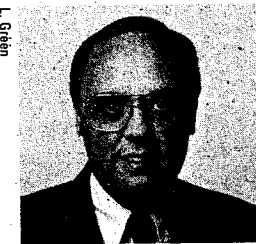




# Risk in Perspective

## Risk Analysis and the EPA Cabinet-Elevation Bill

*"In the long run, implementation of the Johnston Amendment will generate a knowledge base about risks, benefits and costs that will inform Congress and the public as new environmental laws are written and existing ones refined."*



L. Green

John D. Graham  
Center Director



L. Green

March Sadowitz  
Research Specialist

Congress is considering legislation that would elevate the Administrator of the U.S. Environmental Protection Agency (EPA) to Cabinet status. In the Senate, an elevation bill was passed with a floor amendment attached that requires the new Secretary of the Environment to publish a formal risk analysis with any final regulation relating to human health, safety, or the environment. The House may consider a similar amendment this fall. In this issue of RISK IN PERSPECTIVE, we examine the case for this amendment to the EPA Cabinet bill.

### The Johnston Amendment

The risk-analysis amendment passed by the Senate was introduced by Senator Bennett Johnston (D-LA). It requires each final rule to be accompanied by a risk analysis containing the following information:

1. an estimate of the human health or ecological risk to be addressed by the rule and the rule's anticipated impact on the target risk;
2. a comparative analysis of the risk addressed by the rule compared to other risks to which the public is exposed; and
3. an estimate of the costs associated with implementation of, and compliance with, the rule.

When publishing the risk analysis, the Secretary is required to certify that the best available scientific data have been used, that the rule will substantially reduce the risk that is to be addressed, and that the rule will produce benefits to health or the environment that will justify the cost of the rule. If such an analysis cannot be performed, the Secretary of EPA may still promulgate a desired rule but a statement of reasons for not performing such an analysis must be provided. The amendment does not modify or alter any existing statute implemented by EPA and does not create any new grounds for judicial review.

### Risk Estimates Using the Best Available Science

The Johnston Amendment's provision requiring risk estimates based on the best available science is likely to strengthen the hands of professionals

within EPA who believe that agency policy should be responsive to scientific progress. It will also strengthen the hand of the Agency's Science Advisory Board in discussions with the Secretary of the Environment and key program offices. While it may seem obvious that EPA should use good science, students of the Agency have documented that the Agency's leadership, when preoccupied with public fears and legal pressures, has sometimes allowed good science to be neglected.

The phrase "best available science" should not be overinterpreted. The newest scientific information is not always the best. Technical arguments about what information is best can be complex. The Johnston Amendment permits EPA scientists, in collaboration with the larger scientific community, to define this phrase on a case-by-case basis.

### Comparing Risks

The specific requirement for comparative risk analysis, if implemented creatively, should assist regulators, Congress, and the public understand the magnitudes of risks addressed by EPA rules. While ill-considered risk comparisons can be misleading or esoteric, a growing body of scientific research on risk comparison provides guidance to EPA on how to implement this provision intelligently. Risk comparisons are a useful tool when employed to offer citizens a sense of perspective about the magnitude of target risks. When risk comparisons are used to imply acceptability of risks, they are likely to be controversial.

### Reporting the Costs of Rules

Under current executive orders, EPA is required to report the cost of "major" rules (e.g., those that cost more than \$100 million per year). The Johnston amendment, which requires cost estimates for all final rules, reflects growing public concern about the economic impacts of environmental regulation on both states and localities and the private sector. For example, several environmental ballot initiatives at the state level were defeated in 1990 and 1992, in part because of voter uneasiness about the state of the economy and the

