

TITLE 11. DEPARTMENT OF JUSTICE

NOTICE FOR PROPOSED AMENDMENTS TO THE DEPARTMENT OF JUSTICE REGULATIONS PERTAINING TO ELECTRONIC RECORDING DELIVERY SYSTEM

The Department of Justice (DOJ)/Electronic Recording Delivery System (ERDS) program under the authority of the Electronic Recording Delivery Act of 2004 (ERDA), AB 578 (Chapter 621, Statutes of 2004), as amended, is requesting approval to amend six (6) of the nine (9) Articles of the ERDS regulations, CCR, Title 11, Division 1, Chapter 18, Articles 1-9.

The DOJ is requesting to amend regulations sections 121 through 223 to provide clearer guidance to the Counties and the individuals that use an ERDS.

Public Hearing Dates, Time and Place:

No public hearing has been scheduled for the proposed regulatory action; however, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to the Administrative Procedures Act, Government Code section 11346.8.

Written Comment Period:

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person(s) listed below. The written comment period closes on **March 18, 2013 at 5 p.m.** Only written comments received by that time shall be considered.

Contact Person(s):

Any requests for or questions regarding the regulations package should be directed to:

Michelle N. Mitchell, Field Representative
California Department of Justice
California Justice Information Services Division
Electronic Recording Delivery System
P.O. Box 160526
Sacramento, CA 95816-0526
Telephone: (916) 227-1127

OR

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Authority and Reference

The Department is authorized to adopt these regulations pursuant to the Government Code section 12586(b) and to implement, interpret, and make specific the provisions of Government Code Section 12580 et seq. Authority Cited: Sections 27392(a), 27393, 27393(b), 27393(b)(6), 27394(a), 27394(b), 27394(c), 27395(a), 27395(b), 27395(c), 27395(d) and 27395(e), 27396(a), 27396(b), 27396(b)(1), Government Code. Reference: Sections 27390(b)(2), 27390(b)(8), 27391, 27391(a), 27391(b), 27391 (e), 27392, 27392(a), 27392(b), 27393(b), 27393(b)(2), 27393(b)(3), 27393(b)(6), 27393(b)(7), 27393(b)(9), 27393(b)(10), 27393(b)(12), 27393(c), 27394, 27394(a), 27394(b), 27394(c), 27394(d), 27394(e), 27394(f), 27395, 27395(a), 27395(b), 27396, 27396(a), 27396(b), 27396(b)(1), 27397(a), 27397(b), 27397.5, 27397.5(d)(2) and 27396 Government Code; and Sections 1203.4, 11105 and 11105.2, Penal Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Laws and Regulation

Existing law generally specifies that the recorder of any county may, in lieu of a written paper, accept for recording a digitized image of a recordable instrument, subject to specified conditions. AB 578 enacted the Electronic Recording Delivery Act of 2004, to authorize a county recorder, upon approval by resolution of the board of supervisors and system certification by the Attorney General, to establish an electronic recording delivery system for the delivery for recording of specified digitized and digital electronic records, subject to specified conditions, including system certification, regulation, and oversight by the Attorney General. It authorizes a county recorder to include in its electronic recording delivery system a secure method for accepting for 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. It requires participating counties to pay for the direct cost of regulation and oversight by the Attorney General, and authorizes those counties to impose fees to cover those costs.

Anticipated Benefits of the Proposed Regulation:

The DOJ concludes that the benefits of this program will ensure the safety and security of the documents being transmitted electronically and that all California citizens' personal information is also being transmitted securely. The background check conducted on individuals participating within the program promotes fairness and social equity for all California citizens. The proposed regulatory action will benefit the general welfare of California by ensuring the conservation, maintenance, and utilization of the sustainable living resources.

The DOJ concludes 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.

The DOJ is unaware of any inconsistencies or incompatibilities with existing state regulations.

Description of the Effect of the Proposed Action

The following items outline the proposed amendments:

- These amendments include the DOJ's reorganization information which required amendments to all ERDS forms, which is incorporated herein by reference.
- The re-fingerprinting process was eliminated due to the DOJ having subsequent arrest authority.
- The amendments allow secure access users to bundle Type 1 and Type 2 instruments within the same ERDS payloads.
- Amendments have been made to ensure that the ERDS are utilizing the latest final NIST/FIPS publications, and a timeframe was added for updates, which is incorporated herein by reference.
- Removed the word staff and replaced it with representative.
- Removed items that are not technically feasible to audit.
- Title changed Form # ERDS 0002 from: Application for DOJ Computer Security Auditor Approval to: Application for Computer Security Auditor Approval, which is incorporated herein by reference.
- Title changed Form # ERDS 0004 from: Attachment to ERDS 0002 Computer Security Auditor Significant Experience Reference(s) to: Reference(s) for ERDS Computer Security Auditor, which is incorporated herein by reference.
- Amended the minimum requirements to become an ERDS Auditor.
- Amended timeline for inspecting sub-counties.
- Added language for local inspections to be all-inclusive.
- Inspection letters to be mailed out 30 days instead of 10 days to allow for follow up questions.

Section 999.121 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.
- Proof of Fingerprinting was eliminated due to the DOJ having subsequent arrest authority under Government Code section 27395(c)(3).

Section 999.133 is amended as follows:

- The ERDS payload structure was amended so that secure access authorized users can include both Type 1 and Type 2 instruments within the same payload.

Section 999.137 is amended as follows:

- Amendments were made so that the ERDS users are utilizing the latest final publications of NIST/FIPS guidelines as required and to include a timeline as to when those updates must be implemented, which is incorporated herein by reference.

Section 999.139 is amended as follows:

- Amendments were made so that the ERDS users are utilizing the latest final publications of NIST/FIPS guidelines as required and to include a timeline as to when those updates must be implemented, which is incorporated herein by reference.

Section 999.141 is amended as follows:

- Amendments were made so that the ERDS users are utilizing the latest final publications of NIST/FIPS guidelines as required and to include a timeline as to when those updates must be implemented, which is incorporated herein by reference.

Section 999.143 is amended as follows:

- Amendments were made so that the ERDS users are utilizing the latest final publications of NIST/FIPS guidelines as required and to include a timeline as to when those updates must be implemented, which is incorporated herein by reference.

Section 999.144 is amended as follows:

- Amendments were made so that the ERDS users are utilizing the latest final publications of NIST/FIPS guidelines as required and to include a timeline as to when those updates must be implemented, which is incorporated herein by reference.

Section 999.145 is amended as follows:

- Language was amended from staff to representative.

Section 999.146 is amended as follows:

- Auditable events, incidents, and reporting requirements not feasible to audit were removed.

Section 999.165 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.166 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.168 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.171 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.172 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.173 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.174 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.176 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.178 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.179 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.190 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.
- Form # ERDS 0002 title was changed from Application for DOJ Computer Security Auditor Approval to Application for Computer Security Auditor Approval, which is incorporated herein by reference.
- Form # 0004 title was changed from Attachment to ERDS 0002 Computer Security Auditor Significant Experience Reference(s) to Reference(s) for ERDS Computer Security Auditor, which is incorporated herein by reference.
- The minimum requirements to become an Approved Computer Security Auditor have been amended.

Section 999.192 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.
- Form # ERDS 0002 title was changed from Application for DOJ Computer Security Auditor Approval to Application for Computer Security Auditor Approval, which is incorporated herein by reference.

Section 999.193 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.
- Form # ERDS 0002 title was changed from Application for DOJ Computer Security Auditor Approval to Application for Computer Security Auditor Approval, which is incorporated herein by reference.

Section 999.195 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.
- Form # ERDS 0002 title was changed from Application for DOJ Computer Security Auditor Approval to Application for Computer Security Auditor Approval, which is incorporated herein by reference.
- Form # 0004 title was changed from Attachment to ERDS 0002 Computer Security Auditor Significant Experience Reference(s) to Reference(s) for ERDS Computer Security Auditor, which is incorporated herein by reference.
- The minimum requirements to become an Approved Computer Security Auditor have been amended.

Section 999.203 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.204 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.206 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.207 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.209 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.210 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.211 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.217 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.
- The timeframe for local inspections of sub counties were changed due to the fact that lead counties are inspected every two years and have control over the ERDS.
- Language was amended from staff to representative.

Section 999.219 is amended as follows:

- The timeframe for local inspections of sub counties were changed due to the fact that the lead counties are inspected every two years and have control over the ERDS.
- The inspections were also amended to include hardware, software, workstations, and network devices comprising the ERDS, including those located at the office of an

Authorized Submitter and/or their agents; this allows the DOJ inspections to be all inclusive.

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.
- Turn around time for the inspection letters to be mailed to the county recorder increased from 10 days to 30 days, due to follow up items.

Section 999.220 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.221 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Section 999.223 is amended as follows:

- The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization, which are incorporated herein by reference.

Disclosures of Proposed Action:

The DOJ Has Made the Following Initial Determinations:

Mandate on local agencies and school districts: None.

Cost or saving to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or saving imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or businesses: The DOJ is not aware of any cost impact that a private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing cost: None.

Significant statewide adverse economic impact directly affecting businesses, including ability of California businesses to compete with businesses with other states: None. The DOJ believes there is no adverse economic impact directly affecting businesses within California or out of state, this program is on a voluntary basis.

Results of the economic impact analysis:

Elimination of jobs/businesses, creation of jobs/businesses, or expansion of jobs/businesses:
This rulemaking will assist the County Recorders within California, in lieu of a written paper, in accepting for recording a digitized image of a recordable instrument, subject to specified conditions. This regulatory action will not eliminate, create or cause expansion to any businesses in California or out of state.

Benefits of the Proposed Regulation:

This rulemaking will assist the County Recorders within California, in lieu of a written paper, in accepting for recording a digitized image of a recordable instrument, subject to specified conditions. For additional benefits, please see page 3 under "Anticipated Benefits of the Proposed Regulation..

Small Business Reporting requirement: The Department has determined that the proposed amendments will not affect small businesses due to the program being voluntary.

Consideration of Alternatives:

In accordance with Government Code section 11346.5(a)(13), the DOJ must determine that no reasonable alternative considered by the DOJ or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The DOJ invites interested persons to present statements or arguments with respect to alternatives to the proposed amendment to existing regulations during the written comment period.

Availability of Statements:

The DOJ has prepared an Initial Statement of Reasons for the proposed amendments to existing regulations and a listing of the exact regulations being proposed.

Copies of the exact language of the Initial Statement of Reasons and of the Text of the Proposed Amendments to existing regulations, and any other information may be obtained from the DOJ contact person(s) shown in the notice. Copies of the exact language of the Initial Statement of Reasons and of the Text of the Proposed Amendments to existing regulations may also be obtained through the Office of the Attorney General's website at: <http://oag.ca.gov/erds>.

With the exception of any non-substantive technical or grammatical changes, the full text of any amended proposal will be available for 15 days prior to its adoption to all persons who submit written comments during the public comment period and all persons who request notification.

Availability of Changed or Amended Text:

After the DOJ analyzes all timely and relevant comments received during the comment period, the DOJ will either adopt the amendments to the existing regulations as described in the notice, or make modifications based on the comments. If the DOJ makes modifications which are sufficiently related to the original text of the proposed amendments to existing regulations, the amended text, with the changes clearly indicated, will be made available to the public for at least 15 days before the DOJ adopts the revised amendments to the existing regulations. The DOJ will accept written comments on the amended regulations for 15 days after the date on which they are made available.

Availability of Final Statement of Reasons:

Once the Final Statement of Reasons has been prepared, it will be made available through the contact person(s) shown in this notice and the Office of the Attorney General's website at: <http://oag.ca.gov/erds>.

Incorporated by Reference Documents:

ERDS Forms

- ERDS 0001A: Application for System Certification (Rev. 05/2011)
- ERDS 0001B: Application for Sub-County System Certification (Rev. 05/2011)
- ERDS 0002: Application for Computer Security Auditor Approval (Rev. 05/2011)
- ERDS 0003: Application for Vendor of ERDS Software Certification (Rev. 05/2011)
- ERDS 0004: Reference(s) for ERDS Computer Security Auditor (Rev. 05/2011)
- ERDS 0006: Request for Replacement of Certificate and/or Documents (Rev. 05/2011)

- ERDS 0007: FAX Transmission Cover Sheet (Rev. 05/2011)
- ERDS 0008: Change of ERDS Role (Rev. 05/2011)
- ERDS 0009: Reference(s) for Vendor of ERDS Software Certification (Rev. 05/2011)

- ERDS 0010: Application for Withdrawal (Rev. 05/2011)
- ERDS 0011: Statement of Understanding (Rev. 05/2011)
- ERDS 0012: Acknowledgment of Responsibilities (Rev. 05/2011)
- ERDS 0013: Request for Approval of Substantive Modification(s) (Rev. 05/2011)

Publications

- California County Information Services Directors Association “Best Practices” (Pub. 03/2002)
- FIPS PUB 140-2: Security Requirements for Cryptographic Modules (Rev. 12/02)
- FIPS PUB 180-3: Secure Hash Standard (Pub. 10/08)
- FIPS PUB 197: Advanced Encryption Standard (AES) (Pub.11/01)
- FIPS PUB 198-1: The Keyed-Hash Message Authentication Code (HMAC) (Pub. 07/08)
- NISTSP 800-63-1: Electronic Authentication Guideline (Pub. 12/11)
- NISTSP 800-70: National Checklists Program for IT Products-Guidelines for Checklist Users and Developers (Pub. 02/11)
- NISTSP 800-88: Guidelines for Media Sanitization (Pub. 09/06)