



Recommendation 90-3

Use of Risk Communication by Regulatory Agencies in Protecting Health, Safety and the Environment

(Adopted June 7, 1990)

The term "risk communication" is commonly used to describe procedures by which a public agency or other party possessing information about the hazardous attributes of an activity or product transfers this information to others. For several decades, the Freedom of Information and National Environmental Policy Acts have, in effect, provided for government risk communication by requiring federal agencies to transfer information they possess or risk (among other matters) to members of the public on their request.

More recently, Congress and federal agencies have created an additional form of risk communication, one that requires other persons or entities to produce and distribute certain information on the hazardous attributes of their activities and products to third parties. The intended recipients may include employees, product users, and the representatives and residents of communities that host certain types of activities. These recent enactments establish risk communications duties for the private sector, at times creating concomitant rights to such information for designated parties. This recommendation addresses the class of risk communication aimed at providing to third parties.

Risk communication can be a significant feature of programs to control risks that have been identified and assessed by Congress and the regulatory agencies. Its benefits may include widespread acceptability, greater effectiveness and less demand on resources than alternative approaches.

Risk communication programs are now being implemented to foster risk education and reduction in several contexts. The Occupational Safety and Health Administration's (OSHA) "hazard communication" or "worker right-to-know" standard requires firms producing or using designated hazardous chemicals to provide workers with risk information and training on workplace hazards so the workers will understand the hazards, determine personal risks, and take appropriate actions to reduce these risks.

The Federal Emergency Planning and Community Right-to-Know Act, administered by the Environmental Protection Agency (EPA), requires companies producing or using designated



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hazardous chemicals to provide state and local communities and EPA with information about the chemicals, accident risks, spills, and other actual releases of the chemicals to educate these recipients and enable them to develop emergency response plans and other strategies for protecting public health and the environment. The law expressly provides for public access to the information disclosed by industry.

Experience with the OSHA and EPA programs suggests risk communication can advance statutory objectives for risk reduction and can, when properly implemented, reduce the costliness of risk reduction efforts. Workers and community residents now have access to relevant industrial hazard information and are beginning to use the information to take protective measures. Worker training and community emergency planning are also being gradually achieved. State and local officials are taking legislative and regulatory actions to reduce industrial risks. Efforts to achieve international harmonization are also under way. Companies and trade associations are voluntarily initiating new risk reduction practices and some chemical manufacturers are now voluntarily transferring their superior knowledge of chemical risk management to their downstream commercial customers to enhance marketing.

However, these new programs have raised special problems for agency administration and for compliance, particularly for small business. For example, the OSHA and EPA programs require carrying out three basic functions by various parties: (i) producing the reports and other information materials to be disclosed; (ii) distributing the information to persons at risk; and (iii) using the information for developing worker training programs and community emergency response plans. In both programs, compliance with production function requirements has generally been more effective than compliance with distribution and use function requirements.

Agency programs requiring risk communication also have implications for concurrent regulatory efforts and traditional standard-setting that have not been adequately addressed by the agencies or Congress. Risk communication is not necessarily an adequate substitute for prescriptive standards. When these kinds of programs co-exist, they should be mutually supportive.

The existing risk communication programs pose further difficulties in that they require federal agencies to supervise and coordinate the activities of thousands of private firms, 50 state committees, and more than 3000 local committees. However, the agencies' enforcement strategies and capabilities have not developed sufficiently to ensure compliance with program requirements. OSHA and EPA, as well as any other agency considering a program requiring



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numerous private and public parties to disclose, distribute, and use risk information, should develop means of fostering compliance efforts of numerous designated parties, such as by joint government-private sector efforts—for example, by means of a joint council on chemical risk management. OSHA and EPA have identified the need to develop new collaborative relationships with private firms and state and local officials to achieve communication program goals. Current outreach efforts should be expanded as a supplement to agency enforcement strategy for private sector compliance. EPA should provide technical assistance and guidance to promote the compliance of state and local emergency response officials.

In addition, OSHA and EPA are now aware that the transfer of risk information to workers, local officials and community residents is creating additional needs for interpreting the information and guiding these recipients about appropriate actions to reduce risk. These agencies should therefore cooperate with appropriate state officials to ensure that workers and community residents will be able to understand and use the risk information they receive.

The Conference supports improvements in the use of risk information disclosure as a component of federal regulatory programs. The recommended measures can help ensure the promise of this policy alternative is fulfilled.

Recommendation

A. Existing Programs of OSHA and EPA

1. OSHA and EPA should undertake a joint effort to improve the format and content of Material Safety Data Sheets (MSDSs), which are informational documents that must be provided and used by various designated parties for diverse purposes under both agencies' risk communication program.¹ This joint effort should include participation by industrial firms, trade associations, labor and environmental organizations, medical and public health professionals, and state and local officials. OSHA and EPA should consider bringing representatives of these groups together for appropriate negotiations.² Particular attention should be given to improving the organization, clarity, consistency of terminology, and readability of the

¹ MSDSs contain information about hazardous chemicals, including the identity of the chemical, its physical and chemical characteristics, the nature of the hazards, primary routes of human exposure, permissible exposure limits, appropriate precautions, and first aid procedures. See 29 CFR 1910.1200(g).

² See, for example, ACUS Recommendations 82-4, 85-5, Procedures for Negotiating Proposed Regulations, 1 CFR 305.82-4 and 305.85-5.



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information provided in MSDSs so they can be used more easily for developing safe workplace practices and worker training activities under the OSHA program and for developing emergency response plans by local officials under the EPA program.

2. OSHA and EPA should undertake a similar joint effort, including the participation of affected private parties, to facilitate the development of uniform MSDSs for commonly used hazardous chemical substances. This effort should reduce the confusion caused by the proliferation of different MSDSs for the same substance and duplicative efforts by manufacturers in producing the MSDSs.

3. OSHA and EPA should improve the effectiveness of their compliance programs by providing increased technical assistance and guidance to the parties responsible for distributing and using the disclosed information—for example, by using their regional offices to conduct educational programs designed to promote awareness of program requirements and improve performance by designating parties. These agencies should also develop constructive relationships with industrial firms, trade associations, labor and environmental organizations, health professionals, the media, state and local officials, and affected communities to strengthen the worker training and local emergency response planning functions mandated by the programs.

4. OSHA and EPA should inform and guide state health officials with respect to their medical and health advisory functions, to improve the ability of those officials to provide useful guidance to workers and community residents in interpreting the risk information disclosed under the federal agency programs.

B. Generic Recommendations

1. Each federal agency with authority to regulate risks to health, safety, or the environment should evaluate its regulatory program and its statutory authority, to determine whether a program to communicate risk information to educate persons at risk would be beneficial. The agency should also determine whether such a program would be a permissible and useful component of the agency's regulatory program, as an alternative or complement to other measures. If the results of this evaluation are affirmative, the agency should take appropriate steps to develop a cost-effective risk communication program, being careful to prevent conflicts with any agency standard-setting or other regulatory activities. Agencies establishing new risk communication programs should work jointly with other agencies, as appropriate, to avoid duplication or conflict with existing regulatory programs.



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2. In implementing a risk communication program, an agency should:

a. Ensure the information content and communication procedures are appropriate for the intended purposes including: (i) Informing and educating persons at risk as to hazardous conditions and suitable protective measures; and (ii) informing other parties, such as private firms and public agencies, so they can discharge their designated responsibilities for producing, distributing, and using information appropriately.

b. Evaluate the performance of the various parties required to produce, distribute, and use the information, and identify obstacles to achieving program goals. The agency should then take appropriate remedial actions such as the provision of assistance to enable the intended recipients of the risk information to understand and use it to reduce risk; and the initiation of cooperative efforts with industrial firms, trade associations, labor and other interest groups, and other government agencies to improve the quality and usefulness of risk communication and compliance with program requirements.

c. Supplement traditional enforcement measures with additional methods for ensuring awareness of requirements and compliance by designated parties with very limited resources or expertise. Such methods may include, for example, cooperative programs with private firms, trade associations, and state and local officials to promote compliance.

3. In refining the scope of new or existing risk communication programs, agencies should, to the extent permitted by law, exclude from coverage insignificant or unlikely risks, to enhance the overall usefulness of the information to recipients.

Citations:

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