

**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 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 concludes 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 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.

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

Creation/Elimination of California Jobs:

The amendments are not expected to have a direct impact on the creation or elimination of jobs within the State of California because 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. The DOJ believes there is no adverse economic impact on small businesses because the program is on a voluntary basis.

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 ERDS Advisory Committee was formed in 2005 and is part of the review team that drafted policies, procedures, and requirements that were the basis for administering the ERDS and the foundation for these regulations. The DOJ believes there are no significant statewide adverse economic impacts directly affecting businesses because it is a voluntary program. However, there are required procedures to follow that have been reviewed and agreed upon by the ERDS Advisory Committee, which includes the County Recorders.

The specific technologies, actions, and procedures are set forth in the incorporated by reference documents to establish the minimum baseline requirements for a system. The regulations define the standards and provide guidelines in the areas of security, reliability, and uniformity.

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 the latest 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.**
- **Change of ERDS Role form number ERDS 0008, Proof of Fingerprint submission requirements has been revised.**

Specific purpose and rationale:

The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization. Due to the DOJ having subsequent arrest authority (Government Code section 27395(c)(3)) proof of fingerprinting is not being requested. The ERDS Program has access to all fingerprint transactions and can easily identify an individual who was previously fingerprinted; therefore, identifying a role change within an agency has been simplified, and the form has been modified to accommodate the changes.

**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 final publications of NIST/FIPS guidelines as required and to include a timeline as to when those 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 the latest final NIST/FIPS publication that the regulations currently point to and when those guidelines must be implemented. 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.**

Specific purpose and rationale:

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

**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 0004, changed title from "Attachment to ERDS 0002 Computer Security Auditor Significant Experience Reference(s)" to "Reference(s) for ERDS Computer Security Auditor".**
- **The minimum requirements to become an Approved Computer Security Auditor have been amended.**

Specific purpose and rationale:

The ERDS forms were amended to accurately reflect changes due to the DOJ's reorganization. Two of the ERDS form titles were shortened for easier understanding. The minimum

requirements to become an Approved Computer Security Auditor have been amended to allow more individuals the opportunity to become an ERDS Auditor.

**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.**

Specific purpose and rationale:

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

**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.