The best government is that which governs least.

LEARNING OBJECTIVES

• Rethink options to manage risk
• Break out of comfort zone
• Hear different perspectives
• Enable you to:
  – Evaluate current and proposed management strategies
  – Propose statute, regulation, or administrative changes to the existing regulatory landscape
THIS EXERCISE WILL:

• prompt you to consider new ideas to solve problems
• expose you to fresh perspectives
• encourage deep dives into alternatives to regulation
• provide a framework for further discussion
• provide justification and reinforcement of management decisions
THIS EXERCISE WILL NOT:

• tell you how to solve the problem
• make you feel comfortable
• force you to change
WHAT IS THE ROLE OF GOVERNMENT?

• Form a more perfect union
• Establish justice
• Insure domestic tranquility
• Provide for the common defense
• Promote the general welfare
• Secure the blessings of liberty
• Secure and transmit to succeeding generations our heritage of political, civil, and religious liberty within the union of states
WHAT IS THE ROLE OF GOVERNMENT?

- Form a more perfect union
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- Secure the blessings of liberty

Preamble to the Constitution of the United States of America

- Secure and transmit to succeeding generations our heritage of political, civil, and religious liberty within the union of states

Preamble to the Alaska Constitution
SO, WHY DO WE DO WHAT WE DO?

• Limit risk before it happens
• Provide remedy & redress of wrongs
• Gather, disseminate, and analyze data
• Ensure public process
• Create a revenue stream to pay for services
• Ensure transparency
• Provide public services
• Create stability and maintain order
• Set forth common boundaries, rights, and systems for governance
• Other reasons?
IS IT REALLY GOVERNMENT’S RESPONSIBILITY?

Is it a proper activity of government?
Does it duplicate work performed in the private sector?
Does it require a monopoly, or can multiple entities do it?
Is it mandated by the federal government?

For the purpose of this exercise, include any activity performed by your agency.
IS IT *REALLY* GOVERNMENT’S RESPONSIBILITY?

Or, do we ask government to perform our activity because:

We have always done it that way?
We can’t think of another way to do it?
We feel ownership over the activity?
We don’t have the resources to do explore options?
We don’t have the resources to do manage the change?
Statutory change is too volatile and cumbersome?
Stakeholders want us to do it / no alternatives?
The public is complacent?

Other legitimate reasons, weak excuses, unexposed biases?
ARE WE DOING IT WELL?

Is the way we perform our activity:

The most effective cost-efficient time-efficient customer-friendly inclusive way to do it?
RIGHT-TOUCH REGULATION

A RISK-MANAGEMENT APPROACH TO EVALUATING REGULATORY ACTIVITY

Time to use your workbook!
SECTION A: IDENTIFY THE PROBLEMS

The following bad things could happen when this activity is performed:

1.
2.
3.
4.
5.
SECTION B: CREATE A HAZARD PROFILE

What are the inherent (intrinsic) hazards present when the problem occurs?
- Complexity
- Context
- Agency

What are the external (extrinsic) hazards present when the problem occurs?
- Scale
- Perception
- Impact of regulation
- Unintended consequences
SECTION C: HARM POSSIBILITY

What is the possibility for the hazard to lead to creation of a harm?

- **NO HARM**: Unlikely to occur because conditions for hazards are unusual or infrequent.
- **MINIMAL POSSIBILITY**: Possible to occur because conditions for hazards may be present.
- **MODERATE POSSIBILITY**: Certain to occur because hazards are always present.
SECTION D: HARM SIGNIFICANCE
If a harm occurs, what is its significance?

- **NO HARM**
  - Low dollar value
  - Low quantity
  - Limited and treatable physical, emotional, or mental injury

- **MINIMAL IMPACT**
  - Multiple structural systems or components damaged
  - Temporary, treatable physical, emotional, or mental injury

- **MODERATE IMPACT**
  - Total loss of significant structure or investment
  - Permanent physical, emotional, or mental injury or death

- **SIGNIFICANT IMPACT**
SECTION D: HARM RATINGS

Harm Possibility + Harm Significance = Total Harm Rating

There is no scientific “high” or “low” harm rating for any particular regulated program or activity.

Compare your score with others:

– Did you have similar ratings?
– If not, what data is missing?
– What opinions or biases exist?
– Note any observations and make appropriate changes.
SECTIONS E & F: HAZARD MANAGEMENT

Examples from the world of professional licensure
SECTIONS E & F: HAZARD MANAGEMENT

The good, the bad, and the ugly: What is an acceptable level of risk? Oversight? Expense? Flexibility?

**MARKET**
- Yelp, Angie’s List, Facebook
- Written warranty or money-back guarantee
- Better Business Bureau, Good Housekeeping Seal, national accreditation
- Employer/facility oversight
- Voluntary proof of insurance or bond

**PALLIATIVE REGULATION**
- Law requires proof of insurance or bonding
- Legal grounds for court action, may enjoin the state
- May be disciplined for violations

**PREVENTATIVE REGULATION**
- Must appear on an approved state list
- Periodic safety or compliance reviews by state agency
- Must meet state criteria
<table>
<thead>
<tr>
<th>Non-governmental regulation</th>
<th>Governmental regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Many options available</td>
<td>Fewer options available</td>
</tr>
<tr>
<td>Assumes an element of risk</td>
<td>Presumed safe</td>
</tr>
<tr>
<td>Less predictable, more agile</td>
<td>Predictable, slow to change</td>
</tr>
<tr>
<td>Less transparent, public process is optional</td>
<td>More transparent, public process is mandatory</td>
</tr>
<tr>
<td>Based on policy and practice</td>
<td>Based on statute and regulation</td>
</tr>
<tr>
<td>Accountable to the market/consumer</td>
<td>Accountable to state processes and agencies</td>
</tr>
<tr>
<td>Recourse through litigation, social media campaigns</td>
<td>Recourse through Administrative Procedures Act</td>
</tr>
<tr>
<td>May be unclear who is controlling quality, safety</td>
<td>Identity of the regulator is usually obvious</td>
</tr>
<tr>
<td>Cost depends on situation, funding can be fluid</td>
<td>Cost is set in state budget, statute, or regulation</td>
</tr>
</tbody>
</table>
SECTION I: MANAGEMENT RATINGS

Type of Management + Restrictiveness + Flexibility = Total Management Rating

There is no scientific “high” or “low” management rating for any particular regulated program or activity.

Compare your score with others:

- Below your ratings, write down your observations and opinions.
- Are you surprised that a particular hazard has a higher number—and therefore a more regulatory management response—than others?
- Reconsider any changes.
SECTION J: NEXT STEPS

What are the next steps to adjust the climate of regulation of the profession you are reviewing?

Compare your score with others:

– Review the documentation you have created in the previous exercises.
– What changes are needed to implement new management strategies?
– What are current inhibitors to improvement in management of relevant hazards?
– Reconsider any changes.
– Create a written, time-bound plan to accomplish next steps
THANK YOU!

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