Comments on the Draft 2008 Report to Congress

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I limit my comments to the discussion in Chapter I section E on the use of a "scorecard" or checklist with OMB guidance (such as Circular A-4 and A-94). My comments below are not limited to the assessment of RIA conformance with OMB guidance, but include somewhat more general considerations about whether the RIA in question contributes to better regulatory decision-making.

Actually, it seems that the text muddles together the discussion of two distinct types of scorecards. In addition to the scoring of each RIA on the basis of criteria derived from OMB circulars, there is also mention of a scorecard that rating each regulation, which would presumably appear in future editions of this report to Congress. This second scorecard is most explicit in the second bullet point. Making a clear distinction between these two scorecards would be useful, I think. My comments are concentrated on the RIA-specific scorecard.

1. Before developing such a scorecard and making it an element of the rulemaking process, I believe OMB should consider carefully how the scorecard would be used in regulatory analysis. For example, who would prepare the scorecard? Would the regulating agency prepare it and submit the scorecard along with the proposed RIA and draft rule to OMB as part of the OMB review process? Or would OMB prepare the scorecard as part of the regulatory review? Would failure to meet an acceptable "score" be sufficient cause to send the regulation back to the regulating agency? Would it be used as a screening tool for OMB or as an evaluatory tool after the fact?

2. Is there any evidence that doing well on a regulatory scorecard is associated with "better" RIAs, however defined? For example, in 2005 OMB submitted, as part of the annual report to Congress, a comparison of the "actual" or ex post estimates of benefits and costs with estimates made in the RIA. At the same time, various authors, notably Robert Hahn and his colleagues, have made checklist proposals and scored a number of RIAs against them. Has anyone attempted to collate these two bodies of information to see if better benefit and cost estimates result from better RIAs? Of course, accuracy in estimates of benefits and costs is only one dimension of RIA quality, but it might be a useful indicator.

3. The literature on scorecards generally contends that RIAs as a group score pretty badly, omitting essential information, making inconsistent assumptions that are often difficult to find, etc. However, such analyses tend to treat all RIAs the same. The results might have been different if the RIAs had been weighted by a measure of the economic importance –such as the expected costs or benefits – of the rule. EPA budgets resources for preparation of RIAs in part on the significance of the regulation, which depends in

turn on the anticipated benefits or costs. Arguably, larger budgets should mean higher quality, a supposition generally supported by the RIAs examined in Morgenstern ed. (1997). I would worry that an overly strict scorecard requirement might force regulatory agencies to expend analytical resources on matters just to be able to check a box, especially for less economically significant rules, without any useful contribution to decision-making. There is already a fair amount of resources spent on analysis of relatively trivial benefits or costs that are not likely to affect final decisions.

4. I think the scorecard discussion does not sufficiently distinguish between quantification and monetization and by emphasizing the latter, devalues the former. Good quantification of physical effects of regulations is essential for the monetization of benefits—and costs too for that matter, but often one has to search deeply into RIA supporting documents to find the physical outcomes that support the monetary estimates. I think these quantifications of physical effects are important in their own right, and I believe it is important for the RIA to include not only the physical changes predicted from implementation of the regulation, but the baseline physical effects or (what amounts to the same thing) the percentage change in those effects.

It's true that this baseline information is not relevant to the economic criterion of maximizing net benefits only the marginal conditions are. But that applies specifically to monetary measures. Baseline information on quantities is useful in at least two ways that just monetary information is not. First, because good things tend to gain in value as they become more scarce, the change relative to the baseline matters, and if I was the decision maker I think I'd want to know whether the regulatory proposal is going to reduce bad outcomes by 1% or 10%, say.] If a regulation is expected to reduce fish mortality, by how much are fish populations expected to change relative to the baseline? e.g. if billions of fish are dying each year, doesn't it matter whether you have billions or trillions to start with? In addition, having baseline information can provide a sense of perspective that can aid in assessing the credibility of the estimated changes in outcomes. I believe that people tend to think of changes in outcomes in relative terms, and that they begin with priors regarding the percentage change one is likely to see. If the RIA estimates percentage changes in physical units that are much lower or much higher than those priors, it might justify a second look at the methods or data.

Now let me turn to the specific text on p. 18-19 regarding quantification and monetization.

a. A version of bullet point 2 could be applied to individual RIAs, with the summary table itemizing effects by category. However, having a table in the RIA that indicates only those effects that are strictly monetizable would not be a good idea, in my estimation. What would be useful would be a table in the RIA that itemizes effects of the proposed regulation by category, separated into those categories that are quantifiable and monetizable, those that are only quantifiable but not monetizable, and those that are not quantifiable, if there are any. This would immediately make explicit the answers to the questions 3 and 4.

b. On Question 6: Why limit a cost effectiveness analysis to public health and safety regulation? Why not include it for all regulations. It would not add any information or analytical burden to the RIA, as all the information required for CE analysis is necessary for BCA as well.

c. On Question 9. This question is the best example of the confusion in this part of the document about quantification and monetization. If benefits really are unquantifiable, how is it possible to do a useful break-even analysis. In particular, if two alternative regulatory options have benefits that are not quantified but generally thought to be different, how can one possibly evaluate one relative to the other?