

**INITIAL STATEMENT OF REASONS
FOR PROPOSED AMENDMENT TO THE
ELECTRONIC RECORDING DELIVERY SYSTEM REGULATIONS**

INITIAL STATEMENT OF REASONS

Specific Purpose of the Regulation Amendment/Problem Being Addressed:

The Department of Justice (DOJ) requests approval to amend the Electronic Recording Delivery System (ERDS) Regulations, CCR, Title 11, Division 1, Chapter 18, Articles 1-9. The Electronic Recording Delivery Act of 2004 (“Act”) was enacted “to develop a system to permit the electronic delivery, recording, and return of instruments affecting right, title, or interest in real property.” The existing systems currently restrict type 1 instrument (instruments affecting a right, title, or interest in real property, which shall be delivered as digitized electronic records) and type 2 instrument (instruments of reconveyance, substitution of trustee, or assignment of deed of trust, which shall be delivered as digitized or digital electronic records) documents from being submitted within the same ERDS payload (an electronic structure designed for the purpose of delivering digital electronic records or digitized electronic records to a County Recorder via an ERDS). The requested amendments will allow these two document types to be included within the same ERDS payload for electronic recording. These two types of documents must be recorded together as part of the recording process. The current regulations are cumbersome to electronic submitters because they require corresponding documents to be sent separately. This regulation is a risk to the counties that utilize the ERDS because they have to locate the separated documents and bring them together again to record them. In addition, before returning confirmations to submitters, counties must then take the extra effort to again separate these documents. The Department has also revised sections to provide clarity as to which publications the users shall reference regarding technology of the ERDS and a timeframe is being put in the place for a certified ERDS to become compliant with these regulations. The specific purpose of amending Articles 4-9 is to provide clearer guidance to the agencies using the ERDS and to ensure up-to-date information, which will improve overall efficiency of the ERDS.

Benefits of the Proposed Action:

The DOJ has determined that the amendments will benefit the general welfare of all California citizens by ensuring the maintenance and utilization of the information being transmitted securely, and will ensure the safety and security of the type 1 and type 2 instruments. The background check conducted on individuals participating within the program promotes fairness and social equity for all California citizens.

The DOJ has determined that the non-monetary benefits of this program will ensure the protection of safety and the environment, prevention of discrimination, and security for all California citizens.

Economic Impact Analysis Pursuant to Government Code Section 11346.3(b):

Creation/Elimination of California Jobs:

The DOJ has determined that the amendments will not create or eliminate jobs in California. The amendments affect only the administration, security, reliability, and uniformity of the ERDS.

Creation/Elimination/Expansion of California Businesses:

The DOJ has determined that the amendments are not expected to create, eliminate, or expand business within the State of California. The amendments are being requested to assist the County Recorders within California; they authorize a County Recorder to include in its ERDS a secure method for accepting and recording a digital or digitized electronic record that is an instrument of reconveyance, substitution of trustee, or assignment of deed of trust subject to specified conditions.

Reasonable Alternatives Considered by the DOJ:

In accordance with Government Code section 11346.2(b)(5), the DOJ did not consider any alternatives to the proposed regulations. The originally proposed text was made available for public comment for at least 45 days from February 1, 2013 through March 18, 2013 and two subsequent 15-day comment periods from August 1, 2013 through August 15, 2013 and January 9, 2014 through January 24, 2014. No written comments were received during the public comment periods.

The Department has determined this regulatory action will not impose any sufficient costs or other adverse economic impact on County Recorders due to the program being voluntary. This amendment only impacts administration, security, reliability and uniformity of the ERDS.

The Department and the ERDS Advisory Committee has determined there are no alternatives to lessen any adverse economic impact on small businesses or that would be effective and less burdensome to private persons other than the proposed regulations.

The DOJ did not conduct any studies or compile any reports for specific technologies; however, the technology is based on the California Counties “Best Practices” Information Security Program along with specified editions of the NIST/FIPS publications.

**Proposed Amendment 1:
CCR, Title 11, Division 1, Chapter 18
Article 4-Fingerprinting and Criminal Record Checks**

- **Revision dates on all forms were changed from February 2007 to May 2011, due to the DOJ's reorganization.**
- **Revised Form # ERDS 0008 to include a section that can be completed by county recorders to show when secure access users transfer between companies, proof of fingerprint submission is no longer required for this process**
- **Added language for subsequent disposition notification.**

Specific purpose and rationale:

The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization. The ERDS form # ERDS 0008 has been revised to include a section that can be completed by county recorders to show when secure access users transfer between companies, proof of fingerprint submission is no longer required for this process. Due to the DOJ having subsequent arrest authority (Government Code section 27395(c)(3)) proof of fingerprinting is not being requested.

Due to the enactment of AB 2343, effective January 1, 2013, applicant agencies will receive subsequent disposition notification in addition to the subsequent arrest notification.

**Proposed Amendment 2:
CCR, Title 11, Division 1, Chapter 18
Article 5-Baseline Requirements and Technology Standards**

- **The ERDS payload structure was amended so that secure access authorized users can include both Type 1 and Type 2 instruments within the same ERDS payload.**
- **Amendments were made so that the ERDS users are utilizing the latest specified publications of NIST/FIPS guidelines as required. Provide timelines as to when updates must be implemented.**
- **Language was changed from staff to representative.**
- **Some of the auditable events, incidents, and reporting requirements were eliminated.**

Specific purpose and rationale:

The existing systems currently restrict a type 1 instrument (instruments affecting a right, title, or interest in real property, which shall be delivered as digitized electronic records) and type 2 instrument (instruments of reconveyance, substitution of trustee, or assignment of deed of trust, which shall be delivered as digitized or digital electronic records) documents from being submitted within the same ERDS payload (an electronic structure designed for the purpose of delivering digital electronic records or digitized electronic records to a County Recorder via an ERDS). The requested amendments will allow these two document types to be included within the same ERDS payload for electronic recording. These two types of documents must be recorded together as part of the recording process. The current regulations are cumbersome to electronic submitters because they require corresponding documents to be sent separately. This regulation is a risk to the counties that utilize the ERDS because they have to locate the separated documents and bring them together again to record them. In addition, before returning confirmations to submitters, counties must then take the extra effort to again separate these documents. The DOJ is also clarifying that ERDS users must use specified NIST/FIPS publication that the regulations currently point to and when those guidelines must be implemented. A timeframe of 12 months is being put in place for a Certified ERDS to become compliant with these regulations. The DOJ has determined 12 months is sufficient time to complete procurement and any other processes required to update the ERDS. If the county requires an extension a written request shall be submitted to the ERDS Program. Language was amended from staff to representative The DOJ removed some of the auditable events, incidents, and reporting requirements that are not technically feasible to audit.

**Proposed Amendment 3:
CCR, Title 11, Division 1, Chapter 18
Article 6-Electronic Recording Delivery System Certification**

- **Revision dates on all forms changed from February 2007 to May 2011, due to the DOJ's reorganization.**
- **The ERDS form # ERDS 0008 has been revised to include a section that can be completed by county recorders to show when secure access users transfer between companies, proof of fingerprint submission is no longer required for this process.**

Specific purpose and rationale:

The ERDS forms were amended to accurately reflect date changes due to the DOJ's reorganization. The ERDS form # ERDS 0008 has been revised to include a section that can be completed by county recorders to show when secure access users transfer between companies, proof of fingerprint submission is no longer required for this process. Due to the DOJ having subsequent arrest authority (Government Code section 27395(c)(3)) proof of fingerprinting is not being requested.

**Proposed Amendment 4:
CCR, Title 11, Division 1, Chapter 18
Article 7-Computer Security Auditor**

- **Revision dates on all forms changed from February 2007 to May 2011, due to the DOJ's reorganization.**
- **Form number ERDS 0002, changed title from "Application for DOJ Computer Security Auditor Approval" to "Application for Computer Security Auditor Approval".**
- **Form number ERDS 0004, changed title from "Attachment to ERDS 0002 Computer Security Auditor Significant Experience Reference(s)" to "Reference(s) for ERDS Computer Security Auditor".**

Specific purpose and rationale:

The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization. ERDS Form 0002 and ERDS Form 0004 titles were shortened for easier understanding.

**Proposed Amendment 5:
CCR, Title 11, Division 1, Chapter 18
Article 8-Vendor of Electronic Recording Delivery System Software**

- **Revision dates on all forms changed from February 2007 to May 2011, due to the DOJ's reorganization.**
- **The ERDS form # ERDS 0008 has been revised to include a section that can be completed by county recorders to show when secure access users transfer between companies, proof of fingerprint submission is no longer required for this process.**

Specific purpose and rationale:

The ERDS forms were amended to accurately reflect date changes due to the DOJ's reorganization.

The ERDS form # ERDS 0008 has been revised to include a section that can be completed by county recorders to show when secure access users transfer between companies, proof of fingerprint submission is no longer required for this process. Due to the DOJ having subsequent arrest authority (Government Code section 27395(c)(3)) proof of fingerprinting is not being requested.

**Proposed Amendment 6:
CCR, Title 11, Division 1, Chapter 18
Article 9-Audits and Oversight**

- **Revision dates on all forms changed from February 2007 to May 2011, due to the DOJ's reorganization.**
- **The timeframe for the local inspections of sub-counties were amended.**
- **Language was amended from staff to representative.**
- **Language was amended to include hardware, software, workstations, and network devices comprising the ERDS, including those located at the offices of Authorized Submitters and/or their Agents.**
The timeframe for the inspection letters to be mailed out to the county recorders has increased from 10 days to 30 days.

Specific purpose and rationale:

The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization. The timeframe for local inspections of sub-counties were amended, due to the fact that lead counties are inspected every two years and have control over the ERDS. The inspection was amended to include hardware, software, workstations, and network devices comprising the ERDS, including those located at the office of authorized submitters and/or their agents. This allows the DOJ inspections to be all-inclusive. The timeframe is being increased from 10 days to 30 days for the ERDS program to mail the inspection letters; this is to allow sufficient time for follow up questions.