



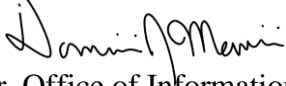
ADMINISTRATOR  
OFFICE OF  
INFORMATION AND  
REGULATORY AFFAIRS

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

February 11, 2025

**MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES AND  
INDEPENDENT REGULATORY AGENCIES**

From: Dominic Mancini   
Acting Administrator, Office of Information and Regulatory Affairs

Subject: Guidance on Implementing Section 3(e) of Executive Order 14168 in Accordance  
with the Paperwork Reduction Act and the Privacy Act

On January 20, 2025, President Trump issued Executive Order (EO) 14168, *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*. Section 3(e) of EO 14168 states: “[a]gency forms that require an individual’s sex shall list male or female, and shall not request gender identity.” Under Section 7 of EO 14168, agencies must submit an update on their implementation of the EO to the President, through the Director of the Office of Management and Budget (OMB), within 120 days.<sup>1</sup>

Forms and other agency documents that currently gather “sex” or “gender identity” are often covered by the Paperwork Reduction Act’s (PRA) definition of a “collection of information”<sup>2</sup> (hereinafter “collection”). To revise a collection, agencies must comply with the PRA, as implemented by OMB through its regulations at 5 CFR Part 1320.

In addition, agencies often maintain information about “sex” or “gender” in systems of records that are subject to the Privacy Act of 1974 (hereinafter “Privacy Act”).<sup>3</sup> As agencies take steps to revise their collections to comply with EO 14168, they should also consider any necessary modifications to system of records notices (SORNs) and matching notices.

The following guidance specifies how agencies can implement Section 3(e) of EO 14168 in compliance with the PRA and the Privacy Act in a timely manner.

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<sup>1</sup> This report is due on Tuesday, May 20, 2025.

<sup>2</sup> 44 U.S.C. § 3502(3).

<sup>3</sup> 5 U.S.C. § 552a.

To implement EO 14168 in compliance with the PRA, changes to existing collections can be completed in one of three ways, depending on the nature of the change:

1. *De Minimis* Change
2. Non-Substantive Change Request
3. Revision Request (Full PRA Clearance Process)

While all revisions to collections required under EO 14168 should be made as soon as practicable, agencies are encouraged to contact their OIRA Desk Officer to identify collections that may require priority review, such as collections actively being conducted.

### ***De Minimis* Change**

An agency may update their collections to comply with EO 14168 through a *de minimis* change in certain cases. As described in previous guidance<sup>4</sup> from OMB’s Office of Information and Regulatory Affairs (OIRA), a *de minimis* change to a collection affects the “look and feel” but does not change data elements collected or increase the collection’s burden. A *de minimis* change to a collection does not need approval by OIRA before implementation and may be completed immediately.

Various agencies have forms that intend to request a respondent’s biological sex and provide response options in compliance with EO 14168 (*i.e.*, female, male), but the question includes terms not in compliance with the EO (*e.g.*, “What is your gender?”). In these cases, an agency may update the question to request “sex” instead of “gender” through a *de minimis* change, without further OIRA approval, as long as the response options set does not change.<sup>5</sup>

If the change involves adding or eliminating question response options, changing a question’s purpose, eliminating a question, or adding a question, then it is not a *de minimis* change. Only a change that simply updates the terms in a question stem, but not its response options, is considered *de minimis*.

*Example of a De Minimis Change:*

If a question asks ...	Then this revision is considered <i>de minimis</i> ...
What is your <i>gender</i> ? <input type="checkbox"/> Female <input type="checkbox"/> Male	What is your <i>sex</i> ? <input type="checkbox"/> Female <input type="checkbox"/> Male

<sup>4</sup> See Off. of Info. & Regul. Affs., *Behavioral Science Insights and Federal Forms* (Sept. 15, 2015); Off. of Info. & Regul. Affs., *Flexibilities under the Paperwork Reduction Act for Compliance with Information Collection Requirements* (July 22, 2016) [hereinafter *Flexibilities under the PRA*].

<sup>5</sup> If there are questions on whether a change to a collection would be considered *de minimis*, an agency should contact their OIRA Desk Officer. Further, agencies should track collections they plan to revise through a *de minimis* change and provide the list to their OIRA Desk Officer when available.

## Non-Substantive Change

As described in previous OIRA guidance, a non-substantive change must be approved by OIRA, but the agency does not need to first seek public comment to complete the change. Non-substantive changes are more significant than those considered *de minimis*, but they generally do not introduce new concepts or measures that have not been subject to public notice and comment.<sup>6</sup> Whether a change to a collection is non-substantive depends on a variety of factors, including the purpose of the collection and the impact of the change on the collection's utility. A similar change may be considered non-substantive in the context of one collection, but not another.

In the context of changes pursuant to EO 14168, OIRA expects many collections can be updated through non-substantive change requests that are consistent with previous OIRA guidance.<sup>7</sup> Below are two examples of cases where a non-substantive change request may be approved by OIRA. Please reach out to your OIRA Desk Officer for questions on specific collections, including whether additional response options would be appropriate.<sup>8</sup>

Generally, non-substantive changes may not be appropriate for collections where the change substantially alters the utility of the collection or where the removal of a response option or question could raise legal, regulatory, statutory, or statistical issues. For example non-substantive changes may not be appropriate for collections that have been subject to litigation; collections associated with rulemaking (where the regulation specifies "gender" questions); or collections that may have statutory reporting requirements for data on a respondent's "gender." Further, where collections ask about a respondent's "gender" for statistical purposes, agencies are encouraged to consult with their OIRA Desk Officer to clarify when a non-substantive change may appropriate.

### *Examples of Non-Substantive Changes:*

- Removing a Response Option: In many cases, an agency may after its own internal review decide to request a non-substantive change to remove response options that do not comply with EO 14168.

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<sup>6</sup> See *Flexibilities under the PRA 4*.

<sup>7</sup> If your agency plans to submit a large number of non-substantive change requests, please reach out to your OIRA Desk Officer to collaborate in advance of submission. Generic Information Collections (GenICs) are not covered by the non-substantive change request process. Agencies should consult with their desk officers to determine how to pursue similar changes to these collections through a non-substantive change request of the umbrella collection.

<sup>8</sup> Such as "Unknown" or "Don't know" in a collection involving direct observation.

If a question asks ...	Then this revision may be non-substantive ...
What is your sex? <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> <Unknown/Don't Know>	What is your sex? <input type="checkbox"/> Female <input type="checkbox"/> Male
What is your sex? <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> <Other> or <None of these>	What is your sex? <input type="checkbox"/> Female <input type="checkbox"/> Male
Are you ...? Mark all that apply. <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Transgender, non-binary, or another gender identity	Are you ...? <input type="checkbox"/> Female <input type="checkbox"/> Male

- **Remove a Question:** For a collection that gathers information about sex or gender through multiple steps, an agency may in certain circumstances determine the question may be removed through submission of a non-substantive change request.

If multiple questions are asked ...	Then the following revision may be non-substantive ...
Initial question: What sex were you assigned at birth, on your original birth certificate? <input type="checkbox"/> Female <input type="checkbox"/> Male	Initial question: What is your sex? <input type="checkbox"/> Female <input type="checkbox"/> Male
Follow up question: How do you describe yourself? (Mark all that apply.) <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Transgender <input type="checkbox"/> None of these	Revision: Remove follow up question (if above initial question of respondent's sex remains)
Follow up question: Just to confirm, you were assigned <Female/Male> at birth and now you describe yourself as <Female/Male>. Is that correct?	Revision: Remove follow up question (if above initial question of respondent's sex remains)

### Revision Requests - Full PRA Clearance Process

For an information collection that requires a more substantial revision than described above, an agency must pursue a revision request through the full PRA clearance process described in 44

U.S.C. §§ 3506–3507.<sup>9</sup> This process includes seeking public comment through a 60-day Federal Register notice and a 30-day Federal Register notice.

To expeditiously implement EO 14168, OIRA encourages agencies to immediately begin the full clearance process for any collection that the agency determines, in consultation with the OIRA Desk Officer, to be ineligible for a *de minimis* or non-substantive change request. In particular, agencies should publish an initial 60-day notice, which does not foreclose an agency’s ability to use one of the other processes for a particular collection.

Agencies may consider issuing one *Federal Register* notice at the headquarters level to fulfill the requirements of the PRA for multiple collections, including for multiple sub-agencies. Appendix A provides a template of a 60-day *Federal Register* notice that agencies may use for this purpose. At a minimum, the 60-day notice should list the names of the collections impacted, their OMB Control Numbers, and a description of the expected changes needed.

If an agency later determines a required revision to a collection noted in a published *Federal Register* notice may be completed through a *de minimis* or non-substantive change request, the agency is not required to complete the full clearance process for that collection.

### **Additional Considerations and Question Formations**

Agencies should ensure they are able to implement revisions expeditiously after OIRA approval without disrupting the collection. When updating a collection, an agency should consider required implementation steps, for example, developing system updates and coordinating with any third-party data providers or across multiple Federal agencies. Non-substantive change requests or the Supporting Statements for collections completing the full PRA clearance process should address implementation.

Further, for a segment of collections, additional question response options about a respondent’s sex may be appropriate. For example, a response option of “don’t know” for collections involving direct observation. Agencies should consult with OIRA desk officers when considering whether additional response options are necessary.

### **Systems of Records and Matching Programs**

As agencies take steps to revise their collections to comply with EO 14168, they should also consider any necessary changes to SORNs and matching notices under the Privacy Act. When agencies make significant changes to systems of records or matching programs, they must publish notice in the *Federal Register* after providing adequate advance notice to OMB and Congress, consistent with law and OMB guidance.<sup>10</sup> For changes that are not significant, neither *Federal Register* publication nor reporting to OMB and Congress are required.<sup>11</sup>

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<sup>9</sup> See 5 CFR § 1320.10.

<sup>10</sup> See Off. of Mgmt. & Budget, Circular No. A-108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act* (Dec. 23, 2016).

<sup>11</sup> *Id.*

Significant changes are those that are substantive in nature and therefore warrant a revision of the SORN or matching notice in order to provide notice to the public of the character of the modified system of records or matching program.<sup>12</sup> Sections 6(b) and 8(b) of OMB Circular No. A-108 provide examples of significant changes to systems of records and matching programs.<sup>13</sup>

As a general matter, a change to a SORN or matching notice that only replaces a non-compliant term (*e.g.*, “gender”) with a compliant term (*e.g.*, “sex”), would not be a significant change if it does not involve a change to the records maintained in the system or the records being matched. For example, it would not be a significant change if an agency modifies a SORN to change the term “gender” to “sex,” as long as the agency is not changing the records maintained in the system and the modified SORN accurately describes those records in compliance with the Privacy Act.

Questions about whether particular changes to a system of records or matching program are significant may be directed to OMB at [MBX.OMB.Privacy@omb.eop.gov](mailto:MBX.OMB.Privacy@omb.eop.gov).

Agencies should only make changes to SORNs or matching notices when those changes are consistent with the underlying records described in those notices. For example, agencies that are changing a SORN should ensure that the revised notice accurately describes the categories of individuals on whom records are maintained in the system, as well as the categories of records maintained in the system.<sup>14</sup>

Agencies should note any associated collections in the narrative statement that they submit when reporting a significantly modified system of records to OMB and Congress.

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<sup>12</sup> *Id.* §§ 6(b), 8(b).

<sup>13</sup> *See id.*

<sup>14</sup> *See* 5 U.S.C. § 552a(e)(4)(B)–(C).

## **Appendix A: Sample 60-Day Federal Register Notice**

Title: *[Please list all relevant ICR titles.]*

OMB Numbers: *[Please list all relevant OMB control numbers here.]*

Form Numbers: *[Please list all relevant agency form numbers here.]*

Abstract: To align with Executive Order 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, the agency plans to remove questions relating to gender in all information collections where such a question appears. We are working with OMB to assess the appropriate approach for each collection. *[There may be other language the agency wishes to include here. In that case, please contact your OIRA desk officer.]*

Type of Review: Revision of a currently approved collection.

Affected Public: *[Please list all relevant categories of respondents here.]*

Estimated Number of Respondents: *[Please put the agency's best estimate here. Try to minimize double counting, but note that the estimate may be high.]*

Desired Focus of Comments [Optional]: The agency is particularly interested in comments that *[Insert list of factors the agency may be considering when making changes.]*

Comments submitted in response to this notice will be summarized or included in the ICR for OMB review and approval of the extension of the information collection through OIRA's PRA clearance process; they will also become a matter of public record so please do not include personally identifiable information.

## Appendix B: Sample Non-substantive Change Request Submission Template (optional)

*Agencies may choose to provide the template below as a justification memo when submitting non-substantive change requests for OIRA review. Use of the template is optional and not required.*

### Non-substantive Change Request

**OMB Control Number XXXX-XXXX**

**TITLE**

**Date Submitted: MONTH XX, XXXX**

**Summary of request:** AGENCY is requesting a change request to revise questions to align with E.O. 14168 *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*.

**Description of Changes Requested:** This request updates sex questions used in FORM 1 and FORM 2 to be in accordance with EO 14168. Please check the boxes below if your request includes:

☐ Revision of an existing question(s)

☐ Deletion of an existing question(s)

### Description of Changes to Burden (if applicable):

Form	Approved Burden	Requested Burden
Form 1	TOTAL TIME	TOTAL TIME
	TIME per response # respondents	TIME per response # respondents
Form 2	TOTAL TIME	TOTAL TIME
	TIME per response # respondents	TIME per response # respondents
Total	TOTAL TIME	TOTAL TIME

**Other Considerations (optional):** *E.g., timing sensitivities, implementation requirements.*

### Table A: Description of Changes (optional, helpful if multiple changes to multiple forms):

Form	Type of Change	Question/Item	Requested Change
FORM 1	Question Revision		
FORM 1	Question Deletion		
FORM 2	Question Revision		

**Attachments (if applicable):**