



Achieving Regulatory Excellence: Challenges and Opportunities

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**PENN PROGRAM
ON REGULATION**
UNIVERSITY of PENNSYLVANIA

Arête: Excellence



Many of Today's Challenges Are Dynamic Ones



Achieving Regulatory Excellence

- 1. Defining Regulatory Excellence**
- 2. Becoming/Remaining an Excellent Regulator**
- 3. Measurement & Excellence in Obligation Management**
- 4. Conclusion: “People Excellence”**

Achieving Regulatory Excellence

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“In searching after one virtue we
have found many.”

— SOCRATES, IN PLATO'S *MENO*

Attributes of Regulatory Excellence

APPENDIX B: ATTRIBUTES OF REGULATORY EXCELLENCE

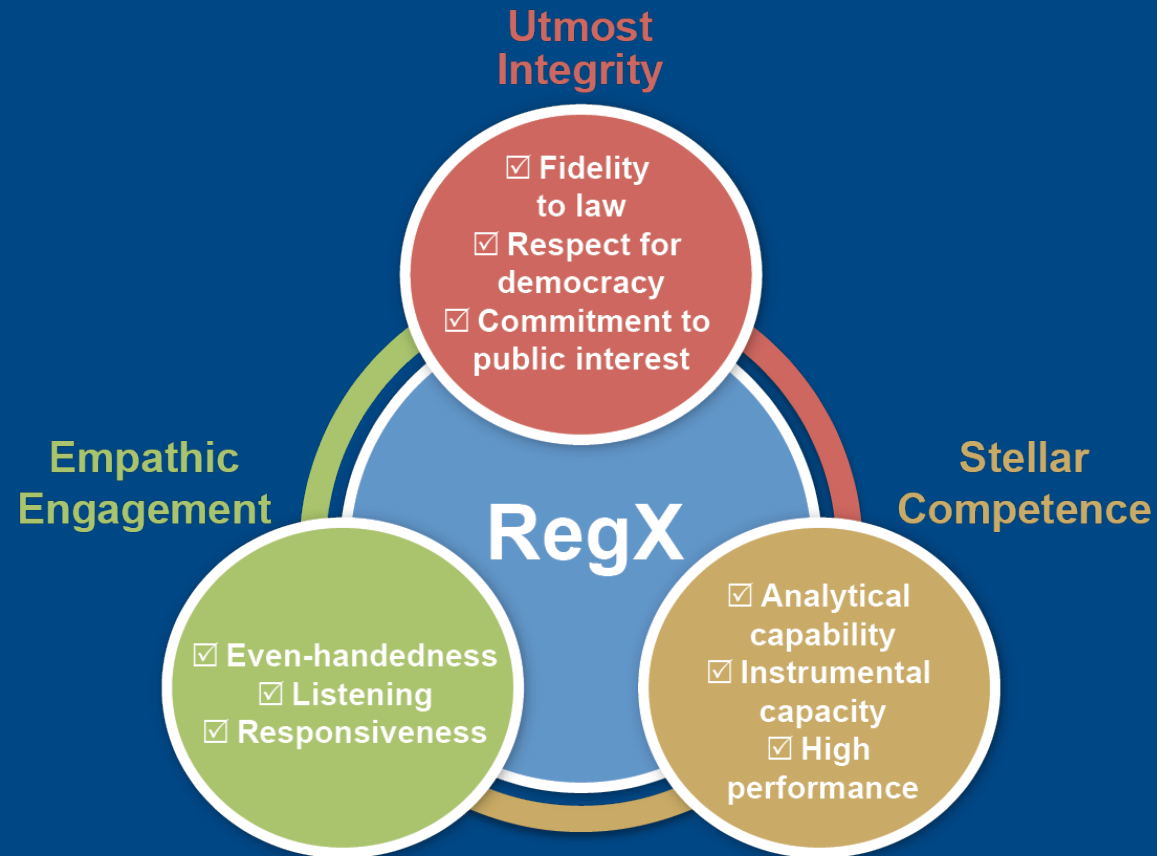
Alberta Energy Regulator (2014) <ol style="list-style-type: none"> 1. Proactive 2. Effective 3. Efficient 4. Credible 	Mumford, Peter (2011) <ol style="list-style-type: none"> 1. Growth supporting 2. Proportional 3. Flexible and Durable 4. Certain and predictable 5. Transparent and accountable 6. Capable Regulators 	<ol style="list-style-type: none"> 4. Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. 5. Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives. 6. Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations. 7. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence. 8. Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner. 9. As appropriate apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. 10. Where appropriate promote regulatory coherence through co-ordination mechanisms between the supranational, the national and sub-national levels of government. 11. Foster the development of regulatory management capacity and performance at sub-national levels of government. 12. In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction. 13. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation. 14. Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment. 15. Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory. 16. Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy. 17. Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests. 18. Eliminate unnecessary regulatory barriers to trade and investment through continued liberalization and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness. 19. Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform. 	<ol style="list-style-type: none"> 3. Organizational culture that harnesses the unique talents of employees and steers those talents towards achieving the agency's mission
Australian Communications and Media Authority (2013) <ol style="list-style-type: none"> 1. Bridging to the Future 2. Transforming the Agency 3. Major program delivery 4. Effective regulation 	New Zealand Ministry of Business, Innovation & Employment (2011) <ol style="list-style-type: none"> 1. Efficiency 2. Effectiveness 3. Transparency 4. Clarity 5. Equity 	Texas Department of Insurance (2011) <ol style="list-style-type: none"> 1. Timely 2. Prompt 3. High-quality 4. Efficient 5. Accurate 6. Limited Disputes/Prompt Resolution 7. Cost-Effective 	Treasury Board of Canada Secretariat (2012) <ol style="list-style-type: none"> 1. Protect and advance the public interest 2. Advance efficiency and effectiveness 3. Make decisions based on evidence 4. Promote a fair and competitive market economy. 5. Monitor and control the administrative burden. 6. Create accessible, understandable & responsive regulation 7. Require timeliness, policy coherence and minimal duplication
Brown, et al (2006) <ol style="list-style-type: none"> 1. Independence 2. Accountability 3. Transparency and Public Participation 4. Predictability 5. Clarity of Roles 6. Completeness and Clarity in Rules 7. Proportionality 8. Requisite Powers 9. Appropriate Institutional Characteristics 10. Integrity 	New Zealand Treasury (2012) <ol style="list-style-type: none"> 1. Growth supporting 2. Proportional 3. Flexible 4. Durable 5. Certain and predictable 6. Transparent and accountable 7. Capable Regulators 	UK Civil Service (2009) <ol style="list-style-type: none"> 1. Set direction (Leadership) 2. Ignite passion, pace and drive (Leadership) 3. Develop People (Leadership) 4. Set strategy and focus on outcomes (Strategy) 5. Base choices on evidence and customer insight (Strategy) 6. Collaborate and build common purpose (Strategy) 7. Innovate and improve delivery (Delivery) 8. Plan, resource and prioritize (Delivery) 9. Develop clear roles, responsibilities & delivery model(s) (Delivery) 10. Manage performance and value for money (Delivery) 	UK Department of Energy and Climate Change (2009) <ol style="list-style-type: none"> 1. Set direction (Leadership) 2. Ignite passion, pace and drive (Leadership) 3. Take responsibility for leading delivery and change (Leadership) 4. Build Capacity (Leadership) 5. Focus on Outcomes (Strategy) 6. Base choices on evidence (Strategy) 7. Build common purpose (Strategy) 8. Plan, resource and prioritize (Delivery) 9. Develop clear roles, responsibilities & delivery model(s) (Delivery) 10. Manage performance (Delivery)
Environment Canada (2012) <ol style="list-style-type: none"> 1. Evidence based decision making 2. Effectiveness 3. Efficiency 4. Transparency 5. Adaptability 	OECD (2005) <ol style="list-style-type: none"> 1. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation. 2. Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment. 3. Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory. 4. Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy. 5. Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests. 6. Eliminate unnecessary regulatory barriers to trade and investment through continued liberalization and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness. 7. Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform. 	UK Environment Agency (2013) <ol style="list-style-type: none"> 1. Proportionate 2. Targeted 3. Customer-focused 4. Consistent 5. Accountable 	UK Food Standards Agency (2005) <ol style="list-style-type: none"> 1. Delivering outcomes 2. Practical and timely interventions 3. Consistent, risk-based, proportionate and transparent decision-making 4. Using the market & applying effective incentives & sanctions 5. Continuous learning 6. Delivering value for money 7. Changing the landscape
Farrell & Goodman (2013) <ol style="list-style-type: none"> 1. Use of better evidence for decision-making 2. Greater engagement and empowerment of citizens 3. Thoughtful investments in expertise and skill building 4. Closer collaboration with the private and social sectors 	OECD (2012) <ol style="list-style-type: none"> 1. Commit at the highest political level to an explicitly whole-of-government policy for regulatory quality. 2. Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. 3. Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality. 	UK Food Standards Agency (2005) <ol style="list-style-type: none"> 1. Delivering outcomes 2. Practical and timely interventions 3. Consistent, risk-based, proportionate and transparent decision-making 4. Using the market & applying effective incentives & sanctions 5. Continuous learning 6. Delivering value for money 7. Changing the landscape 	
Gardner, et al (2013) <ol style="list-style-type: none"> 1. Accelerating... strategic goals 2. Using efficient and transparent processes 3. Strengthening capabilities 4. Building expertise 5. Providing customers with cross-functional support 6. Working as a coordinated and cohesive internal team 	OECD (2012) <ol style="list-style-type: none"> 1. Commit at the highest political level to an explicitly whole-of-government policy for regulatory quality. 2. Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. 3. Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality. 		
Government of Alberta (2010) <ol style="list-style-type: none"> 1. Effective 2. Efficient 3. Adaptable 4. Predictable 5. Fair 6. Transparent 	OECD (2012) <ol style="list-style-type: none"> 1. Commit at the highest political level to an explicitly whole-of-government policy for regulatory quality. 2. Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. 3. Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality. 		
Hempling, Scott (2013) <ol style="list-style-type: none"> 1. Purposeful 2. Educated 3. Decisive 4. Independent 5. Disciplined 6. Synthesizing 7. Creative 8. Respectful 9. Ethical 	Riefling, et al (2013) <ol style="list-style-type: none"> 1. Clear articulation of strategy and overall agency direction 2. Well defined operating model based on efficient and effective processes and systems 		

Source: Appendix B to Cary Coglianese, *Listening and Learning: Toward a Framework of Regulatory Leadership*

RegX: Atoms of Excellence



Nine Tenets of Regulatory Excellence



Utmost Integrity

Key Tenets

- Fidelity to law
- Respect for democracy
- Commitment to public interest

E.P.A. Chief Scott Pruitt Resigns Under a Cloud of Ethics Scandals



Scott Pruitt has been the subject of at least 13 federal investigations.



<https://www.nytimes.com/2018/07/05/climate/scott-pruitt-epa-trump.html>

Stellar Competence

Key Tenets

- Analytic capability
- Instrumental capacity
- High performance



Image sources: Getty Images, under license.

Empathic Engagement

Key Tenets

- Even-handedness
- Listening
- Responsiveness



<https://www.flickr.com/photos/taedc/4997001278>

Pursuing Regulatory Excellence

1. Defining Regulatory Excellence
- 2. Becoming/Remaining an Excellent Regulator**
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What Makes for an *Excellent* Cellist?

- Traits
- Actions
- Outcomes



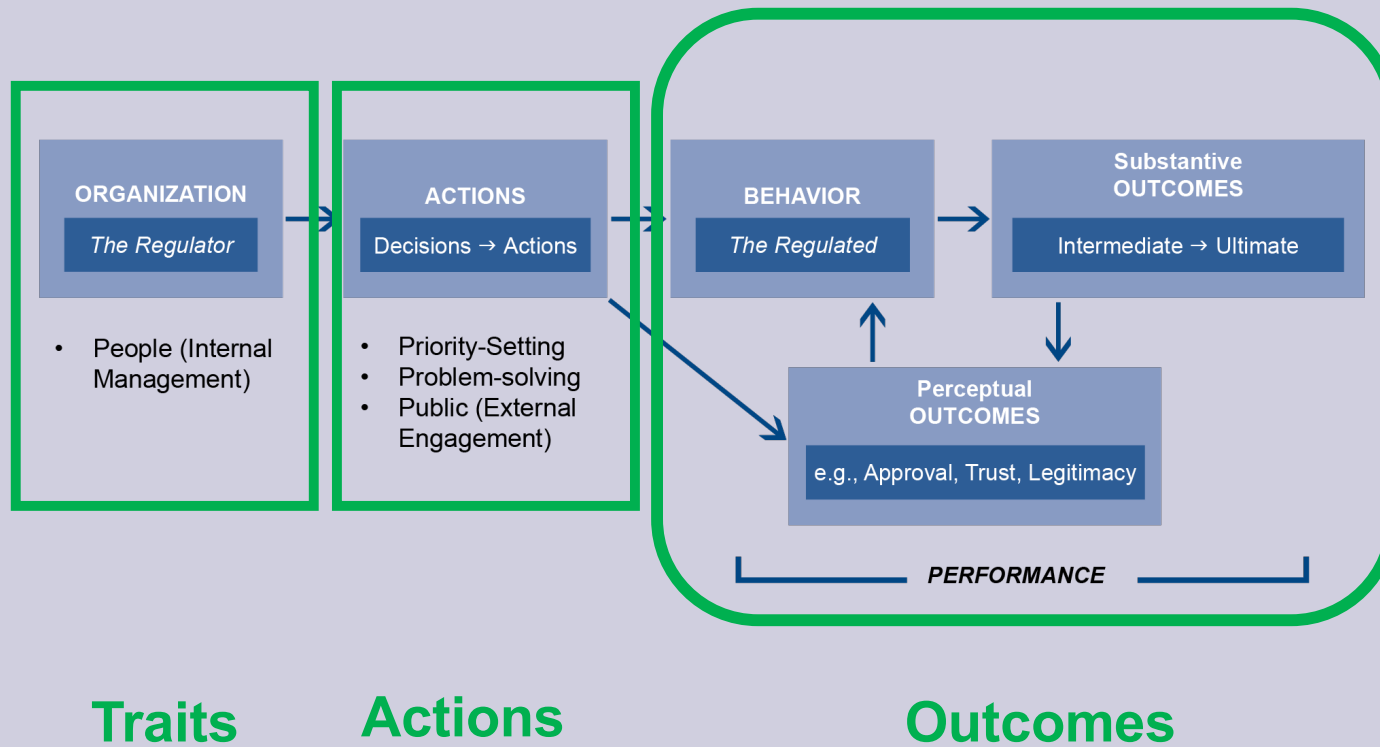


Regulatory excellence applies to a regulator's

- **Traits** (as organization)
- **Actions**
- **Outcomes**

(Or the TAO of Regulatory Excellence....)

Becoming an Excellent Regulator



How not to be an excellent regulator

MINERALS MANAGEMENT SERVICE

Organization (traits)

- Allegations of favors, socializing, and even sexual relations between MMS staff and industry
- Inspector conducted inspections on facility owned by a company with which he was seeking employment
- Dual mandate to regulate industry but also collect oil revenues

Actions

- Unannounced inspections had dropped off
- Laxity in scrutinizing emergency response plans
- Rules not updated to reflect new industry practices

Performance (outcomes)

- See image to the right....



How to be an excellent regulator

Organization (traits)

- **Utmost integrity:** Does your organization possess the autonomy from narrow, short-term political pressures and industry interests needed to act on a fair assessment of evidence and to deliver overall public value?
- **Empathic engagement:** Does your organizational culture embrace and promote public awareness of and input into all aspects of its policies and practices?
- **Stellar competence:** Are your human, financial, and information resources up to the task of making sound, evidence-based decisions that consistently deliver stellar overall performance?

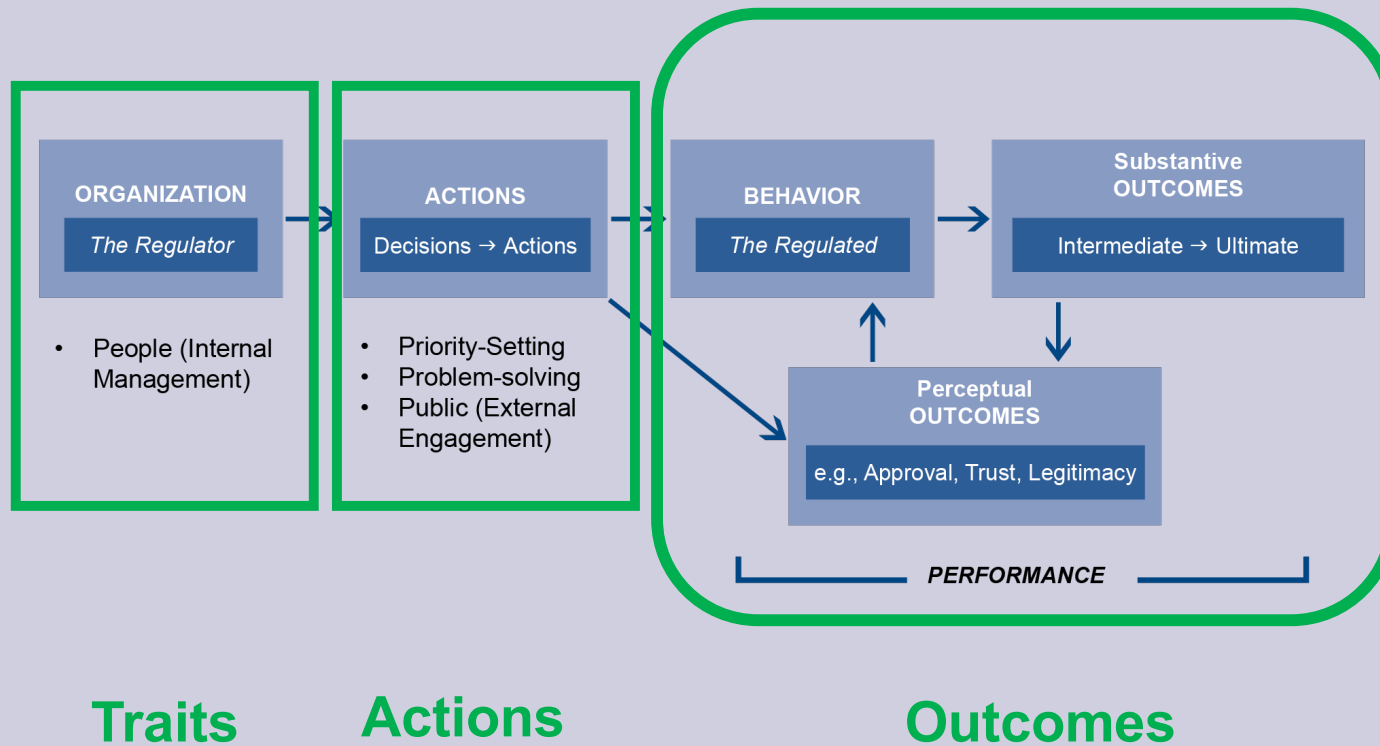
Actions

- **Utmost integrity:** Are your actions properly motivated to be fair and designed to deliver public value?
- **Empathic engagement:** Are your actions ones that treat others with respect and dignity and that start with the assumption of the good faith of all with whom you interact?
- **Stellar competence:** Are your actions innovative, protective, and effective? Are you constantly seeking to learn about best practices and to refine your tools and tactics?

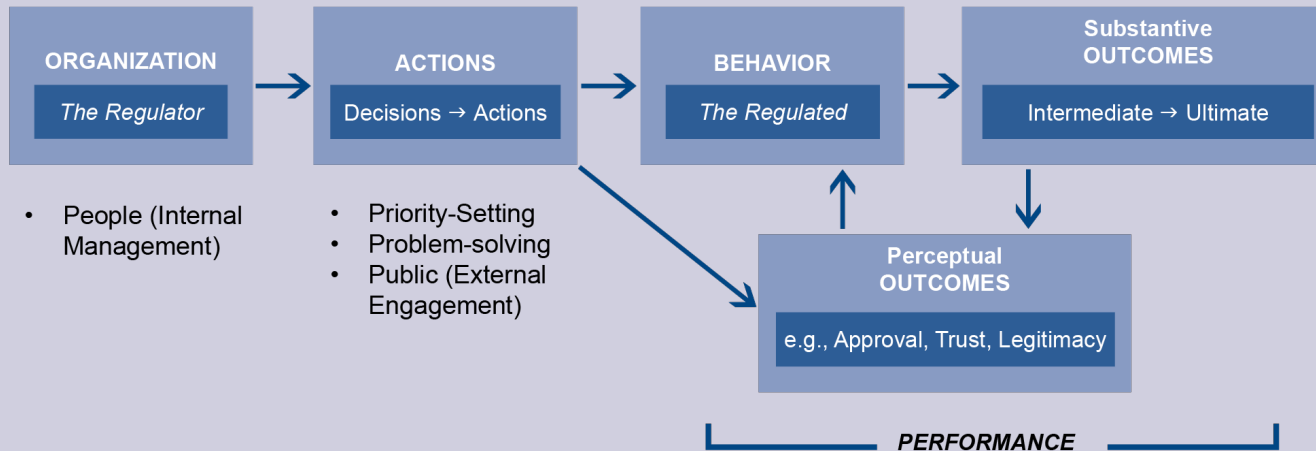
Performance (outcomes)

- **Utmost integrity:** Do your actions lead to outcomes that adhere to the law and advance the public interest?
- **Empathic engagement:** Are you perceived by members of the public to be transparent, fair, and trustworthy?
- **Stellar competence:** Are your actions in fact making a significant difference in advancing your mission?

Becoming an Excellent Regulator



Becoming an Excellent Regulator



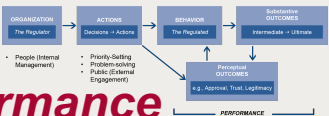
Moving Forward

1. **Self-awareness:** *build out your model*
2. **Scoping:** *assess current alignment with RegX*
3. **Select strategic priorities:** *identify key areas to improve*
4. **Assessment and continuous improvement:** *measure and move forward!*



Scoping Grid

Excellence Infusion



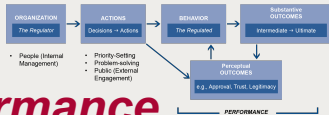
Model of Regulatory Performance

	Organization					Actions					Performance			
	Mission	Resources	Human capital	Autonomy	Culture	Decision-making	Public Engagement	Rule-making	Rule-application	Incident response	Evaluation	Industry Behavior	Perpetual Outcomes	Substantive Outcomes
Utmost Integrity														
Fidelity to law														
Respect for democracy														
Commitment to Public Interest														
Empathetic Engagement														
Even-handedness														
Listening														
Responsiveness														
Stellar Competence														
Analytical capability														
Instrumental capacity														
High performance														

Attributes & Tenets of Regulatory Excellence



Excellence Infusion



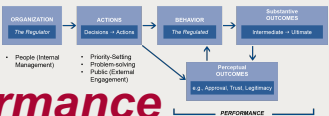
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Excellence Infusion



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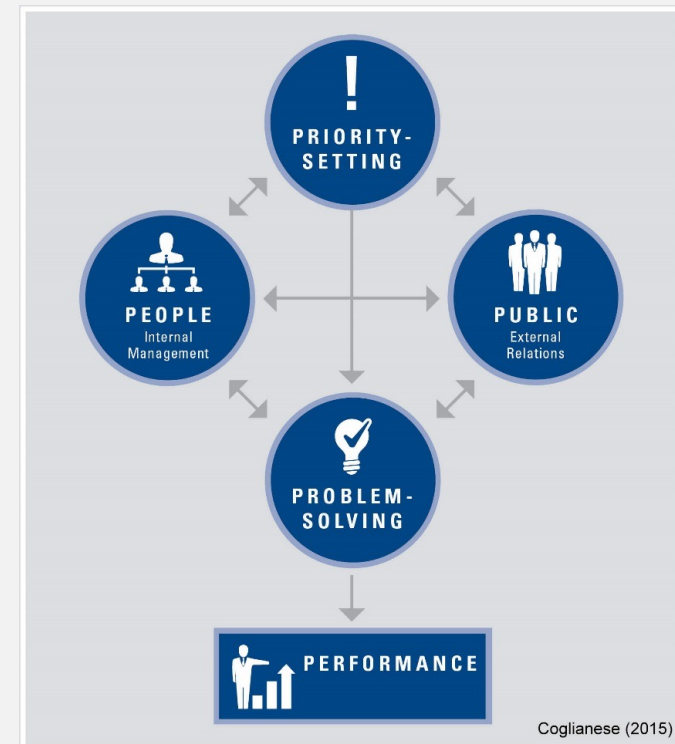
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Attributes & Tenets of Regulatory Excellence



Keys to Achieving Regulatory Excellence

- **People (Internal Management)**
 - Mission, resources, human capital, autonomy, culture
- **Priority-setting**
 - Decision-making (risk- & evidence-based)
- **Problem-solving**
 - Rule-making, rule application, incident response, evaluation
- **Public (External Engagement)**
 - Empathy, outreach, responsiveness



People (Internal Management)

1. Does your organization possess and communicate a clear, well-defined mission that aims boldly to maximize public value within the scope of the regulator's mandate?
2. Does your organization have adequate financial resources and information technologies to deliver on its mission?
3. Does your organization possess appropriate levels of autonomy to ensure its decisions are made consistently with expert judgment and in the long-term public interest?
4. Does your organization have a sufficient level of staff members who are highly-trained and keep up with developments and emerging trends within their scope of work?
5. Does your organizational culture support and value learning, innovation, and public service?
6. Does your culture align well with all three core RegX attributes and all nine regulatory excellence tenets?

Priority-setting

1. Does your organization seek out state-of-the-art evidence before making both regulatory and management decisions, and then incorporate that evidence in good faith into its decision-making and its reasons for its decisions?
2. Does your organization actively investigate and seek to generate new knowledge of poorly understood risks, potential areas of concern, and regulatory impacts?
3. Does your organization have in place adequate procedures for preserving the integrity of scientific information, including suitable processes of peer review?
4. Does your organization ground its decisions on a solid understanding of the industry it is regulating, including an ongoing awareness of technological innovations?
5. Does your organization understand and articulate clearly the normative principles it uses in combination with risk analysis to make decisions (i.e., what it means to be “risk-based” or “risk-informed”)?
6. Does your organization engage in analysis of its own rules and practices, including rigorous causal evaluation, to learn what works and what could work better?

Problem-solving

1. Does your organization consistently determine that new regulations are needed (and that non-regulatory solutions would not be effective) before adopting new rules and directives?
2. Does your organization select and apply regulatory instruments that equitably maximize net benefits (or, if specified by law, that meet other policy criteria)?
3. Does your organization consider a full range of regulatory instruments that will best achieve relevant policy goals, including when appropriate, regulatory instruments that preserve flexibility?
4. Does your organization target its inspections in such a manner as to maximize the chance of finding and reducing significant regulatory violations?
5. Does your organization deploy enforcement tools responsively, calibrating consequences so as to assure compliance and promote positive cooperation?
6. Does your organization manage its own operations with efficiency, minimizing unwarranted delays in decision-making?

Public (External Engagement)

1. Does your organization provide open access to its information in a manner that is accessible and comprehensible both to industry users and to the broader public?
2. Does your organization provide, whenever feasible, full drafts of regulatory decisions when it invites public comment?
3. Does your organization generally provide opportunities for participation by any member of the public that is concerned or will be affected by its decisions?
4. Does your organization reach out to and welcome input by all individuals, organizations, and communities that are interested in or affected by its decisions?
5. Does your organization provide well-reasoned explanations for its decisions that acknowledge and respond to all pertinent concerns expressed by members of the public?
6. Does your organization ensure that its entire workforce interacts fairly, respectfully, and empathically with all segments of the public?

Recap: Excellence Infusion

- Identify **strategic priorities** *around RegX*
- Align **organizational culture** *around RegX*
- Build **human capital** *around RegX*
- Involve **public** *in pursuit of RegX*
- Use **strategic measurement** *for RegX*

Pursuing Regulatory Excellence

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Measurement of regulatory excellence

versus

Measurement for regulatory excellence

Measurement serves many purposes.

The most important of these is...

to learn.

“The reality for public managers is that they oversee functions that are easily measured by one or a small number of performance items but are imperfectly measured by a great number of items, some of which imply inherent tradeoffs in the function...”

Moynihan (2017)

Choose metrics that are ...

- **Relevant**
 - Related
 - Tight
- **Reliable**
 - Accurate
 - Resistant
- **Realistic**
 - Available
 - Intelligible



Methods of Measurement

1. Actions (bean-counting)
2. Outcomes (stock-taking)
3. Action → Outcomes (causation)

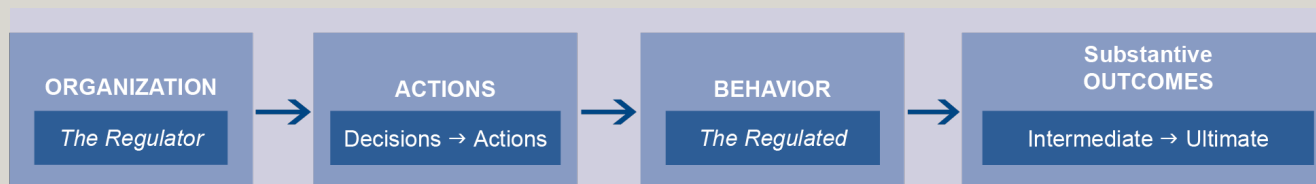
Note: Avoid linking measurement to organizational incentives. Remember, the most important reason for measurement is to learn!

*Measure with excellence too:
utmost integrity,
stellar competence,
empathic engagement....*

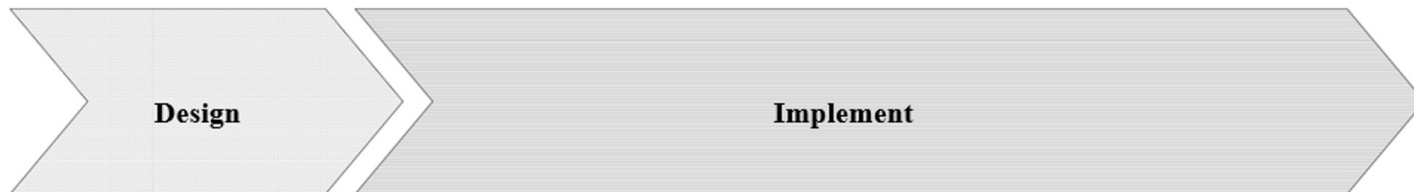




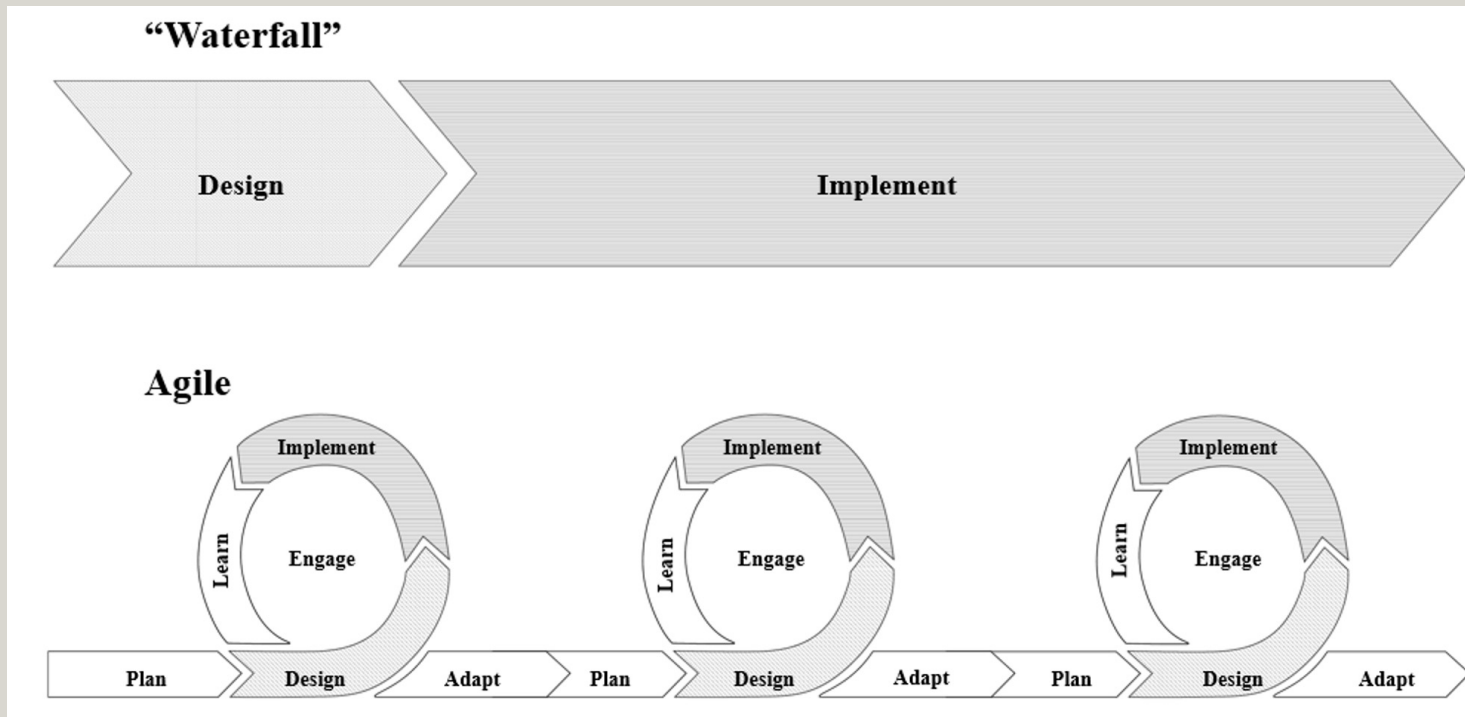
Make Learning Ongoing



“Waterfall”

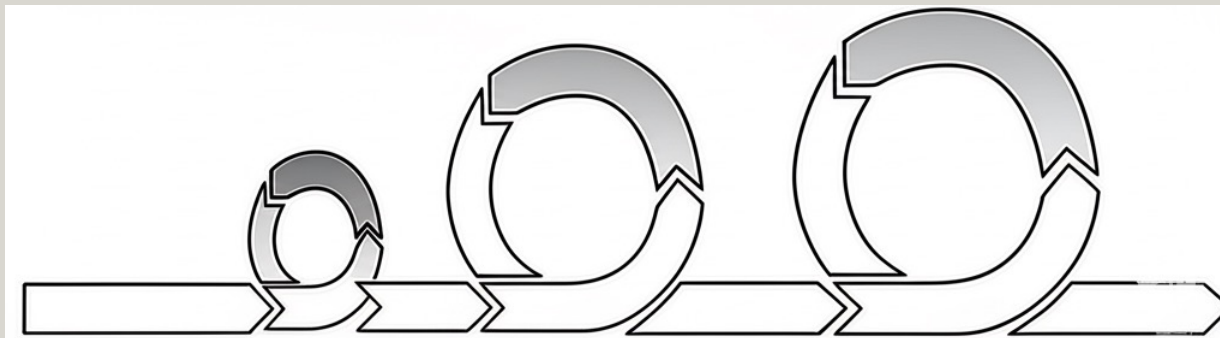


Make Learning Ongoing

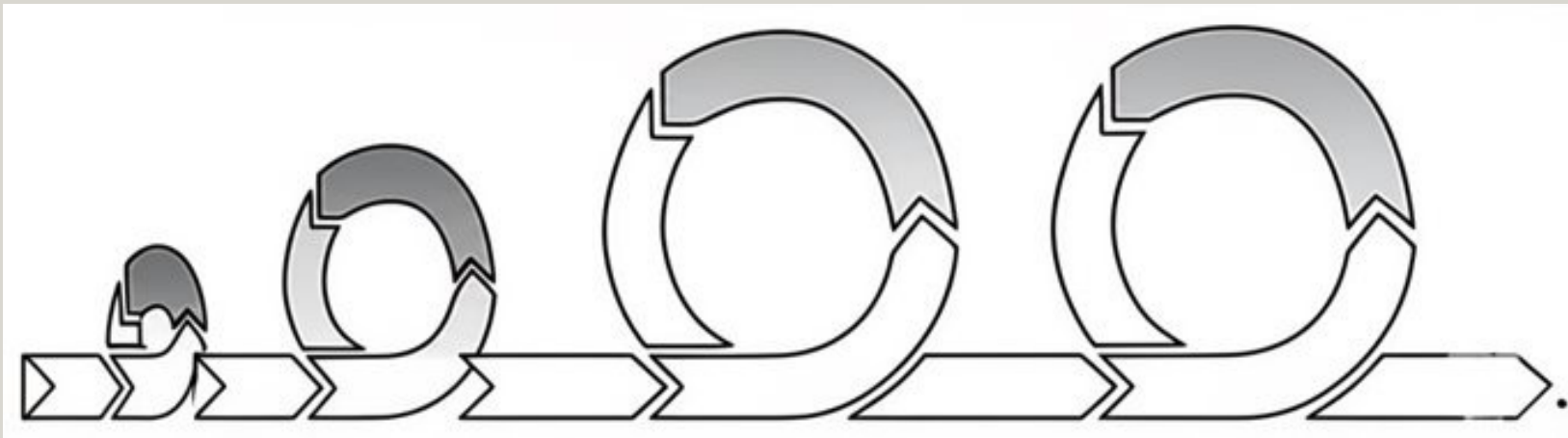


Source: Kariv-Tietelbaum & Coglianesi (2023)

Vary Your Pace as Needed



Keep the Learning Going



Pursuing Regulatory Excellence

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4. **Conclusion: “People Excellence”**

**Excellence requires a regulator to have
a suitable *legal mandate*, adequate
financial resources, sufficiently
advanced *technology* ...
and more.**



But most important of all.... *regulatory excellence is people excellence*

“Only if the people working in a regulatory organization are committed to doing their utmost to deliver public value, and to learning and to improving their ability to deliver value in an environment that requires respectful engagement with others, can a regulator expect to achieve true excellence.”

Coglianese (2015)

“Make no doubt, it is tough leading a regulator and **there can be pressure from a variety of external sources**, some of it fairly rough. So as an individual **you do need to be personally resilient with a thick skin**. I believe **you also need a belief in a purpose, or a lodestar**, which will help you confidently to make judgments and stop you from being pushed around by each last source of pressure. But the flip side of that, and it makes for a nice balance, is that **you also need humility** to recognize that you may well be wrong and others may have better ideas or judgments.”

Dame Deirdre Hutton (2015)





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