

CALIFORNIA DEPARTMENT OF JUSTICE

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

UPDATE OF THE INITIAL STATEMENT OF REASONS

There have been no changes in the applicable laws or facts, or to the effect of the proposed regulations, from those described in the Initial Statement of Reasons.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

No alternatives were proposed to the Department of Justice (DOJ) that would lessen any adverse economic impact on small business.

ALTERNATIVES DETERMINATION

The DOJ has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective as and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The amendments proposed by the DOJ are the only regulatory provisions identified that accomplish the goal of providing consolidated and centralized guidelines for a select number of individuals who voluntarily elect to participate in the electronic recording delivery system (ERDS) program. No other alternatives have been proposed or brought to the DOJ's attention.

INCORPORATION BY REFERENCE

These regulations incorporate by reference the following documents:

1. Federal Information Processing Standard (FIPS) 180-4, Secure Hash Standard, August 2015, Section 999.129 and Section 999.136.
2. National Institute of Standards and Technology (NIST) Special Publication 800-88 Revision 1, Guidelines for Media Sanitization, December 2014, Section 999.129 and Section 999.139.
3. NIST Special Publication 800-63-3, Digital Identity Guidelines, June 2017, Section 999.129 and Section 999.141.

4. NIST Special Publication 800-70 Revision 3, National Checklist Program for IT Products- Guidelines for Checklist Users and Developers, February 2018, Section 999.129, Section 999.138, and Section 999.143.
5. NIST Special Publication 800-52 Revision 1, Guidelines for the Selection, Configuration, and Use of Transport Layer Security (TLS) Implementations, April 2014, Section 999.129 and Section 999.144.
6. FIPS 202, SHA-3 Standard: Permutation-Based Hash and Extendable-Output Functions, August 2015, Section 999.129 and Section 999.136.
7. FIPS 140-2, Security Requirements for Cryptographic Modules, May 2001 (change notice dated, December 2002), Section 999.129 and Section 999.137.
8. Application for Withdrawal, Form # ERDS 0010, May 2011, Section 999.196.
9. Request for Replacement of Certificate and/or Documents, Form # ERDS 0006, May 2011, Section 999.197.

These documents were incorporated by reference because it would be cumbersome, unduly expensive, and otherwise impractical to publish them in the California Code of Regulations. Some of the documents are lengthy, technical standards that would add unnecessary additional volume to the regulation. Distribution to all recipients of the California Code of Regulations is not needed because the interested audience for these documents is limited to those entities who elect to participate in ERDS, as specified in these regulations, most of whom are already familiar with these methods and documents. Also, the incorporated documents were made available by the DOJ during the rulemaking action and will continue to be available in the future.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF MARCH 1, 2019 THROUGH APRIL 15, 2019.

Commenter	Affiliation
Ladd, Mark (4/2/2019)	Simplifile
Evans, Susan (4/12/2019)	Orange County Clerk-Recorder

1. Comment: To provide clarity, we recommend the definitions associated with “Agent” and “Authorized Submitter” be updated to include additional detail. Clarifying the roles and responsibilities of Agents and Authorized Submitters will result in more effective sanctions when violations occur. (Simplifile)

Department Response: “Authorized Submitters” is already defined in Government Code (Gov. Code) Section 27390(b)(1), to mean a party that has entered into a contract with a county recorder, as specified. The roles and responsibilities of an Authorized Submitter should be addressed in the terms of the contract with the county recorder.

2. Comment: We recommend striking the reference to digitized records in the Section 999.108(a)(10) definition of “Electronic Signature of the Notary.” A digitized record

would not contain an electronic signature of any of the parties or the notary, as it is a paper document that has been scanned by the Authorized Submitter. (Simplifile)

Department Response: This is an objection to existing regulations. The existing definition addresses the potential for a hybrid record that has been digitized and then electronically notarized as part of a package.

3. Comment: Expanding the Section 999.122 fingerprinting requirement to all Authorized Submitters and Agents will significantly increase the burden of complying with this provision. (Simplifile)

Department Response: The DOJ is not expanding the fingerprinting requirement to all Authorized Submitters and Agents. Proposed Section 999.142(a)(10) would stipulate that an Authorized Submitter who has no access to an ERDS and submits through an Agent is not subject to the requirements of Government Code Section 27395.

4. Comment: We recommend that all Authorized Submitters undergo the background checks required under Gov. Code Section 27395 regardless of whether they have direct access to ERDS. (OC Clerk-Recorder)

Department Response: These regulations pertain to securing the integrity of documents once in ERDS. Requiring a background check for individuals that do not have direct involvement with ERDS is outside of the scope of the DOJ's role.

5. Comment: We recommend that additional language be drafted and considered to ensure that Agents, submitting on behalf of no-access ERDS Authorized Submitters, have the obligation of ensuring that those Authorized Submitters continue to meet the insurance obligation. (OC Clerk-Recorder)

Department Response: Gov. Code section 27391(c)(2) requires an authorized submitter and any agent submitting documents on behalf of an authorized submitter to provide a certificate of insurance, evidencing an amount of general liability coverage to be set through rule or regulation by the Attorney General. These regulations make specific that requirement by setting the amount of required coverage. The management of the collection, maintenance, and storage of this information is not dictated by these regulations.