improvement and even absolute achievement in reducing risks while providing little guidance about how the costs are to be distributed and how competing policy goals are to be achieved. Regulatory power that was in the past usually limited to identifying prohibited practices in selected industries has mushroomed to include planning and directing industrial and commercial behavior and practices. In nearly every case, the scope of agency responsibility and authority greatly exceeded the resources provided. Congress regularly provides only a fraction of the resources

needed to accomplish the regulatory tasks delegated to regulatory agencies. As a result, administrative agencies, and thus regulatory inspectors, are given little guidance in their enabling statutes concerning how they should shape the regulatory agenda of setting priorities, allocating scarce resources, and distributing the costs and benefits involved in the rules issued regulations (Lipsky 1971, 1977, 1980; Bryner 1997; Kiewiet and McCubbins 1991).

Some discretion, of course, is inevitable as laws cannot possibly anticipate the myriad of situations and circumstances that inspectors confront. Bureaucratic discretion is viewed as appropriate and even essential to assure that policies are developed by experts and that scientific expertise and technical calculations determine health and safety regulations. And, while administrative discretion is common to all bureaucracies, it is seen as a problem by many (Lowi 1979; Wilson 1967). The way in which regulatory agencies have exercised the discretion given them has evoked widespread criticism by those who champion more regulatory protection and by those who oppose government intervention.

While there is no clear consensus concerning the exercise of discretion, much activity has been directed toward ways of limiting the discretion of regulatory inspectors. A number of important devices were developed in response to these and other criticisms of regulatory agencies devices, ranging from changes in standard operating procedures within agencies to increased external scrutiny of administrative decision making. For all agencies, however, the major focus of attention has been on limiting discretion through procedural mechanisms and devices.

While much energy has been expended to invent ways to limit discretion, very little time has been spent discovering why inspectors exercise discretion. Even though scholars have done an excellent job of cataloging numerous instances of the exercise of inspector discretion, most have been concerned with whether the exercise of discretion constituted “good” or “bad” behavior. In this chapter I add to the previous research in important ways. As noted earlier, I steer away from the normative question about the good or bad nature of bureaucratic discretion. Instead, I focus first upon the circumstances under which street level bureaucrats exercise discretion. Included is why do some bureaucrats exercise discretion and others do not? Second, I utilize data from a national survey of building departments and inspectors. Thus, the scope of the study is greater than the traditional examination of one limited set of inspectors (e.g., meat inspectors from one USDA office) or simply a case study that relies upon anecdotal evidence of inspector discretion. Lastly, this study examines an oft-overlooked group of regulatory inspectors that are vital to the health and well-being of nearly all citizens. By engaging in this type of research, I am able to comment more comprehensively on why inspectors exercise discretion and why they do not.

Measuring the concept of discretion is a slippery task. If inspectors were simply asked if they exercised discretion, one would probably get a range of answers covering the spectrum from “yes” to “no” to “it depends on the situation.” None of them convey much information. The dichotomy of yes or no does not evoke a rich set of responses. However, if inspectors were allowed to comment in an open-ended format,

they would surely run the gamut of responses that would also only apply to individual situations. What is needed is a set of questions that judges the attitudes of inspectors toward the use of discretion in differing field enforcement situations. Until recently, such data were scarce. As noted earlier, most studies relied upon observations of inspectors in their jobs, and they concluded either inspectors were or were not exercising discretion.

More recently richer data have become available. A national survey of building departments and inspectors was conducted by the University of New Orleans with the benefit of an NSF grant. This survey asked a random sample of building officials a set of questions (see Appendix B for exact question wording) about the use of discretion in a variety of real enforcement situations. While these questions do not ask directly whether respondents actually have exercised discretion in these situations, they certainly imply that they do. As noted in Chapter 3, this battery of questions meshes well with numerous scholars' measures of discretion. These questions give insight into whether inspectors have "the power of free decision or latitude of choice." In addition, these questions measure whether street-level bureaucrats "adapt to local situations".

The mail surveys and participant observation took place from 1994 to 1995. The mail survey was returned by 819 governments (83% response rate), providing a highly accurate, nationally representative picture of code enforcement in local governments. The follow up mail survey was based on the original survey of 819 governments. Two hundred jurisdictions were chosen from the original 819 for inclusion in the second

sample. Of the 200 departments contacted, 69 building departments participated in the survey for a response rate of 34.5 percent. In the data for this study, inspector's responses were matched with their agency responses. This technique allows me to compare results for supervisors and line workers in perceptions of actions and discretion.

### **Factors Influencing Discretion**

Much has changed since Lipsky (1980) published his influential work on street (or lower) level bureaucrats. The environment in which bureaucratic discretion is exercised and evaluated has changed considerably (Scholz and Wei 1986; Keiser and Soss 1998; Brehm and Gates 1997; Burby and May 1998; Burby et al., 1986; Vinzant and Crothers 1999). A product of these changes has been the increased scope and range, due to greater complexity, of street level discretion. Bureaucrats face an ever increasing array of pressures. The pressure to perform comes from numerous places, including organizational and managerial objectives: Others are political. Some are based on changing public and community expectations. Still others arise from the changing nature of the problems street-level workers confront. I now turn to a synopsis of the various themes upon which this chapter are based, including the following: (1) inspectors will vary greatly in the exercise of discretion, (2) various factors will play an integral role in the exercise of inspector discretion, and (3) internal factors will be more influential than external factors in shaping the exercise of inspector discretion.



When internal and external factors that influence implementation and impact are discussed, the internal is typically in reference to such things as the internal structures and policies of agencies and government (e.g., standardization of employee behavior) and the external refers to things external to the general environment of government (e.g., interest group pressure). The specific internal factors of interest here are: standardization of inspector behavior, agency leadership, agency technical expertise, agency budgets, inspector job satisfaction, inspector experience, use of flexible enforcement tools, use of deterrent enforcement tools, elected official involvement in agency decisions, and incidents of corruption or scandal. The specific external factors to be examined here are: interest group support for agency enforcement and variables related to growth, including population increases and new home construction.

*Internal Factors.* As noted earlier in this research, scholars have argued that the use of bureaucratic discretion is driven by the internal characteristics of the bureaucracy (Ripley 1995). In numerous social science studies, the political attitudes and personal characteristics of regulatory officials appear to play no independent explanatory role; the agency's internal ethos, it is assumed, is shaped by the legal, social and political winds that buffet the agency (Kagan 1994). Dispersed throughout the case study literature (Lipsky 1980; Ackerman et al., 1973; Ackerman and Hassler 1981; Church and Nakamura 1993; Braithwaite 1985; Hedge et. al., 1988), however, are signs that agency officials at all levels frequently have minds (and interests) of their own and that intra-agency commitment and competence (or lack thereof) significantly affect regulatory enforcement style. Agency officials sometimes resist political and

economic pressures, or they actively seek to influence their environment. In short, regulatory behavior can be affected by variations in leadership and its effect on “agency culture.”

A potential set of internal factors—the agency’s social and economic task environment, elected official involvement in agency decisions, and its internal leadership—can simultaneously influence inspector behavior. The intellectual exercise is to analyze the relative weight of each of these conditions under varying circumstances.

There is a broad based assumption (Kagan 1978; Hutter 1988; Feinstein 1989; Mashaw and Harfst 1991) that regulatory enforcement officials strive to maximize social impact as they see it, striking an intelligent balance between regulatory control and economic efficiency, between precaution and innovation. They seek to accomplish those goals through cooperation whenever possible, but they also seek to accomplish that through coercion when necessary, adapting their actions to the risks and compliance costs presented by the case at hand and to the character of the regulated enterprises with which they deal. Agencies respond to the interactions between the law’s abstract demands and the concrete features of each agency’s environment.

*Standardization of inspector fieldwork.* Scholz’s (1994) research showing the limitations in using standard routines and forms to control discretion are well known. Just as regulations can seldom specify the exact behavior desired of regulated firms, so also can organizational rules and forms seldom capture the exact behavior desired of

inspectors and their supervisors. Subordinates unable or unwilling to use discretion to enhance persuasion cannot be forced to do so with rules and forms, and they can use rules to reduce the ability of supervisors to control their behavior. Adequate rules and forms can facilitate, but not necessarily force, the use of effective enforcement techniques. To reiterate, standardization of fieldwork is an 8-item additive scale composed of such things as the use of inspection checklists and forms. Higher scores on the scale indicate greater standardization of work.

Communication and computer technology have increased the information available to monitor and detect deviations considerably from normal patterns of field office and even individual officer behavior. With current technologies, monitoring techniques can be developed to provide considerably greater flexibility to inspectors and field office supervisors. Previous systems were limited to comparing the average performance of a given inspector or field office with performances of comparable inspectors and offices. Deviations from standard performance would be most visible, and require justification that would not be evident in the data.

However, the primary force for shaping the enforcement culture of the inspector must come from the constant interaction involved in supervision and in office routines overseen by supervisors (Scholz 1994). It was noted long ago that agencies with some sort of standardized routines for inspectors who spend much of their time in the field provide the much needed psychological support required (Blau 1963). Specifically, this research will test the possibility that the appropriate use of discretion can be

fostered through such mechanisms as training programs, the pairing of junior and senior inspectors, and the regular review of inspectors' actions.

*Enforcement approaches.* As has been discussed throughout this research, the realities of any regulation are provided by the day-to-day interaction of inspectors with regulated entities. Inspectors communicate the meaning of a given regulation, and they exercise discretion in deciding how to deal with a particular violation of rules. Given these critical roles, an important management challenge is to foster a desired enforcement style among inspectors. What constitutes the best enforcement style has been a matter of debate in the regulatory literature (May and Winter 1999). Inspectors who are too informal and unwilling to invoke threats are likely to be ineffective unless there already is a high degree of willingness to comply. They simply will not be taken seriously. Inspectors who are too rigid and bullying will be off-putting. If regulatees think inspector threats will not be backed by the relevant legal system, legalistic regulators will not accomplish their purpose.

As part of instilling the desired enforcement style, regulatory officials are trying to balance the desire for discretion so that inspectors use appropriate judgments with the need for consistency in the application of rules. Of theoretical import here is whether a culture and commitment by an agency to a specific enforcement approach can foster that same enforcement style among that particular agency's inspectors. Specifically, two enforcement approaches are examined. The first deals with flexible approaches to enforcement (e.g., relaxing standards based on extenuating circumstances). Higher scores on this six-item additive scale indicate greater

flexibility. The second approach involves a deterrent approach to enforcement (e.g., the use of fines). Higher scores on this 3-item scale indicate the greater use of deterrent approaches to enforcement.

*Leadership.* The environment that inspectors confront often sends mixed or conflicting signals, giving agency administrators several degrees of freedom. Within this space, regulatory enforcement style can be affected by different kinds of administrative leadership. However, there have been few systematic studies of leadership in regulatory agencies. Latin (1991, 1663) suggests “Agency officials, like most human beings, prefer to avoid criticism and controversy whenever possible.” However, internal agency culture is not immutable. With varying degrees of energy and success, agency leaders attempt to control front-line officials and to inculcate a particular regulatory ethos. As in police work (Muir 1977), the most important factor in controlling discretionary enforcement may be day-to-day interactions among enforcement officials interactions with supervisors in particular. Through the discussion of “hard cases” with knowledgeable and experienced supervisors, regulators learn informal norms concerning the interpretation of regulations (Kagan 1978, Ch.6), the methods of identifying and dealing with untrustworthy enterprises, and cost-effective compliance methods to convey to regulated firms, and, most importantly, a confidence-building sense of priorities regarding discretion (Blau 1955). The intent here is to determine the amount of influence that supervisors’ exercise over their line level personnel in their daily regulatory behaviors. This

variable is a measure of inspector's perceptions of their agency leadership. Higher scores on this additive scale indicate stronger/better leadership.

*Capacity for enforcement.* A common refrain among most regulatory agencies is the need for more staff. A recognized reality among public administrators from urban street departments to rural electric cooperatives is that they cannot do everything they are supposed to do. Political authorities' priorities leave some regulatory agencies with far lower inspector-to-site ratios than others, a phenomenon which affects the frequency of inspection and hence enforcement style. In periods of retrenchment, political authorities may force regulators to change their enforcement methods even more by making across-the-board budget cuts. Smaller budgets may encourage some agencies to avoid costly legal contestation by adopting a more conciliatory style. If budget cuts and layoffs undercut morale, an agency may fade into a retreatist mode (Hull 1992). Still other researchers have suggested that if the ratio of regulators to regulated enterprises shrinks, inspectors cannot come as often and the agency might wish to compensate by adopting a more deterrence-oriented style (Kagan 1994; Wood 1998). The intent is to provide insight into the role that resources, both financial and technical, play in influencing enforcement styles. Two measures of capacity are utilized here. Both measures of capacity are perceptions of about inspector's levels of technical expertise and budget adequacy. Higher scores indicate greater capacity.

*Situational influences.* It may be true, as the legal realists said, "that rules don't decide cases. People do." Essentially, inspectors must decide which firms to

inspect and what to look for during inspections. They must apply abstract regulations to concrete situations and decide whether a violation exists and whether an existing violation is worth citing. The inspector provides a critical link in enforcement strategies because it is at this level that the agency must differentiate between cooperative firms and noncompliant ones.

Kagan (1994) has noted that inspectors need sufficient substantive knowledge not only to recognize violations but also to prove to firms they know their jobs, to assist in problem-solving, and to recognize when a firm is not cooperating. They also need skills in persuasive interactions. Enforcement agencies may do well to emulate the training that insurance companies provide for their inspectors, training which includes the utilization of discretion to persuade compliance. What is of interest is the extent to which characteristics such as experience and job satisfaction influence inspector behaviors.

*Politics.* The nature of regulations often reflect the views of the winners in a political debate over how stringently an agency's legal mission should be stated, the powers it will have, the discretion administrators will be granted (Kagan 1994; Moe 1989). These regulatory designs are shaped by many political factors, including political culture, political parties, and legal doctrines (Vogel 1986; Badaracco 1985; Kagan 1988; Katzenstein 1988).

While these influences are broad in nature, it is necessary to focus on a more limited set of political influences: those that impinge on frontline, day-to-day regulatory administration after the formulation of basic regulatory laws and

bureaucratic structures. Arguing that continuing political influences affect inspector behavior requires a shift in assumptions about regulatory behavior. There is an oft cited assumption that regulatory officials seek to maximize public welfare and that their enforcement style reflects rational adaptation to the problems generated by the regulatory law and the task environment. Explanations based on the agency's political environment, however, shift the operative assumption from that of a "welfare-maximizing agency" to a "criticism avoiding agency." (Nichols and Zeckhauser 1986).

Kagan (1994) identified several assumptions underlying this paradigmatic shift. They are as follows: (1) with varying degrees of intensity, political leaders seek to affect agency behavior through the appointment of sympathetic administrators, manipulation of the news media, threats of budgetary restrictions, and appeals to the courts, (2) regulatory officials seek to avoid political trouble in order to keep their jobs and maintain their agency's powers and budget, (3) regulatory officials shape their enforcement style to avoid political trouble, adopting a legalistic style when they are most subject to criticism by political leaders or influential outsiders for real or suspected laxity, favoring a more accommodative style when those risks are not present or when they are subject to criticism for excessive strictness.

Elected public officials have little interest in most regulatory programs (Russell 1990). Nevertheless, with varying degrees of frequency and intensity, political authorities do affect some inspectors behavior: by appointing or influencing the appointment of, higher agency officials; by expanding or contracting agency resources



through the budget process; by legislative oversight hearings; and sometimes by telling agency officials how they would like particular regulatory matters of urgent political concern to be handled.

Regulatory officials usually are adept at reading the tenor of their political environment and at shaping enforcement methods accordingly (Frank and Lombness 1988; Hutter 1988). Scandals and catastrophes fall under the realm of the political environment of regulatory inspector's. Kagan (1994) noted that widely publicized catastrophes that fall within an agency's jurisdiction often trigger agency-changing political intervention. In the aftermath of a televised hotel fire, a death-dealing tunnel collapse, or a highly visible oil spill, political leaders often respond by holding hearings, replacing agency heads, and calling for new, more rigorously enforced regulations. A recent catastrophe is a reasonably good predictor of a more zealous, legalistic enforcement style, at least for a while.

A stringent regulatory program occasionally generates sustained political opposition which political leaders try to defuse (or capitalize upon, depending on whether they are in or out of power) by pushing the agency to change its enforcement policy. (For numerous examples of this phenomena see Levin 1979; Scholz 1991; Scholz et al. 1991; Singer and Murphy 1988; Noble 1986; Scholz and Wei 1986; Kniesner and Leeth 1991). Moreover, a rapid shift toward accommodative enforcement also can stimulate political opposition by advocacy groups, disgruntled regulatory officials, and opposition politicians (Russell 1990; Wood 1988; Wood and Waterman 1991). These scholars suggest that some regulatory issues have moved

toward the center of the contemporary political stage and that inspector behavior will more often become a matter of political controversy and intervention. Essentially, this is a test of the proposition that inspectors are affected by their political and task environments. Of particular interest here is the effect that elected official involvement in code decisions and incidents of corruption have on the attitudes of inspectors toward discretion. This variable is an interval level measure of local elected official involvement. Higher scores indicate greater propensity of elected official involvement.

*External Factors.* A primary theme in this discussion is the need for discretion to adopt enforcement tactics that are appropriate for given situations facing the agency. Although the basic tactics and strategies of enforcement are universal, the external environment of enforcement agencies can dramatically alter the choice and effectiveness of appropriate tactics and strategies. We now know that field office discretion arises from the generic problem of interpreting national regulations under a diversity of changing local conditions (Bardach and Kagan 1982; Diver 1980; Hawkins 1984). In addition, there is evidence to suggest that the varying local situations that inspectors confront leads to considerable variation in the way different inspectors (Feinstein 1989) and field offices (Hedge , 1988; Shover , 1984; Hutter 1988) enforce the same law, and even to variation in the way similar cases are treated in the same office (Kagan 1978). The specific external variables of interest here are pro-interest groups support for strong code enforcement and population and building growth in the various jurisdictions.

*Interest group pressure.* Among scholars, Moe (1989) has been successful in documenting interest group influence during the regulatory process. He has documented the success of business interests in opposing regulation, in weakening regulatory agencies through statutory features that divide important functions among separate and competing agencies, in limiting access to information necessary for enforcement, in imposing cumbersome administrative procedures on rule-making and enforcement procedures, and in providing multiple points at which agency decisions can be challenged. The courts also have encouraged contentious interest groups to mount challenges to agency procedures and decisions, limiting the flexibility of agencies and drastically slowing their ability to resolve issues (Kagan 1990).

However, the hypothesis to be tested here investigates pro-interest group support and its effect on discretion. Scholz (1991) was one of the first to raise the possibility that even supporters of regulatory policies have limited the ability of the agency to develop effective enforcement strategies. He pointed out that among agencies there was a concern that agency discretion would lead to capture by business interests. This in turn prompted supporters to require agencies to pursue stringent deterrence-oriented strategies while limiting discretion at the same time. Interest group pressure is measured with an index of support for strong code enforcement. Higher scores indicate greater pro-interest group support for strong code enforcement.

*Growth.* There are several ways to measure growth when considering building regulations. The two facets of growth to be considered here are population growth over a 10 year period and new home construction over a 10 year period. Following

the lead of May and Burby (1994), new home construction serves as a proxy for community resources or community capacity for addressing problems. It seems reasonable to assume that faster growing areas are more likely to be forced to deal with a plethora of development issues, including hazard-prone areas, and subsequently will be forced to invest in expertise and staff for such purposes. Population serves as a proxy for economic resources, since comparability of costs and expenditures across jurisdictions is problematic.

With growth comes an increased level of professionalization of staff for which larger cities have more specialized functions. Increasing growth and rising professionalization create demand for regulatory controls. While demand for regulatory controls increases, resources are not always allocated to meet these demands, causing gaps in implementation of regulations. The effects of growth on inspector behavior will be examined here. Specifically, I want to determine what effect growth has on the propensity of inspectors to exercise discretion.

## **Findings**

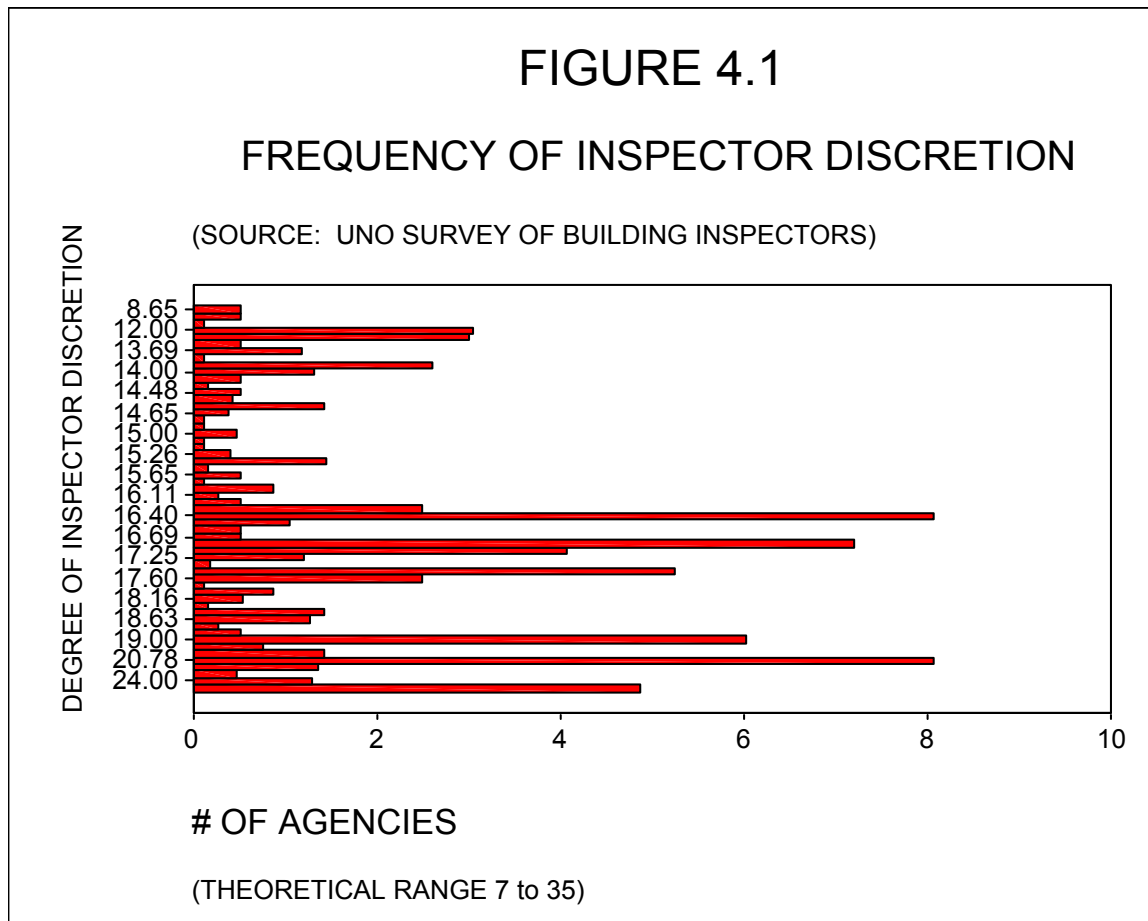
This chapter empirically addresses the exercise of inspector discretion. As noted earlier, the criterion for gauging discretion is the amount of discretion exercised by building inspectors in various (e.g., routine or difficult) enforcement situations. As noted earlier, discretion is measured with a 7-item additive scale that determines inspectors' behaviors in or utilization of discretion in differing enforcement situations. Figure 4.1 is a representation of dispersion of the frequency with which various

building departments exercise discretion and Tables 4.2, 4.3, 4.4, and 4.5 represent OLS models of the various propositions highlighted above.

The results show that the exercise of discretion varied greatly among the inspectors from each department (see Figure 4.1). The scores in the figure represent the degree to which inspectors exercise discretion and the frequency of that exercise of discretion. With a theoretical range from 7 to 35, the scores ranged from 8.65 to 27.75 on the additive scale. As noted earlier, higher scores indicate greater propensity to exercise discretion. The mean score for exercise of discretion was 18. The modal score (multiple modes existed, the smallest value is reported here) was 16. The mean and modal scores indicate a moderate degree of discretion being practiced by most of the building agencies involved. The standard deviation for the exercise of discretion was 3.63.

When scholars first attempted to define the role of public administrators at the turn of the century, their thinking was based on formal organization theory and a strict separation between politics and administration. Bureaucrats were deemed responsible for the efficient and politically neutral execution of the public will as defined by public officials. As such, this model of discretion was not really an issue. Politicians were expected to make decisions while bureaucrats carried them out. These findings suggest that this is no longer the case. Regulatory inspectors are either more willing to or are forced by the vagaries of current policies to exercise discretion. These findings show clear evidence of the bottom-up method of implementation at work. Regulatory

inspectors responsible for implementation play a positive, necessary, and appropriate role in redefining and refocusing policy in light of line-level realities.



I now turn to the influences on the propensity to exercise discretion. The measures of internal and external influences upon discretion in Table 4.1 explain 59% of the overall variation in inspector discretion (Adjusted R<sup>2</sup>). The findings indicate that both internal and external factors have statistically significant effects on discretion. Again, the data confirm a major assumption suggested earlier in the study. Internal factors exert more influence than external factors in shaping the exercise of

inspector discretion, with five of ten internal factors achieving statistical significance compared to only one of three external factors. It is obvious that that there are triple the amount of internal factors compared to external factors. However, when separated into competing models (see Table 4.2 versus Table 4.3); the internal factors continue to explain significantly more variance than their internal counterparts (58% to 9%). The key internal structural influences are standardization of inspector behavior, agency leadership and use of deterrent enforcement tools. Specifically, the findings indicate that the standardization of inspector behavior ( $p < .01$ ) and deterrent enforcement tools ( $p < .05$ ) limit the use of discretion by regulatory inspectors. Furthermore, those inspectors that perceive strong agency leadership exercise higher levels of discretion ( $p < .01$ ).

Perceptions of strong agency leadership have the reverse effect on discretion. Agency leadership (measured on a 0 to 12 additive scale) that is perceived to be strong has a positive effect on discretion, or as perceptions become more favorable discretion increases. A one category jump in perceptions of inspector discretion produces a .43 increase in inspector discretion. If taking the agency leadership scale as a whole, with positive perceptions in every category on the scale, the propensity to exercise discretion would increase 5.16 on the 7 to 35 scale of inspector discretion.

In other words, changes in each of these independent variables produces statistically significant changes in the dependent variable, in this case, discretion. A one degree change in the standardization of inspector behavior, measured on a 0 to 8 additive scale, would produce a .59 decrease in the propensity of inspector's to

exercise discretion (measured on a 7 to 35 scale). Put another way, running the entire scale of standardization of inspector behavior, with a score of 8 would produce a 4.72 decrease in the exercise of discretion.

The other aspects of internal influence that exert statistically significant effects are job satisfaction and inspector experience. Inspectors who are satisfied with their jobs exercise less discretion, while inspectors who are more experienced are more apt to exercise discretion. The specific effects of job satisfaction (measured on a 1 to 10 scale) are as follows: when satisfaction with the job increases there is a .80 decrease in the level of discretion being exercised. In other words, a 1 level increase in job satisfaction would produce an 8 degree decrease in inspector discretion. On the other hand, inspector experience produces increases in satisfaction. For instance, for every year of inspector experience there is a .17 increase in the level of inspector discretion. It would take ten years to raise the level of inspector discretion one full degree. It should be noted here that mutual causation may be in effect here. In other words, job satisfaction may be tied directly to incidents of corruption. This could be the case in a number of scenarios. For instance, inspectors that work for an agency that has experienced corruption may be chronically unhappy. Or, on the other hand, unhappy inspectors may engage in corrupt activities.



<b>Table 4.1</b>		
<b>Comprehensive Model of</b>		
<b>Internal and External Factors Affecting</b>		
<b>The Exercise of Inspector Discretion</b>		
	<b>P</b>	<b>B</b>
<b>Internal Factors:</b>		
Standardization of Inspector Behavior	<b>-.591**</b> (.19)	-.29
Agency Leadership	<b>.438**</b> (.14)	.33
Level of Technical Expertise	-.417 (.35)	-.11
Adequacy of Budget	.320 (.32)	.09
Job Satisfaction	<b>-.808*</b> (.30)	-.23
Inspector Experience	<b>.178**</b> (.05)	.29
Use of Flexible Enforcement Tools	-.012 (.02)	-.05
Use of Deterrent Enforcement Tools	<b>-.028*</b> (.01)	-.25
Elected Officials Involved in Code Decisions	.403 (.41)	.10
Incident of Corruption/Sanctions	.326 (.23)	.14
<b>External Factors:</b>		
Interest Group Pressure for Strong Enforcement	.002 (.01)	.01
Population (natural log)	<b>-.0001**</b> (.00)	-.23
Percentage of New Housing Units (10 yrs.)	-.039 (.02)	-.13
R <sup>2</sup>	.66	
Adjusted R <sup>2</sup>	.59	
F	<b>8.76***</b>	
N	70	

P $\leq$ .05\*, p $\leq$ .01\*\*, p $\leq$ .001\*\*\*

b=unstandardized regression coefficients

Standard errors in parentheses

B=standardized regression coefficients

(Source: UNO National Survey of Local Building Departments)

The use of deterrent enforcement tools is statistically significant in the hypothesized direction. It was posited that less flexible approaches would be negatively related to discretion. In other words, as the use of inflexible approaches to enforcement increased, discretion would decrease. This is clearly the case with the use of standard deterrent enforcement approaches. As the use of deterrence increases, the exercise of inspector discretion decreases. The use of fines as a deterrent enforcement tool also produces a decrease in inspector discretion. For example, a one category increase in the use of fines, measured with a 3-item additive scale, would decrease inspector discretion .02 on a scale of 0 to 35.

The findings shown in Table 4.1 regarding environmental or external factors are inconsistent with my assumptions about their importance in influencing inspector discretion. These results suggest that inspectors confronted with populations that are large do not develop coping mechanisms to effectively carry out their jobs. In essence, when confronted with increasing workloads, larger territories, and fewer resources, inspectors are not necessarily forced to exercise discretion to deal with their case loads. The effects of population density appear to effect minimal change. For every one person increase in population in the last ten years, there has been a corresponding .0001 decrease in inspector discretion. Put more simply, it would take an increase of ten thousand individuals in a particular jurisdiction to produce a 1 degree change in the level of inspector discretion.

When observed individually, it does not appear that any variable is the single causal factor in explaining the propensity to exercise inspector discretion. However,

when taken together, as a whole the model is able to explain much of the variance. It is posited here that this is a reflection of the real world of regulatory policy implementation. In other words, it is not a single factor that best explains successful implementation, but rather a conglomeration of factors.

To ensure that multicollinearity was not a possible cause for the low coefficients, the inverse of a correlation was used. The diagonal elements of this matrix are called variance inflation factors. Using the rule of thumb (Kennedy 1996) for standardized data, no variables were greater than 10. This gives even more confidence that the findings are both valid and reliable.

Lastly, in Table 4.2 one can see that political factors, whether internal or external, had no discernible effect on the exercise of discretion. Elected officials, interest groups, and corruption all fail to exert any statistically significant effects upon inspector discretion.

Table 4.3 represents OLS findings of a separate model that was constructed to ferret out the effects that each of the internal factors would have independent of the various external factors that were also examined. In the same vein, Table 4.4 represents OLS findings of a separate model that was constructed to determine the effect that each of the external factors would have independent of the various internal factors that were included in the comprehensive model in Table 4.1.

<b>Table 4.2</b>		
<b>Internal Factors Affecting The Exercise of Inspector Discretion</b>		
	<b>p</b>	<b>B</b>
Standardization of Inspector Behavior	<b>-.596****</b> (.17)	-.30
Agency Leadership	<b>.296*</b> (.12)	.26 (table cont.)
Level of Technical Expertise	-.518 (.33)	-.14
Adequacy of Budget	.300 (.31)	.08
Job Satisfaction	<b>-1.04****</b> (.28)	-.31
Inspector Experience	<b>.199****</b> (.05)	.35
Use of Flexible Enforcement Tools	-.015 (.02)	-.06
Use of Deterrent Enforcement Tools	-.019 (.01)	-.16
Elected Officials Involved in Code Decisions	-.034 (.37)	-.00
Incident of Corruption/Sanctions	<b>.555*</b> (.21)	.24
R <sup>2</sup>	.63	
Adjusted R <sup>2</sup>	.58	
F	<b>11.98****</b>	
N	78	

p ≤ .10\* p ≤ .05\*\*, p ≤ .01\*\*\*, p ≤ .001\*\*\*\*

b=unstandardized regression coefficients

Standard errors in parentheses

B=standardized regression coefficients

(Source: UNO National Survey of Local Building Departments)

It is clear from both of these tables that internal factors continue to offer greater predictive power in explaining attitudes toward discretion than does the various external factors. Internal factors are able to account for 58% of the variance in inspector discretion, where external factors only explain 9% of the variance. The assertion that internal conditions are more important than external conditions in determining inspector behavior is clearly confirmed by these separate models.

Whether the external environment is sending mixed or conflicting signals or just allowing administrators too much freedom, internal factors are the driving force in inspector discretion.

<b>TABLE 4.3 ENVIRONMENTAL/EXTERNAL VARIABLES INFLUENCING INSPECTOR DISCRETION</b>		
	<b>b</b>	<b>B</b>
Interest Group Support for Strong Enforcement	<b>-.033** (.01)</b>	-.23
Percentage of New Housing Units	-.029 (.03)	-.10
Population (natural log)	<b>-.00018** (.00)</b>	-.26 (table cont.)
R2	.12	
Adjusted R2	.09	
F	<b>3.46**</b>	
N	75	

P $\leq$ .10\*, p $\leq$ .05\*\*, p $\leq$ .01\*\*\*, p $\leq$ .001\*\*\*\*

b=unstandardized regression coefficients

Standard errors in parentheses

B=standardized regression coefficients

(Source: UNO National Survey of Local Building Departments)

This conclusion is further supported when constructing the “best-fit model” shown in Table 4.4. Only one external factor, population, meets the criteria for being included in the model. And, as noted earlier, its statistical influence is fleeting. However, this does not mean that the external factors are void of influence in shaping inspector attitudes toward behavior. This can be seen with the comprehensive model offering greater predictive power than the best-fit model, 59% to 52%, in predicting inspector attitudes toward discretion.

<b>TABLE 4.4</b>		
<b>BEST FIT MODEL FOR FACTORS INFLUENCING</b>		
<b>INSPECTOR DISCRETION IN ENFORCING BUILDING REGULATIONS</b>		
	<b>B</b>	<b>B</b>
Interest Group Support for Strong Code Enforcement	-.001 (.01)	-.08
Population (natural log)	-.00017*** (.00)	-.23
Agency Leadership	.361*** (.12)	.27
Standardization of Inspector Behavior	-.855*** (.17)	-.43
Incident of Corruption/Sanctions	.585*** (.21)	.26
Job Satisfaction	-.994*** (.31)	-.28
Inspector Experience	.164*** (.05)	.29
R2	.56	
Adjusted R2	.52	
F	12.28****	
N	72	

P $\leq$ .10\*, p $\leq$ .05\*\*, p $\leq$ .01\*\*\*, p $\leq$ .001\*\*\*\*

B=unstandardized regression coefficients

Standard errors in parentheses

B=standardized regression coefficients

(Source: UNO National Survey of Local Building Departments)

To further illustrate how the predictors included in this model affect inspector attitudes toward discretion, values of the dependent variable were calculated while manipulating the values of the independent variables. First, all the independent variables were set to their values hypothesized to produce the least discretion. For example, interest group support was set to zero (0), its lowest value. The regression equation was then calculated and the resulting Y value equaled 24.64. Thus, when all independent variables are set at their least values, that should produce the least amount of discretion, in this case 18.73. Conversely, when the regression equation is calculated with all independent variables set to their values hypothesized to produce the most discretion the estimated value of the dependent variable is 24.64. Overall,

this illustrates a 5.91 point difference (on a 28 point scale, range 7 to 35) in inspectors hypothesized to exercise the least discretion and those hypothesized to exercise the most discretion.

The findings as well as implications of these findings will be further discussed in Chapter Five, which focuses on the influences and expectations regarding industry compliance with regulations.

## **Chapter 5: Regulatory Compliance**

Safety standards generally impose concentrated costs and confer dispersed public or private benefits. Shortfalls often are due to concentrated costs. As noted in previous portions of this study, scholars (May 1999, Burby et al., 1996; Burby and May 1997) have pointed to shortfalls in building-code enforcement and compliance as obstacles in reducing loss of life and property in natural disasters. This chapter extends the research on code enforcement to consider the role of various factors (e.g., enforcement styles, attitude congruence between agencies and inspectors) that influence the building industry to comply with building regulations.

This chapter specifically relates how local enforcement of building code regulations affects compliance. In essence, inspectors are charged with an overall evaluation of how effective the building code enforcement program is in their jurisdiction. The specific measure is an effectiveness rating for attaining compliance with building code requirements on a scale of 1 to 10, with 1 indicating low compliance with code requirements and 10 being complete compliance with code requirements. And, as noted earlier, a key contribution is ferreting out the influence of inspector's different styles (i.e., level of discretion) on regulatee compliance. Thus, I am moving away from implements of implementation toward testing determinants of policy impact and the influence of the former on the latter.



The extant literature covering regulatory enforcement (implementation) and compliance (impact) draws upon a multitude of theories and the presumed efficacy of each in bringing about compliance (Ayres and Braithwaite 1992; Bardach and Kagan 1982; Braithwaite 1985; Burby and Patterson 1993; Burby 1995; Eckberg 1997; Gormley 1997). Most of the studies attempt to disentangle the day-to-day style of inspection from agency enforcement actions. This chapter builds on this research agenda and draws a distinction between enforcement styles of regulatory bodies and compliance choices made by the private sector.

There are various approaches to regulatory enforcement. Among the earliest scholars to draw a distinction in regulatory enforcement were Bardach and Kagan (1992). The dominant distinction drawn was between the by-the-book enforcement entailing a legalistic approach, such as levying fines against noncompliant entities, and what is labeled as cooperative enforcement involving a flexible approach, such as allowing firms to sell pollution credits.

To draw even more distinct lines between by-the-book and flexible enforcement, this chapter distinguishes the behavior of inspectors from the choices of regulatory agencies. Following the lead of May and Burby (1998) and May and Winter (1999), the day-to-day interactions of inspectors with regulatees and choices made by enforcement agencies constitute regulatory enforcement. The behavior of inspectors and the enforcement decisions of agencies differ with respect to specific enforcement choices and levels at which they are made. The behavior of inspectors makes up enforcement styles while agency-level choices constitute an overall enforcement

strategy. In concert, inspectors' behavior and agency choices seek to bring about compliance with regulations.

A common approach in the study of compliance is to dichotomize organizations according to whether they comply or fail to comply with a policy. This approach does not take into account differences in the amount of compliance that could possibly take place. The use of a variable that considers degrees of compliance allows theoretically interesting lines of inquiry that would be foreclosed by using a compliant/non-compliant dichotomy.

Failure to comply is an immense problem. Violations result from the acts of innocent individuals, from the refined plans of sophisticated criminal groups, and from the actions of governmental entities whose other activities promote compliance (DiMento 1989). The range of behavior involved in noncompliance is similarly wide—from falsifying reports to building with known inferior materials.

Most inspectorates are considered ineffective unless most of their regulatees are either in compliance or on the way to it. However, almost all inspectorates have very limited staffing and funding in comparison to the regulatees (Hawkins 1984; Grabosky and Braithwaite 1986; Bardach and Kagan 1982; Hutter 1988). Compliance obviously involves the effective management of the relationship between the two parties so as to achieve the best practicable results over time. A section of this chapter is focused on the skills deployed in managing this relationship. The implicit question being: given that most agencies and inspectors operate under substantial restraints of resources and powers, what factors and resources will get the best results, the most compliance?

Serious questions are not pursued, questions such as whether what is being achieved is adequate. Rather, the focus is on how inspectors have achieved their respective degrees of compliance from regulatees.

### **Factors Influencing Compliance**

Regulatory enforcement has experienced dramatic growth in recent years. Accompanying this focus to regulate behavior has been an attempt to develop systematic approaches to behavior of enforcement agencies and inspectors. However, and as noted earlier, there is no real consensus about it. Given this search for the ideal behavior that agencies and inspectors should pursue, this chapter has a four-pronged foci of investigation; (1) enforcement approaches (agency behaviors), (2) enforcement styles (inspector discretion), (3) agency capacity to enforce regulations, and (4) the local regulatory environment. There is less of an attempt in this chapter to determine whether is it factors that are internal or external to inspector's and agency's environments that are exerting influence on the dependent variable, compliance. Rather, the attempt here is to determine what strategies or factors are most effective in bringing about compliance with regulatory directives.

*Enforcement approaches.* Scholz (1994) recognized that enforcement is never simple. Furthermore, he pointed out that the techniques for obtaining policy goals are constrained not only by the need for regulations and enforcement that encourage efficiency on the part of regulated firms and other entities but also by the need for enforcement techniques that are both efficient and within the rather ambiguous limits on government coercive power set by the political system.

Such constraints have encouraged the development of “voluntary compliance” as the primary enforcement philosophy of federal regulatory agencies. This philosophy takes on many forms, but essentially it recognizes the need for educational and persuasive techniques to complement the coercive, deterrence-oriented techniques at the core of most enforcement programs. Table 5.1, provided below, highlights the basic components of a three-faceted approach developed by Kagan and Scholz (1984) to clarify the basic components of the voluntary compliance approach.

While the enforcement approaches have been expanded beyond this basic framework in recent years (see Burby and May 1994; Burby and May 1998), this basic framework outlined in Table 5.1 provides insight to the various approaches to be tested here. Of interest is which enforcement approach is most effective in bringing about compliance. Various enforcement approaches are examined. Each of the approaches (flexible, incentives, standardized fieldwork, and fines) are measured with additive scales. Higher scores on each of the scales indicate a greater propensity to utilize that particular enforcement approach.

*Discretion/Cohesion.* It has been hypothesized that an internal bureau characteristic that contributes to its power base is agency cohesion. Meier (1993) defines cohesion as the commitment of bureau members to the organization and its ideals. Further, case study analyses point to limiting discretion as the means for achieving industry compliance (Miller 1992; Bianco and Bates 1989). However, there is certainly a counter view to this emphasis on cohesion and limiting discretion.

Beginning with Herbert Kaufman's *The Forest Ranger* (1960), scholars not only found that bureaucrats had policy preferences and the need for resources to secure implementation, but bureaucrats' preferences might lead them to significantly alter their behavior the preferences of their superiors in the bureaucratic hierarchy. The measure of discretion is the dependent variable from Chapter 4. This 7-item additive scale evaluates inspector's perceptions of the exercise of discretion. The scores ranged from 8.65 to 27.75 on an additive scale of 7 to 35. Higher scores indicate greater propensity to use discretion.

Furthermore, it has been pointed out those supervisors at all levels of public bureaucracies face constraints not dreamed of by managers in private firms. Production in public bureaucracies nearly always differs from production in private firms, not just in the form of the goods produced (which is not always a material products and may often be a public good), but in the competing standards for what comprises efficient production (Wilson 1989).

A message that is consistently enforced by bottom-up theorists is that bureaucracies are best defined by "tasks," the things that bureaucrats learn to do, rather than abstract, often internally contradictory goals. It is difficult to provide much precision behind an organizational goal such as to "promote the long-range security and interests of the United States" (Wilson 1989, 32), the goal of the State

<b>TABLE 5.1 BASIC COMPONENTS OF THE VOLUNTARY COMPLIANCE APPROACH</b>	
<b>DETERRENCE STRATEGY</b>	This approach is based on the assumption that regulated entities are amoral, and they will not obey regulations without an incentive. The deterrence strategy uses coercive means to provide incentives by punishing all noncompliant firms. The basic tactics include methods of monitoring firms to detect noncompliance and the imposition of penalties sufficient to deter future noncompliance.
<b>EDUCATIONAL STRATEGY</b>	This approach assumes that at least some noncompliance stems from the difficulty certain firms have with understanding regulations and with implementing effective internal controls to prevent noncompliance. Although fines and punishment may force noncompliant firms to focus more clearly on regulatory duties, they may also further distract firms or provide only temporary cures for recurrent problems. Basic tactics for the educational strategy consist of methods to provide compliance information in a usable form and to establish organizational routines necessary for future compliance. They do not shy away from coercion, but they use it to focus attention rather than to punish noncompliers.
<b>PERSUASIVE OR COOPERATIVE STRATEGY</b>	This approach assumes that firms perceive enforcement agencies as one of several important actors that the firm must deal with over the long haul. Furthermore, it assumes that firms develop principles to govern their relationships with all actors. Thus a firm may forgo short-term temptations to cheat on an agency that cannot easily monitor its activities in order to establish (table cont.) a more cooperative long-term relationship with the agency and with others in its environment. Tactics for this strategy include techniques to convince firms in the agency's jurisdiction that it is in their long-term best interest to comply.

Department. But bureaucrats in the State Department do many things, and their tasks are shaped by a process of trial and error in a sometimes competitive environment. “People matter, but organization matters also, and tasks matter most of all” (Wilson 1989, 173). In other words, bureaucrats and the decisions they make are shaped by the jobs they undertake and the environments in which they operate.

Chapter 4 of this study covered the exercise of discretion in the regulations of building codes and inspectors’ exercise varying levels of discretion, with most exercising moderate degrees of discretion. We now understand that bureaucracies are not unitary actors with homogenous preferences. The evidence in Chapter 4 was drawn from a national sample of building departments that covered a multitude of locales across the United States, and inspectors in these locales varied in their attitudes toward the exercise of discretion. However, we still must try to extricate the effects this exercise of discretion has on the decision of regulatees whether to comply with policy directives. And furthermore, are inspector actions more important than agency actions or the regulatory environment in achieving compliance?

*Agency capacity.* Along with cooperative approaches, many scholars have posited that an important feature of policy design is building local capacity for achieving state goals (May and Burby 1994). While psychological and political obstacles potentially stand in the way of enforcing compliance, agency capacity is still a formidable barrier. The practical barrier of agency capacity is at least more tractable. If it is true that compliance might be enhanced through financial and

technical assistance, capacity might be a central pursuit of local regulatory officials. Since many cooperative mandates lack coercive elements to force compliance when commitment is lacking, agency capacity may be the answer through the provision of technical expertise and the carrot of financial resources to achieve compliance.

To determine the effects that agency capacity has on the decision of whether regulatees decide to comply with building code regulations, several measures of capacity are considered. The code enforcement staff was the focus of the capacity of building departments since the code enforcement staff in most agencies are charged with the day-to-day enforcement of building code regulations. The building agencies were asked to rate each of the aspects of capacity on a 5-point scale with 1 being least adequate and 5 being most adequate. The specific measures of agency capacity are: adequacy of non-personnel budget, adequacy of staffing, agency technical expertise, and authority for enforcing codes.

*Environmental/External Controls.* Examining external or political environment variables is in direct contrast to the perspective that assumes official action is shaped by the technical, economic and legal problems encountered by the agency. This second explanatory approach emphasizes the regulatory agency's political or external environment. Regardless of the law and the regulators' notions of what would be best, it is assumed, regulators work within a charged political atmosphere. Interest groups attempt to control the agency's leadership. Those who offend politically significant government officials or private organizations face severe challenges in implementing desired policies. Understanding compliance as a byproduct of the intensity and



predominant direction of the political pressures brought to bear on regulatory officials by political leaders, industry, proregulatory advocacy groups and the growth of particular jurisdictions is vital to an understanding of policy impact.

Of specific interest here is what impact that interest groups, local politics, and growth have on regulatee compliance with building regulations. The local political context is measured as the extent of support for strong enforcement of building codes by key groups in each community. As part of the survey, building agencies were asked about the existence of seven organized interests in the locality and whether each advocated strong or weak code enforcement. The groups are architects or engineers, chamber of commerce, environmental groups, general contractors association, historic preservation groups, homebuilders association, and neighborhood groups. The percentage of groups advocating strong enforcement serves as a measure of political support (mean 25.68). (One caveat is that the strength of each organization is not measured). Further analysis of the politicization of the process of enforcing building codes is whether local elected officials become involved in specific cases about code compliance. This occurred for 34 percent of jurisdictions in the sample.

In addition to the political environment, this study also considers the economic conditions of particular jurisdictions as proxies for the capacity of cities and counties to adopt and implement building code regulations. While population is not a direct measure of professionalization, it is a good indicator. Larger jurisdictions typically have a higher degree of professionalization among staff. In addition, population also can reflect aspects of risk since cities with larger populations by definition have

greater vulnerability from a given level of non-compliance with codes. New home construction also serves as a proxy for economic conditions. On the one hand, increased growth creates a demand for regulatory controls, and it provides resources because building departments are typically funded from fees for building permits. On the other hand, the resources often do not keep up with the demand straining agency capacity to implement regulations.

There are several expectations regarding the impact that the various factors discussed above will have on the decision of regulatees to engage in compliant behaviors. They are as follows: (1) flexible approaches will be more effective than coercive enforcement approaches in bringing about complaint behavior from regulatees, (2) agencies promoting standardization and oversight of regulatory inspectors will be effective in achieving regulatory compliance, (3) inspector discretion will be more influential than agency enforcement approaches in promoting compliance, (4) agency capacity is positively related to the ability of building departments to achieve compliance, (5) interest group advocacy for strong building code enforcement will enhance an agency's ability to obtain compliance, (6) local elected officials involvement in building code decisions will lower industry compliance by sending the message to contractors that principals are not committed to strong code enforcement, and (7) jurisdictions with larger populations and/or new growth will have higher degrees of regulatory compliance than their smaller counterparts. The overall expectation is that agency enforcement approaches and

inspector discretion, with inspector discretion being most important, are the driving forces behind regulatee compliance decisions.

### **Findings**

This chapter empirically considers a variety of factors that have the potential to shape regulatees compliance behavior. As was previously discussed, the measure of compliance is the overall degree of compliance the building inspectors have obtained in their respective inspection areas.

The frequency of level and degree of compliance, based upon their specific responses to the mail survey, is graphically represented in Figure 5.1. Tables 5.1 through 5.7 represent the OLS findings regarding factors shaping compliance organized by the four concepts developed above. What follows is a discussion of the findings related to the factors that influence industry compliance, including discretion, with building code regulations.

The results in Figure 5.1, based upon inspector evaluations of industry compliance, show that among the various jurisdictions, there is a relatively high degree of compliance. The scores on the compliance scale (theoretical range 0 to 10), range from 6 to 10. The mean score for achieved compliance was 8.09. The modal or most common score was 7.50. The standard deviation for the exercise of discretion was .83. These findings suggest that regulatees do indeed comply with building codes (whether pressured or not) across multiple jurisdictions.

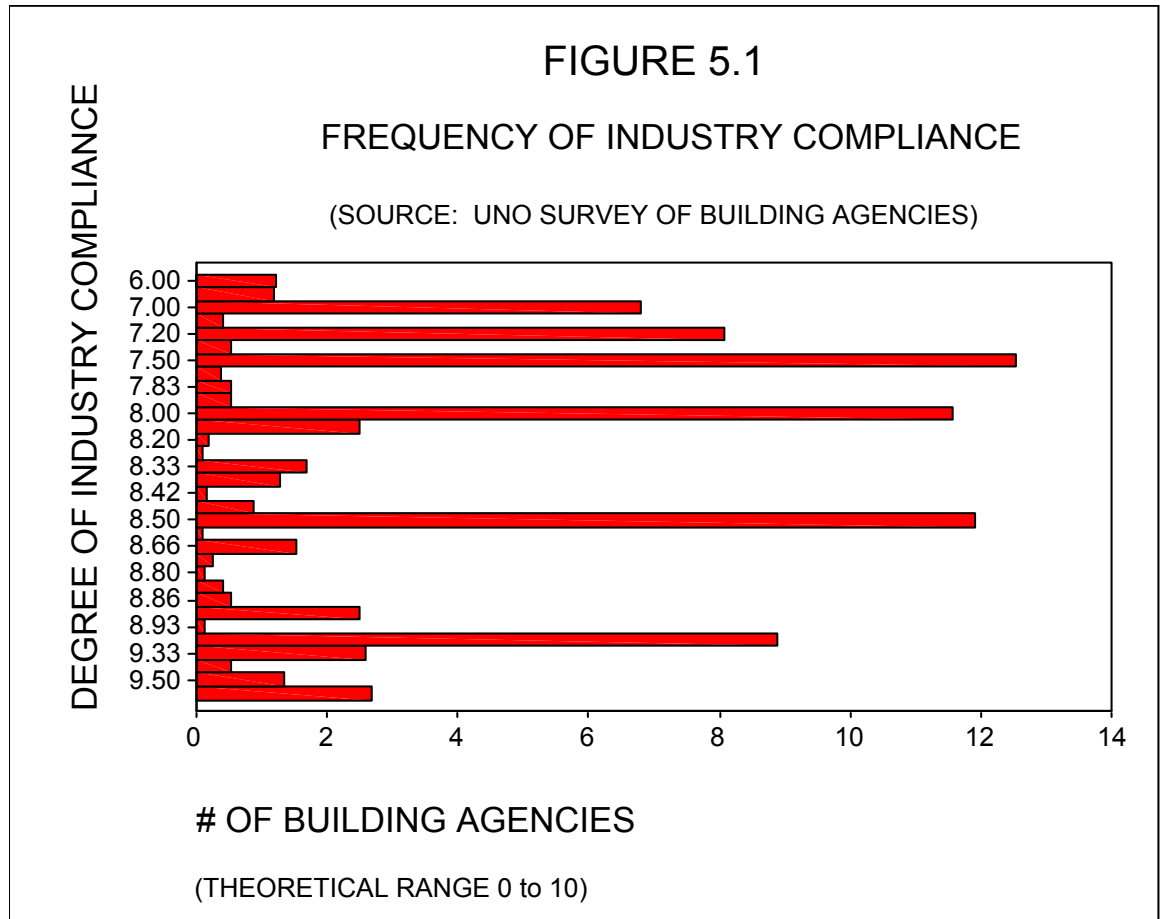
Basing these findings on inspectors' self-evaluations of their ability to achieve compliance from regulatees may seem troubling to some. However, this should not be

the case. Although subjective, many scholars have found these estimates to be relatively accurate (Burby et. al., 1990; Malcom et. al., 1990). A comparison by Burby of subjective perceptions of North Carolina program administrators with actual field measurements of sediment abatement attained showed a remarkable degree of similarity. For example, the administrators of the North Carolina program estimated that on a scale of 1 (no control) to 10 (complete control) their program should be given a rating of 7. In field measurements of 128 construction sites, it was found that 74% of approved sediment control measures had been installed and that 68% of the projects had either no (27%) or a minor (47%) loss of sediment to streams or adjacent property (Burby 1994).

Table 5.2 provides a comprehensive model including all of the variables hypothesized to influence regulatory compliance. These findings represent the statistical influence that each has, given the relative power of the other influences. While no single variable is able to produce overwhelming statistical influence, when taken as a cluster, these variables are able to predict a very respectable 33% of the total variance in compliance with building code regulations.

The one variable that appears to be driving the model of compliance is elected official involvement in building code decisions. Measured on a scale of 1 to 5, with 5 representing frequent elected official involvement, a 1 point increase in elected official involvement produces a .25 point decrease in regulatory compliance (measured on a 1 to 7 scale, with higher scores indicating higher compliance). In other words, if elected

officials were involved all of the time in code decisions, a 1 point decrease in industry compliance would occur.



Much the same is true for use of incentive enforcement tools to achieve compliance. As the use of incentives increases, the level of compliance decreases. Specifically, for every 1 point increase in the use of incentives (measured on a 0 to 6 scale), the level of compliance decreases .009 points. The same can be said for inspector discretion. When inspector discretion increases, compliance decreases. In

short, a 1 point increase in inspector discretion produces a .07 point decrease in regulatory compliance. Running the full scale of discretion to 35 would decrease regulatory compliance 1.96 intervals.

Interest group pressure and new home construction are positively related to regulatory compliance. When interest group support and new home construction increase, compliance rises. As the percentage of new homes increases over a ten year period, a 1 point change in new home construction produces a .017 increase in industry compliance. Whereas, a 1 point increase in the level of pro-interest group support for strong code enforcement produces a .008 level change in increased compliance.

These findings were slightly contrary to what was expected. There was an expectation that enforcement approaches would be the driving force behind achieving compliance. This is clearly not the case. While enforcement approaches have a statistically significant influence on regulatee behavior, most do so in the opposite direction hypothesized. Political and growth factors are noteworthy positive influences upon compliance actions. Demands for stronger enforcement has a positive impact ( $p < .01$ ) on compliance actions and involvement of local elected officials in code decisions has a statistically significant negative effect ( $p < .01$ ). This reaffirms the supposition that regulatory enforcement is influenced by the dynamics of interest groups. The impact is the greatest for increased demands by key interest groups for stronger enforcement on review of plans and on field inspection. In addition, this confirms the hypothesis

that political interference by local elected officials in code decisions reduces effort that building departments put into field inspection, and thus compliance.

Lastly, both measures of growth, new housing ( $p < .01$ ), and population ( $p < .10$ ) exert influence on contractor decisions about whether to comply with building code regulations. It is clear that this growth is partially fueling the capacity for jurisdictions to adopt and implement regulations. This increased growth is fueling the demand for regulatory controls and is providing more resources through the purchase of building permits. In addition, the new home construction, in many instances is more valuable, thus increasing the demand for more regulation since more valuable property is at risk of loss from non-compliance with regulations.

To reiterate, there is no individual variable that is the single causal factor in explaining regulated entities decisions to comply with the building code. In other words, the slope of the regression line is not very steep. However, when taken together, the variables are able to explain a respectable 33% of the variance in regulated entities decisions to comply. This suggests that a large number of cases fall near the regression line. To ensure that multicollinearity was not a possible cause for the low coefficients VIF scores were also calculated for this Comprehensive Model. Using the rule of thumb (Kennedy 1996) for standardized data, no variables were greater than 10. Again, this gives even more support that the findings are both valid and reliable.

**TABLE 5.2**  
**COMPREHENSIVE MODEL OF**  
**FACTORS AFFECTING REGULATEE COMPLIANCE WITH**  
**BUILDING CODE REGULATIONS**

<b>Enforcement Approaches</b>	<b>b</b>	<b>B</b>
Use of Flexible Enforcement Tools	-.001 (.00)	-.03
Use of Incentive Enforcement Tools	<b>-.009*</b> (.00)	-.21 (table cont.)
Use of Coercive Enforcement Tools	-.001 (.00)	-.05
Use of Standardized Fieldwork	-.001 (.00)	-.27
<b>Inspector Discretion</b>	<b>-.073**</b> (.02)	-.31
<b>Agency Capacity</b>	-.139 (.12)	-.13
<b>Environmental/External Influences</b>		
Interest Group Pressure	<b>.008*</b> (.00)	.14
Elected Officials Involved in Code Decisions	<b>-.256**</b> (.10)	-.27
Population (natural log)	.00002 (.00)	.14
Percentage of New Housing Units	<b>.017*</b> (.00)	.24
R2	.42	
Adjusted R2	.33	
F	<b>4.72***</b>	
N	75	

$p \leq .10^*$ ,  $p \leq .05^{**}$ ,  $p \leq .01^{***}$

b=unstandardized regression coefficients

Standard errors in parentheses

B=standardized regression coefficients



*Enforcement Approaches.* Table 5.3 shows the use of incentives is the only enforcement approach that exerts statistical influence upon regulatee decisions about complying and that is in the opposite direction of the relationship that is hypothesized. These findings are quite unique and surprising. The use of incentives to achieve compliance is a relatively new phenomenon. However, it is surprising that compliance actually goes down when the use of incentives increases. The use of incentives is exerting a statistically inverse effect on regulatee decisions about compliance. It has been hypothesized that, cooperative designs, when aggressively pursued, are effective in dealing with leading jurisdictions (May and Burby 1994). But it should be pointed out that cooperative policies, such as incentives, only work when those leading jurisdictions have the commitment and ability to cooperate in advancing policy. Cooperative policies do little to build industry commitment to policy goals, while coercive policies appear to foster commitment—if only a “calculated commitment” aimed at foregoing sanctions for noncompliance. Thus, lagging jurisdictions with less commitment to state goals fall behind, by either not complying, or making more modest efforts to fulfill state policy objectives. The findings largely suggest that agency’s pursuing cooperative approaches to enforcement are likely to leave uncommitted, laggard clients untouched.

*Agency Capacity.* Program funding and staffing varied systematically throughout the various jurisdictions surveyed. We know that throughout the literature, there are scholars who question local capacity to administer environmental regulations effectively (Bosselman et. al., 1976; Jennings 1989; Rowe 1978). In addition, it has

been widely documented that with more personnel available per project, local programs were able to apply far more deterrence, inspecting land distributing projects more frequently than the state and, particularly in the case of smaller local programs, applying more fines and stop work orders/injunctions (Burby 1994; Burby and Patterson 1993).

<b>TABLE 5.3 ENFORCEMENT APPROACHES AND THEIR EFFECT ON REGULATORY COMPLIANCE</b>		
	<b>P</b>	<b>B</b>
Use of Incentive Enforcement Tools	<b>-.015**** (.00)</b>	-.36
Use of Standardized Field Work	.005 (.00)	.16
Use of Flexible Enforcement Tools	-.002 (.00)	-.05 (table cont.)
Use of Coercive Enforcement Tools	.001 (.00)	.16
R <sup>2</sup>	.19	
Adjusted R <sup>2</sup>	.15	
F	<b>4.75****</b>	
N	83	

$p \leq .10^*$ ,  $p \leq .05^{**}$ ,  $p \leq .01^{***}$ ,  $p \leq .001^{****}$

P=unstandardized regression coefficients

Standard errors in parentheses

B=standardized regression coefficients

Table 5.4 shows the primary factors, each statistically significant, are staffing ( $p < .001$ ), and financing ( $p < .01$ ). Staffing is positively related to compliance, and financing is counter-intuitively negatively related to compliance. Program staffing is important because it allows personnel to spend much more time per project, they can monitor firms and help firms understand and comply with regulatory requirements.

As stated above the finding regarding budgeting is counter-intuitive. This could be for a number of reasons. It may be an artifact of the data. This survey only allows for a “snapshot” in time. In other words, those inspectors’ who have been unable or unwilling to bring their jurisdictions into compliance may be getting the majority of funding in their particular geographical areas to bring recalcitrant regulatees into compliance. Thus, it appears that more financing leads to less compliance.

<b>TABLE 5.4</b>		
<b>AGENCY CAPACITY TO INFLUENCE REGULATORY COMPLIANCE WITH BUILDING CODES</b>		
	<b>B</b>	<b>B</b>
Adequacy of Staffing	.31**** (.08)	.50
Adequacy of Non-Personnel Budget	-.26*** (.10)	-.35
Agency Technical Expertise	.20 (.12)	.24
Authority for Enforcing Codes	-.13 (.15)	-.13
R2	.18	
Adjusted R2	.14	
F	4.29****	
N	80	

$P \leq .10^*$ ,  $p \leq .05^{**}$ ,  $p \leq .01^{***}$ ,  $p \leq .001^{****}$

B=unstandardized regression coefficients

Standard errors in parentheses

B=standardized regression coefficients

*Environmental/External Influences.* Table 5.5 shows that environmental or external influences are highly contributory factors when discussing compliance. Elected officials becoming involved in building code decisions, interest group pressure, housing growth and population all contribute significantly to compliance

from the building industry. Four of four external factors achieve statistical significance.

<b>TABLE 5.5 ENVIRONMENTAL/EXTERNAL VARIABLES INFLUENCING COMPLIANCE DECISIONS</b>		
	<b>B</b>	<b>B</b>
Interest Group Support	<b>.010***</b> (.00)	.32
Local Elected Officials Involved in Code Decisions	<b>-.28***</b> (.09)	-.30
Percentage of New Housing Units	<b>.020***</b> (.00)	.28
Population (natural log)	<b>.00003*</b> (.00)	.22
R <sup>2</sup>	.32	
Adjusted R <sup>2</sup>	.28	
F	<b>8.51****</b>	
N	75	

$P \leq .10^*$ ,  $p \leq .05^{**}$ ,  $p \leq .01^{***}$ ,  $p \leq .001^{****}$

B=unstandardized regression coefficients

Standard errors in parentheses

B=standardized regression coefficients

*Best Fit Model.* The model in Table 5.6 confirms that a number of factors potentially influence industry to comply with building code regulations. When all of the statistically significant variables from the three previous models were combined into a larger “best-fit” model, 29% (Adjusted R<sup>2</sup>) of the variance was explained.

Interest group pressure and elected official involvement continued to exert statistical influence on industry decisions about compliance with the building code. All of the variables in the model continued to exert statistical influence in the same direction as they had previously in their “stand alone” models (e.g., Tables 5.2-5.5).

<b>TABLE 5.6</b>		
<b>BEST FIT MODEL FOR FACTORS INFLUENCING</b>		
<b>INDUSTRY COMPLIANCE WITH BUILDING CODES</b>		
	<b>b</b>	<b>B</b>
Elected Officials Involved in Code Decisions	<b>-.262***</b> (.09)	-.29
Interest Group Support for Strong Code Enforcement	<b>.008**</b> (.00)	.27
Percentage of New Housing Units	<b>.02**</b> (.00)	.27
Adequacy of Non- Personnel Budget	<b>-.20*</b> (.10)	-.26
Population (natural log)	<b>.00002*</b> (.00)	.18
Use of Incentive Enforcement Tools	-.005 (.00)	-.11
Adequacy of Staffing	.10 (.10)	.14
R2	.36	
Adjusted R2	.29	
F	<b>5.34*****</b>	
N	72	

$P \leq .10^*$ ,  $p \leq .05^{**}$ ,  $p \leq .01^{***}$ ,  $p \leq .001^{*****}$

b=unstandardized regression coefficients

Standard errors in parentheses

B=standardized regression coefficients

*Inspector Discretion.* Table 5.7 incorporates the *inspector discretion* variable into the best fit model as a check against the potential that it is not agency specific variables, but rather inspector specific variables that drive regulatees to comply with regulatory provisions. Recall that discretion is the implementation variable from Chapter 4 and this provides a test to see if it relates as hypothesized to compliance (impact) as the policy literature infers. Inspector discretion does exert strong statistical influence on contractor decision-making. However, the influence that is

exerted is in the opposite direction that is hypothesized. As with agency enforcement approaches, this style does little to build industry commitment to regulatory initiatives. However, it should be pointed out that the discretion that is being exercised by inspectors is not necessarily of the cooperative sort. In other words, these inspectors may be choosing to pursue deterrent strategies rather than cooperative strategies. The concept of discretion does not imply cooperation, but rather choice. The choices that are being made by inspectors are obviously the wrong ones, because those inspectors with the greatest discretion have the lowest level of compliance. Furthermore, these questions call into doubt the ability of local entities to administer regulations effectively. Furthermore, as has been suggested by other scholars, these local individuals may be susceptible to influence by development and real estate interests (Logan and Molotch 1987).

To further illustrate how the predictors included in this model affect builder decisions to comply with the building code, values of the dependent variable were calculated while manipulating the values of the independent variables. First, all the independent variables were set to their values hypothesized to produce the least compliance. The regression equation was then calculated and the resulting Y value equaled 7.21. Conversely, when the regression equation is calculated with all the dependent variables set to their values hypothesized to produce the most compliance, the estimated value of the dependent variable, is 9.27. Overall, this illustrates a 2.06 difference (on a 10-point scale) in compliance between those hypothesized to be least compliant and those hypothesized to be most compliant.

**TABLE 5.7**  
**BEST FIT MODEL (INCLUDING DISCRETION) FOR**  
**FACTORS INFLUENCING INDUSTRY COMPLIANCE WITH BUILDING**  
**REGULATIONS**

	<b>b</b>	<b>B</b>
Elected Officials Involved in Code Decisions	<b>-.24***</b> (.09)	-.26
Inspector Discretion	<b>-.052**</b> (.02)	-.23
Percentage of New Housing Units	<b>.015**</b> (.00)	.23
Adequacy of Non- Personnel Budget	<b>-.20*</b> (.10)	-.25
Interest Group Support for Strong Code Enforcement	<b>.006*</b> (.00)	.19
Use of Incentive Enforcement Tools	<b>-.008*</b> (.00)	-.18
Adequacy of Staffing	.10 (.10)	.31
Population (natural log)	.00001 (.00)	.12
R <sup>2</sup>	.40	
Adjusted R <sup>2</sup>	.33	
F	<b>5.51*****</b>	
N	72	

$p \leq .10^*$ ,  $p \leq .05^{**}$ ,  $p \leq .01^{***}$ ,  $p \leq .001^{*****}$

b=unstandardized regression coefficients

Standard errors in parentheses

B=standardized regression coefficients

The above findings concerning the various influences that enforcement approaches, agency capacity, inspector discretion, and agency environmental factors play in affecting regulatee compliance with building code regulations have implications for administrative behavior and regulatory policy making. Thus far, these factors have only been discussed in terms of their potential to shape inspector and

regulatee behavior. The discussion that follows in Chapter 6 will provide a more in-depth perspective of the role and the implications that all of the findings from Chapters 4 and 5 have in the larger perspective of regulatory policy making in the United States. Further discussion of this model and the findings above, as well as the implications for these findings and those found in Chapter 4 regarding factors that shape inspector behaviors will be discussed in the next chapter. In addition, Chapter 6 will offer overall implications of the research findings and posit suggestions for future research concerning inspector discretion, regulatory compliance, and regulatory policies in general.



## **Chapter 6: Conclusions and Implications**

This study focused on street level bureaucrats as a way of furthering the understanding of actual policy implementation and impact. Throughout the study, the behavior of line level workers was examined and brought to light, rectifying the situation that previously existed; individuals with the most potential for shaping policy impact were ignored.

Attention was given to the pressures, both internal and external, that shape regulatory inspector behavior. Moreover, this study has tested a hybrid model of bureaucratic-decision making, incorporating tenets of the top-down and bottom-up approaches for influencing inspector behavior and for influencing regulatee compliance. Furthermore, this study goes further than many policy studies in that it did not stop at the implementation “stage” of the policy process. Instead, this study follows the policy from implementation to the impact stage, (compliance in this case), and it identifies several potential variables that exert significant influence at the conclusion of the policy cycle.

Specifically, this research considers a two-fold explanation for the reasons that the exercise of inspector discretion and the reasons that regulatory compliance differ across jurisdictions. What is considered vital in the exercise or deterring the use of discretion and in achieving regulatory compliance are the internal and external

environments of inspectors and agencies. Kagan (1994) termed these environments the “legal/task environment” and the “political environment.” Both explanations consider regulatory officials and agencies as malleable entities that are responsive to shaping by outside forces. This was shown to be correct.

All of the explanatory factors—enforcement approaches, enforcement styles, the agency’s economic environment, inspector’s and agency’s political environments, and internal leadership—can exert significant pressure on regulatory behaviors and actions. As Kagan (1994) noted, the real intellectual exercise is to analyze the relative weight of each under varying circumstances. In sum, this study contributes significantly to the understanding of street-level bureaucrats’ attitudes and to an understanding of how agencies and street-level bureaucrats interact to bring about compliance with regulations. The following discussion is a summary of the study findings and their potential implications for regulatory policy.

### **Inspector Discretion**

Fortunately, in more recent years, scholars have refocused their attention on the front lines of policy implementation (May and Wood 2003). Much of this new research realizes the importance of street-level bureaucrats and the role of their decisions, motivations, and capabilities in affecting policy outcomes. Within the regulatory arena, scholars have begun to zero in on the broad autonomy and discretion held by inspectors (May and Wood 2003; Brehm and Gates 1997; Vinzant and Crothers 1998).

Following the lead of the scholars mentioned above, this study addresses the exercise of inspector discretion empirically. The findings from Chapter 4 (see Figure 4.1) indicate that the attitudes toward inspector discretion varied greatly. A majority of the inspectors surveyed were exercising moderate to high degrees of discretion. As was shown in Figure 4.1, the average inspector scored 18 out of a possible 35, or a little more than the midpoint, for exercising discretion in various enforcement situations. The question becomes one of, why do inspectors feel the need to or are forced to exercise discretion? For purposes of parsimony, only the “comprehensive model” of inspector discretion will be discussed in detail.

Field office discretion may develop in directions undesired by agency leaders for a number of reasons. The findings gleaned from this study indicate that it is a mix of factors that are internal and external to the regulatory inspector’s environment that shaped their attitudes toward discretion. It is clear that factors internal to the inspector’s environment are more important than external conditions in influencing their attitudes and behavior.

The findings indicate that standardization of inspector behavior/routines or control strategies play an important role in limiting inspector discretion. Kaufman (1960) was one of the first to posit that agencies could counteract local influences with a range of techniques and strategies, including procedures for controlling and “pre-forming” decisions, detecting and discouraging deviation, and developing the will and capacity of field officers to conform to central guidelines. This particular finding is of interest because it suggests that one of the primary forces for shaping the enforcement

culture of the inspector is the constant interaction of supervision and office routines overseen by supervisors. If this is the case, then as Blau (1963) suggested, it is worthwhile for agencies to pursue or require some sense of “esprit de corps” to provide sufficient support for inspectors who spend much of their time in the field in potentially confrontational situations.

This finding is particularly significant because it goes against the long held belief (Scholz 1994) that there are severe limitations in using standard routines and forms to control discretion. It appears, all other things being equal, that organizational rules and forms can and do aid in capturing the exact behavior desired of inspectors. With rules and forms, subordinates who are unable or unwilling to follow agency procedures for exercising discretion can be forced to do so. However, it may not be the case that rules and forms are necessitating inspector behavior, rather they may be facilitating inspector actions.

It is clear from the results in Chapter 4 that agency leadership plays a role in inspector attitudes toward discretion. However, it should be pointed out that agency leadership does not shape inspector discretion in the posited direction. It was expected that strong agency leadership would limit the exercise of discretion. This potentially should not be viewed as a negative or contradictory finding. It is possible that strong leaders advocate discretion and their inspectors follow suit. If these leaders are advocating discretion and if these inspectors have some sense of commitment to agency goals or camaraderie with fellow inspectors and supervisors, it would follow logically that they would avoid confrontation and follow the leader.

However, this potential conclusion should be viewed with caution. The real possibility still remains, as Lipsky (1980) suggested, that front-line regulatory enforcement officials are hard to manage bureaucrats, and they employ a variety of stratagems to resist direction. Regardless of their attitudes about their supervisors, their day-to-day enforcement routines are shaped in part by their efforts to retain some autonomy and to manage their own workloads.

It is not discernible whether agency culture is immutable, or whether supervisors are doomed to fail in limiting inspector discretion. It has been suggested that agency leaders can control front-line officials and inculcate a regulatory ethos (Kagan 1994). They can change recruitment patterns, intensify supervision (as suggested above), invest in intensive retraining and fire or transfer the recalcitrant. The methods chosen and the ethos that results affect the agency's level of activism, its legal decision style, the efficiency of its operations, and the effectiveness with which enforcement policies of top officials are translated into the desired day-to-day decisions.

Agencies that advocate deterrent enforcement approaches have statistically significant influence on inspector's attitudes toward discretion in the hypothesized direction. In essence, agencies that pursue deterrent enforcement approaches have inspectors that exercise less discretion. This is not an unexpected finding. It should follow that regulatory offices that tend to be more legalistic or sanction oriented pursue a more coercive regulation style. These agencies are more likely to interpret regulations stringently and apply them with bureaucratic literalness. They are unlikely

to treat regulations as guidelines, rather they are likely to treat them as fixed obligations. When an agency advocates such legalistic behavior, it would follow that they would emphasize the need of their inspectors to respond to detected violations by immediately issuing notices of violation, assessing fines, shutting down operations until the violations are fixed, or flatly rejecting permit applications.

In addition, it also would follow that these legalistic agencies would stress standardization of inspector behavior that would institute inspector compliance. Furthermore, recruitment, training, and supervision would all be directed toward producing inspectors that were committed to agency goals rather than to an agenda that pursued discretion.

The last internal factors that shape inspector attitudes are job satisfaction and inspector experience. Both factors exert statistical influence in the hypothesized direction. Inspectors that are satisfied are also committed to agency objectives. This finding confirms earlier findings by Romzek and Hendricks (1982) that satisfied employees are likely to be loyal to the organization and to be conscious of the organization's expectation for involvement. Thus, it follows that they would exercise less discretion and follow agency directives instead. The finding that experienced inspectors exercise higher levels of discretion can be attributed to two potential explanations. The first would suggest that new inspectors are less sure of themselves, thus they are more likely to go by the book. The second explanation involves the suggestion that, at least in some regulatory areas, experienced inspectors cite fewer violators, possibly suggesting that more experienced inspectors practice a more

flexible approach. Whatever the reason, experienced inspectors are more apt to exercise discretion.

Lastly, population growth is the only external factor from the Comprehensive Model in Chapter 4 to exert statistical influence, and it shapes inspector attitudes toward discretion. This finding suggests that May and Burby (1994) are correct in their assumption that population growth is a good proxy for degree of staff professionalization, and this population growth in turn may create demand for regulatory controls.

The findings from Chapter 4 clearly show that internal factors are the driving force in determining the attitudes of inspectors toward the exercise of discretion. These internal factors refer to the inside of agencies in both a structural and a process sense. As noted earlier, agencies have a particular structure and a set of specific operative processes at any given time. These internal factors lead inspectors to implement policies that have general policy consequences.

This direct empirical analysis has provided some insight into an explanation of actual policy implementation. As promised, this study goes further than much of the case study analysis of implementation, and it provides empirical results regarding the exercise of inspector discretion. It is hoped that it has shifted some of the focus back to the actual policy implementers and back to the area where much actual policy implementation takes place--the state and local level.

When viewed broadly, implementation means administration of the law in which various actors, organizations, procedures, and techniques work together to put

adopted policies into effect in an effort to attain policy or program goals (in this case building regulations). This study has moved away from the dichotomous view of implementation and the question of did it take place or not. Instead, it viewed the factors that potentially influence implementation behavior and their subsequent impact.

### **Compliance**

Compliance with regulations consists of the extent to which regulatees adhere to the requirements of a given set of regulations (May and Wood 2003). In this study, the adherence to regulations was determined by inspectors and by the degree to which the building industry was compliant with the building code in their given jurisdiction. As was noted earlier in this study, much of the literature focused on how different agency enforcement strategies affect compliance. Specifically, these studies address the enforcement activities of agencies, their priorities for enforcement, and their efforts expended on enforcement (Reiss 1984; Scholz 1994; Sparrow 2000). Of interest here was how agency enforcement approaches and different enforcement styles of inspectors (the degree of discretion exercised) affect compliance. Again, for purposes of parsimony, only the “comprehensive model” regarding the findings from Chapter 5 will be discussed in detail.

When looking at industry compliance with building code regulations (Chapter 5, Figure 5.1), the degree and frequency of compliance is quite high, an average of 8.1 on a 10.0 point scale. While it is nice to know that builders are obeying regulations and



inspectors are enjoying high levels of compliance, questions remain. Specifically, what factors contribute to this high level of compliance?

To begin with, this study examined a large number of enforcement approaches, inspector discretion, agency capacity, and variables external to the building agency environment for their potential to exert statistical influence on industry decisions to comply. The approaches and the capacity models performed poorly (see Chapter 5), but the Comprehensive Model explains 33 percent (Adjusted  $R^2$ ) of the variation in voluntary compliance by the building industry. The large amount of unexplained variation is consistent with studies in the United States of compliance of individuals with restrictions on building codes (May and Wood 2003), individuals with restrictions on littering (Grasmick, Bursik, and Kinsey 1991) and tax payments (McGraw and Scholz 1991), with studies of compliance of firms with occupational and safety regulations (Gray and Scholz 1993) and water quality regulations (Burby and Patterson 1993), and of compliance of Danish farmers with agro-environmental regulations (Winter and May 2001).

As one can see in Chapter 5, agency enforcement approaches exerted negligible effects on compliance decisions. The use of incentive enforcement tools was the only factor to achieve statistical significance, and it was opposite of the hypothesized direction. The failure to find any enforcement approach effect on compliance is somewhat puzzling. However, May and Wood (2003), noted many of the same problems in their examination of enforcement styles in a smaller scale study in Washington state. While several explanations could be potentially offered, the most

plausible seems to fit with the findings of May and Wood (2003). There is an inconsistency of interaction between building agencies and builders. Many of the survey respondents cited inconsistencies in inspector's behavior as somewhat constraining in their ability to comply with code provisions. Thus, the degree of consistency in inspection experiences can make a difference in compliance decisions. These findings would suggest that repeated interactions and consistent signals are necessary for fostering shared expectations about compliance. If contacts with inspectors are indirect or inconsistent, it undermines the basis for shared expectations about compliance. As such, it is posited that inconsistencies in inspection styles makes homebuilders unresponsive to stylistic differences in enforcement (May and Wood 2003).

The second factor to exert strong statistical influence on compliance decisions is inspector discretion. Like incentive enforcement tools, inspector discretion is related negatively to compliance. In other words, as inspector discretion goes up, compliance with building codes decreases. While this is one of the first forays into the empirical relationship between individual inspector discretion and compliance decisions, the finding suggests that policy congruence is important for obtaining industry compliance. Apparently, there is reason for building agencies to place limits on discretion. As noted above, it may not be the exercise of discretion per se that is leading to noncompliance, rather it may be the inconsistencies in messages from inspectors that confuses homebuilders and influences the noncompliant behavior.

The next two variables that shape compliance behavior confirm the proposition that it is not only the technical and economic problems that agency's encounter that shapes official action. Rather, it is, at least partially, the charged political atmosphere in which regulators operate that influence compliance decisions. Clearly, at least in building code regulation, pro-regulatory interest groups have the potential to shape compliance. These interest groups, in favor of strong code enforcement, apparently bring strong political pressures to bear on regulatory officials, with compliance being a byproduct of this intensity and predominant direction of these political pressures. Furthermore, the involvement of elected officials in building code decisions has the expected influence that was posited in an earlier chapter.

Involvement of elected officials has a negative relationship with compliance. Simply stated, involvement of elected officials decreases compliance. It is assumed here that this elected official involvement in building code decisions is a negative intrusion on the enforcement of building codes. In other words, the elected official is usually stepping in to protest on behalf of the builder, arguing for less regulation.

Lastly, economic conditions exert a significant positive statistical influence on compliance behavior. Growth in new home construction is clearly driving an increased demand for regulatory controls and providing more resources for building departments to conduct inspections and to prosecute violators. In addition, it could be the case that with more growth there is less incentive to evade compliance, since builders and contractors are likely making money.

### **Implementation to Impact**

As highlighted above, implementation ostensibly occurs to reach the goals of some policy or statute. To analyze public policy enforcement without some attempt to address whether or not the policy has been successful would leave the analysis incomplete. As with most popular studies of impact, this one asked the question: “What did the program do?” In this particular case, building industry regulation, the program achieved an 80 percent rate of compliance. As with implementation, compliance is a mix of internal and external factors that shape policy impact. In this case it is the opposite of implementation where internal factors were the most important explanans. It appears that external factors (e.g., interest group involvement, politicization of the code decisions, and growth) are the driving force behind compliant behaviors.

It was somewhat surprising that compliance and inspector discretion were negatively related. However, and as noted earlier in Chapter 5, the discretion that is being exercised may not be of the cooperative sort. Unfortunately, the data limitations do not allow one to determine the type of discretion that inspectors are exercising. It could be that these inspectors are choosing to pursue a mix of strategies resulting in mixed signals, and the strategies are clearly ineffective in achieving compliance.

### **Implications and Future Research**

This study has shown that whether we are examining top-down or bottom-up policies, or a mixture of the two, both internal and external factors have the potential to shape regulatory behavior. It is not important to agree upon a single method or to

agree upon a single set of variables for studying policymaking. Rather, it is important that we identify the factors that shape behavior at each stage of the policy process.

There is considerable evidence to indicate that inspectors are exercising discretion. At the same time, these inspectors prove to be the least effective in bringing about regulatory compliance. While not engaging in the normative debate regarding the positives and negatives of discretion, this does at least lend *prima facie* credibility to an argument for top-down policymaking. It would appear that inspectors are not very effective in bringing about compliance with safety regulations when left to their own wares. Of course, we are unaware of all of the circumstances surrounding each individual inspector's agency.

Future research should continue to explore the factors that shape inspector behavior. For example, another internal factor not covered in the dissertation is the relative degree of legal support. One could argue that legal support is critical to the use of discretion, since inspectors might be reluctant to exercise discretion on close calls if they did not have someone who could tell them whether it was legal or not.

This study, while meaningful, only has provided a snapshot into regulatory behavior. None of this is to say that this study should spark a normative debate regarding the exercise of regulatory discretion. Rather, it is to say that to we need more empirical analysis of inspector behavior to understand the intricacies of inspector decisions. Surveys provide valuable insight into inspector behavior, but recall is not always ideal. Participant observation as well as surveys of regulated industries has the potential to bear much fruit. We then can get a clearer picture of the true signals sent

by inspectors and also get a perception from the regulated industry, especially since perception is in essence reality.

As for the study of impact, it needs more study. As has been suggested throughout this research, too many studies stop at implementation, stop short of asking the difficult questions of how well the program performed. While surveys and self-assessment have proved useful in determining things such as compliance, and thus impact, we must continue to search for more accurate measures. For instance, there are areas where we can determine actual impact (e.g., improving health, lower crime rates). We must strive to improve our measures of impact. It is often the most difficult, but, at the same time, it is the most rewarding aspect in research.

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**APPENDIXES**

### Appendix A-Data Sources and Measurement of Variables

Category and Item	Source <sup>a</sup> Mean (s.d.)	Measure
<b>Dependent Variable- Model 1</b>		
Discretion	Inspector Survey 17.61 (3.63) Alpha=.79	Sum of 7 items of various discretionary behaviors engaged in by inspectors when confronted with different enforcement situations. (1=strongly disagree; 5=strongly agree). Scale converted to 0-100.
<b>Internal Factors</b>		
Standardization of inspector behavior	Agency Survey 3.86 (1.89) Alpha=.66	Sum of 8 items of whether jurisdiction employed the practice or not in the past 12 months (1=yes; 0=no).
Politicization	Agency Survey 2.10 (.88)	How often elected officials become involved in building department decisions on cases (1=never;5=often).
Use of flexible enforcement tools	Agency Survey 48.81 (17.10) Alpha=.60	Sum of 6 items of whether jurisdiction allows usage flexible enforcement (1=yes; 0=no). Scale converted to 0-100.
Use of incentives	Agency Survey 28.76 (19.34)	Sum of 6 items of whether jurisdiction uses incentives to attain



	Alpha=.50	compliance (1=yes; 0=no). Scale converted to 0-100.
Use of fines	Agency Survey 45.93 (31.92) Alpha=.64	Sum of 3 items of whether jurisdiction uses fines to attain compliance (1=yes; 0=no). Scale converted to 0-100.
Use of standard deterrent enforcement tools	Agency Survey 46.27 (18.01) Alpha=.76	Sum of 13 items of whether standard enforcement tools are employed (1=yes; 0=no).
Strong agency leadership	Inspector Survey 6.98 (3.16) Alpha=.88	Sum of 12 items of the strength of leadership in a jurisdiction (1=yes;0=no).
Budget adequacy	Agency Survey 3.55 (1.09)	A measure of the adequacy of the jurisdictions budget (1=poor;5=good).
Technical expertise	Agency Survey 4.05 (.97)	A measure of the technical expertise in a particular jurisdiction (1=poor;5=good).
Corruption	Agency Survey .03 (.18)	Problems with corruption in any aspect of the code enforcement process (1=yes;0=no).
Inspector experience	Inspector Survey 6.00 (6.78)	A measure of experience on the job as building inspector (higher #'s indicate more experience).
<b>External Factors</b>		
Interest group pressure	Agency Survey 4.62 (1.79)	Index of interest group advocacy for strong code enforcement. Theoretical range of 0 to 12.
Population density	Secondary Source 2321	Persons per square mile.

	(2267)	
New Home Construction	Secondary Source 16.94 (11.73)	Percentage of housing units built between 1980-90.
<b>Dependent Variable- Model 2</b>		
Compliance	Inspector Survey 8.22 (1.06)	A measure of the effectiveness of the building code enforcement program in each jurisdiction (1=low compliance;10=high compliance).
<b>Independent Variables- Model 2</b>		
Enforcement Approaches		
Use of flexible enforcement tools	Agency Survey 48.81 (17.10) Alpha=.60	Sum of 6 items of whether jurisdiction allows usage flexible enforcement (1=yes; 0=no). Scale converted to 0-100.
Use of incentives	Agency Survey 28.76 (19.34) Alpha=.50	Sum of 6 items of whether jurisdiction uses incentives to attain compliance (1=yes; 0=no). Scale converted to 0-100.
Use of fines	Agency Survey 45.93 (31.92) Alpha=.64	Sum of 3 items of whether jurisdiction uses fines to attain compliance (1=yes; 0=no). Scale converted to 0-100.
Use of standard deterrent enforcement tools	Agency Survey 46.27 (18.01) Alpha=.76	Sum of 13 items of whether standard enforcement tools are employed (1=yes; 0=no).

<b>Supervision of field inspectors</b>	Agency Survey 49.80 (22.71)	Sum 9 items regarding the supervision of inspectors in the field (1=yes;0=no). Scale converted to 0-100.
Discretion	Inspector Survey 17.61 (3.63) Alpha=.79	Sum of 7 items of various discretionary behaviors engaged in by inspectors when confronted with different enforcement situations. (1=strongly disagree; 5=strongly agree). Scale converted to 0-100.
Agency Capacity	Agency Survey 3.69 (.78) Alpha=.70	Sum of 4 items concerning the capacity of the agency to enforce the building code (1=poor;5=good).
Environmental Variables		
Interest group pressure	Agency Survey 4.62 (1.79)	Index of interest group advocacy for strong code enforcement. Theoretical range of 0 to 12.
Population density	Secondary Source 2321 (2267)	Persons per square mile.
New Home Construction	Secondary Source 16.94 (11.73)	Percentage of housing units built between 1980-90.
Politicization	Agency Survey 2.10 (.88)	How often elected officials become involved in building department decisions on cases (1=never;5=often).
<p><sup>a</sup>Source indicates whether data are for one of the national surveys of building departments or inspectors or secondary sources. The descriptive statistics are computed for both the agency and inspector samples. Non-responses vary among items. For summated items, the Cronbach Alpha measure of reliability is reported.</p>		

## Appendix B-Survey Questions

Below is the exact question wording for each question used in this study. Questions are grouped where appropriate (e.g., where they are combined into additive scales).

### *Agency Capacity (Only utilized in Model 2):*

How would you rate the capacity of the Building Department to perform its mission? Please circle one for each of the following aspects of capacity.

- 1) Adequacy of non-personnel budget
- 2) Adequacy of staffing
- 3) Agency technical expertise
- 4) Authority for enforcing codes

### *Agency Leadership (Only utilized in Model 1):*

Please circle all of the following leadership and managerial characteristics that apply to your direct supervisor.

- 1) Knowledgeable about technical aspects of the Building Code
- 2) Acknowledges a job well done
- 3) In general, supports my field enforcement decisions when complaints are received
- 4) Is knowledgeable about the practical aspects of code enforcement in the field
- 5) Coordinates well my work assignments
- 6) Accessible
- 7) Good motivator
- 8) Good problem solver
- 9) Gives instructions that are easy to understand
- 10) Active in seeking to improve my work conditions (e.g., salary, resources)
- 11) Active in looking for ways to improve my technical capacity (e.g., training opportunities, technical materials, speakers)
- 12) Sets clear goals

### *Budget Adequacy (Only utilized in Model 1):*

How would you rate the capacity of the Building Department to perform its mission? Please circle one for each of the following aspects of capacity. Adequacy of non-personnel budget?

### *Compliance (Only utilized in Model 2):*

Overall, how effective is the building code enforcement program? Please rate effectiveness in attaining compliance with building code requirements on a scale of 1 to 10, with 1 indicating low compliance with code requirements and 10 being complete (100%) compliance with code requirements.

*Corruption (Only utilized in Model 1):*

During the past ten years, has the Building Department experienced any problems with corruption in any aspect of the code enforcement process (e.g., attempted bribery of an inspector, inspector blackmail of contractor)?

*Discretion (Utilized in Model 1 and 2):*

- 1) For a new contractor whose compliance record is unknown, Building Code provisions should be applied flexibly at first and then, depending on compliance response, modify enforcement accordingly.
- 2) The provisions of the Building Code are too complex and numerous; as a result, I enforce mainly those I am most familiar with.
- 3) The provisions of the Building Code are too complex and numerous, as a result, I enforce mainly those that I consider are most effective in protecting life and safety.
- 4) In practical terms, it is not possible to prevent all code violations and, thus, enforcement largely involves tolerating a certain level of noncompliance.
- 5) Discretion is necessary because the enforcement situations that I face in the field are more complex than those covered by the Building Code.
- 6) I apply Building Code provisions more strictly with “bad apples” (i.e., chronic offenders).
- 7) I apply Building Code provisions more leniently with “good apples” (i.e., those who comply regularly).

*Enforcement approaches:*

Use of fines (Utilized in Model 1 and 2)

- 1) Fine levied for working without permit in the last 12 months
- 2) Fine levied for not following approved plan in the past 12 months
- 3) Fine levied for not following code provisions in the past 12 months

Use of flexible enforcement tools (Utilized in Model 1 and 2)

- 1) Inspectors can vary enforcement procedures with assessment of cause of violation
- 2) Inspectors authorized to bluff in order to obtain compliance
- 3) Inspectors allowed to be lenient when life safety not threatened
- 4) Inspectors can badger contractors who are chronic violators
- 5) Inspectors can relax standards based on extenuating circumstances
- 6) Inspectors can spend extra time on site to develop good relations with regulated

Use of incentives (Utilized in Model 1 and 2)

- 1) Less frequent inspections
- 2) Bend over backward to be cordial
- 3) Modify standards for firms with good records with approval of higher authority
- 4) Other incentives
- 5) Prior record of violator taken into account in decision to prosecute

6)Attitude of violator taken into account in decision to prosecute

Use of informal communication (Utilized in Model 1 and 2)

- 1)Verbal notice of violation
- 2)Verbal notice of corrective action
- 3)Mediation of disputes over interpretation of code

Use of standard deterrent enforcement tools (Utilized in Model 1 and 2)

- 1)Written notice of violation
- 2)Written notice of corrective action
- 3)Stop work order
- 4)Revocation of building permit
- 5)Revocation of certificate of occupancy
- 6)Temporary restraining order
- 7)Preliminary injunction
- 8)Permanent injunction
- 9)Infraction field citation/fine
- 10)Misdemeanor prosecution/fine
- 11)Fine levied for working without permit in past 12 months
- 12)Fine levied for not following approved plan in past 12 months
- 13)Fine levied for not following code provisions in past 12 months

Supervision of field inspectors (Only utilized in Model 2)

- 1)Inspection checklists and forms
- 2)Department policy or procedure manual
- 3)Periodic review of inspectors work
- 4)Inspectors required to consult supervisor/building official on hard calls
- 5)Rotate field inspectors' territories
- 6)Intensive training of inspectors in department policy and procedures
- 7)Annual performance evaluation of inspectors
- 8)Follow-up field inspections of inspectors' work
- 9)Productivity measures used to evaluate inspectors' work

*Inspector Experience (Only utilized in Model 1):*

In what year did you begin working for this Building Department?

*Interest Group Pressure (Only utilized in Model 1 and 2):*

Index of interest group advocacy for strong code enforcement. Dichotomous measure of the interest group activity of six interest groups for strong code enforcement.

*Job Satisfaction (Only Utilized in Model 1):*

What is your overall level of satisfaction with your job as Building Inspector?

*New Home Construction (Utilized in Model 1 and 2):*

Percentage of housing units built between 1980 and 1990

*Politicization (Utilized in Model 1 and 2):*

How often do elected officials become involved in Building Department decisions on specific building code cases?

*Population Density (Utilized in Model 1 and 2):*

Population density (persons per square mile)

*Technical Expertise (Only Utilized in Model 1):*

How would you rate the capacity of the Building Department to perform its mission?  
Please circle one for each of the following aspects of capacity. Agency technical expertise?

### **Vita**

William McLean was born in Osceola, Arkansas, January 29, 1971. He graduated from Rivercrest High School. He took his B.A and M.A. in Political Science from Arkansas State University, in 1994 and 1995 respectively.