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The day it became clear that disclosure was a powerful regulatory tool was June 30, 1988, when Richard J. Mahoney, then the head of Monsanto, made a dramatic announcement on the eve of the first TRI reporting deadline. Mahoney said bluntly that he had been astounded by the magnitude of Monsanto's annual release of 374 million pounds of toxins. He vowed to cut the release of air emissions by 90 percent worldwide by the end of 1992 -- news to the engineers at the company's thirty-five plants. A year later, when the EPA announced first-year results for all companies, *USA Today* ran a special report naming the worst polluters, and the National Wildlife Federation published a book titled *The Toxic 500*. Such companies as Du Pont and 3M vowed to reduce toxic pollution. Corporate shaming had produced results.

Now dozens of disclosure requirements have been enacted, and with Congress deadlocked on most social-policy issues and new regulatory measures stalled by political obstacles, many more requirements are on the way. Requirements are being used for national initiatives ranging from stopping

discrimination to improving airline service.

Last October 55,000 local water authorities began reporting to their customers on contaminants in their drinking water, and the largest systems posted their reports on the Internet, as required by the Safe Drinking Water Act of 1996.

To deter discrimination, the Home Mortgage Disclosure Act requires banks, savings and loans, and credit unions with assets of more than \$30 million to disclose the geographic distribution of their mortgage and home-improvement loans and the race, gender, and income of applicants.

Long-standing national laws require car manufacturers to inform the public of how well each of their models has performed in standardized crash tests and how many miles per gallon each model gets. Auto-safety regulators are working on new disclosure requirements that will allow car buyers to determine the relative effectiveness of all cars' lights and brakes and the likelihood of rollovers.

In the wake of revelations, in the mid-1990s, that major fashion houses were buying merchandise from sweatshops in the United States and abroad, the U.S. Department of Labor urged retailers to disclose supplier information, established a "trendsetter list" showcasing companies with high standards, and proposed the adoption of a "no sweat" label.

Congress requires airlines to release on-time records and baggage-handling reports (which the Department of Transportation uses to rank the airlines) and safety information. Soon Congress may add disclosure of ticket-pricing practices and reasons for flight delays or cancellations as part of a proposed "passenger bill of rights" that has won broad bipartisan support.

Related link:

"Preventing Death and Injury From Medical Errors Requires Dramatic, System-Wide Changes," (November 29, 1999)

A brief by the Institute of Medicine's Office of News and Public Information.

Momentum for national disclosure of serious medical mistakes has been growing rapidly since the Institute of Medicine, part of the National Academy of Sciences, reported last November that 44,000 to 98,000 people die each year as a result of medical errors. Several states require hospitals to disclose mistakes that result in death or serious injury. For example, New York recently revamped its reporting system to release such information on the Internet when the state takes action against a hospital. General Motors, General Electric, and six other large employers have said that they will steer employees toward those hospitals that make the fewest mistakes.

Jenny Craig and Weight Watchers recently agreed to disclose information about the risks associated with their regimens, as part of a Federal Trade Commission effort to make diet programs safer.

A ten-year battle over the meaning of "organic" as applied to fruits and vegetables may end this year, with agreement on the first national labeling criteria for informing

shoppers about the conditions under which crops are raised. A 1997 Department of Agriculture proposal that the term "organic" include irradiated and genetically altered crops was withdrawn after it triggered 275,000 letters of protest.

Following the rapid and relatively uneventful introduction of genetically engineered crops into the United States in the past five years (half of all soybeans and one third of all corn now grown in the United States have been genetically altered), pressure is mounting to label such foods and products containing them. The European Union approved a similar labeling provision in 1997.

LIKE other kinds of regulation, disclosure requirements can miss the mark. Consider the example of the Toxics Release Inventory, one of the oldest and most successful requirements. Its success is more limited than one might think.

Industry can outsmart the regulators. Companies that use toxic chemicals have found many ways to avoid public humiliation. Initially nearly a third simply failed to report -- often owing to confusion about the law's requirements, according to a 1991 General Accounting Office report. And as many as half of the claimed reductions in toxic waste in the reports that were filed from 1991 to 1994 were really only paper changes -- for example, according to a telephone survey of eighty

facilities by Hampshire Research Associates, redefining on-site recycling, which must be reported, as "in-process recovery," which need not be. Also, companies frequently substitute "off-list" chemicals for listed ones. Whether this is a net gain for public health is anyone's guess: such substitutions are not reported, and more than 90 percent of the chemicals most commonly used in the United States have yet to be fully tested for toxicity.

Selective publicity can create a selective view of reality. What Congress leaves out of disclosure requirements matters. In the case of toxic chemicals, Congress left out most of the problem. The TRI requires disclosure of some of the toxins used by large manufacturers. This spring the electrical-power industry, the mining industry, and several others will for the first time report on their toxic emissions, by chemical and by facility. But the sources of most airborne toxic pollution in the United States are cars, trucks, and buses (41 percent) and small businesses (35 percent). Also missing from the TRI is information on levels of human exposure and on chemical toxicity, making it impossible to calculate risks.

Information without reliable interpretation is of little use. Like much of the information the government releases, TRI results are hard for non-experts to understand. Long lists of numbers and abstruse narrative descriptions are not helpful to people who are trying to assess the immediate risks of

living near a chemical company or a power plant. Yet the EPA releases raw data with little interpretation.

Current industry lobbying should not compromise the public's access to information held by the government. But new requirements that use disclosure as a means of regulation should pass four tests. First, is disclosure the right regulatory tool for the job at hand? If the threat to health is serious enough, banning the product may be warranted. Assuring a reasonable level of safety may call for national standards. Reducing risks when information is plentiful may require the use of taxes or other economic incentives.

Second, is disclosure cost-effective? Costs can be substantial. The public pays for processing, verifying, and communicating information; corporations pay for collecting new data, redesigning products, and changing processes. Disclosure should give the public more bang for the buck than spending the same amount of money to improve health, safety, and the environment in other ways.

Third, will disclosure be accurate, timely, and complete enough to give a true picture? Information requirements can be expensive, ineffective, or counterproductive. And legitimate concerns about corporate confidentiality, personal privacy, and national security may limit the information that can be made available to the public. So may political maneuvering.

Fourth, is the disclosure accompanied by guidance to help people evaluate risks? Kip Viscusi, at the Harvard Law School, suggests developing a uniform risk vocabulary that clarifies the degree of danger. Supreme Court Justice Stephen Breyer has gone further, in his book *Breaking the Vicious Circle* (1993), proposing the creation of a corps of civil servants, insulated from politics and powerful enough to set national priorities for addressing risks. He envisions a group with broad experience, able to build common assumptions, track advancing science, and address emerging problems.

The Internet can help. Computer users can easily see the order of magnitude of each problem and the degree of uncertainty in each set of data. The Environmental Defense Fund's Scorecard Web site (www.scorecard.org) provides one view of the future. It combines most federal information on environmental conditions. Users can slice and dice data forty different ways, to explore the relative importance of environmental problems, their local context (the site can be searched by ZIP code), the presence and health effects of specific toxic chemicals or other pollutants, and the degree of data uncertainty. They can customize a fax to send to a company of their choice or tailor e-mail to a congressman. The site, which has received high marks for credibility, is less than two years old and cost \$1.5 million to create.

The Institute of Medicine's current proposal for reporting medical mistakes provides an excellent example of a carefully constructed disclosure requirement. Mistakes that result in death or serious injury must be disclosed, but near misses and minor errors are to be reported confidentially, to encourage internal discussion of how to remedy problems before they cause serious harm. Resources for follow-up are built into the system.

Mandatory disclosure has now taken its rightful place beside the power to tax and the power to frame national standards as a means of carrying out public priorities. But disclosure is no panacea. It can be costly or ineffective. Requirements should be approached with care. They are just as difficult to craft -- and enforce -- as any other government mandate.

(The online version of this article appears in two parts. [Click here to go to part one.](#))

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