

FINAL STATEMENT OF REASONS

Update of Initial Statement of Reasons

Information provided in the Initial Statement of Reasons is accurate with the exception of edits made as a result of internal review and in response to public comments during the 45-day and 15-day comment periods (detailed within this section). The changes, identified below, add clarity and it is the Department's belief, though some of the changes do materially change the text of the regulations, which were addressed in the 15-day comment period, are sufficiently related to the originally proposed text and statutory intent. The originally proposed text in the following sections differs from the regulations as noticed on September 8, 2006.

Table of Contents

The Department has made various changes to the Table of Contents to assure that it is consistent with sections contained in Articles 1 through 9. The Department deems these changes as adding clarification and that they do not materially change the text of the regulations.

Article 1, sections 100 and 102 – Additional sections added

Article 5, section 500 – Editorial correction only

Article 6, sections 602 and 604 – Additional sections added

Article 6, sections 603 and 605 through 614 – renumbering required as a result of the addition of sections 602 and 604

Article 7, section 700 – Editorial correction only

Article 1. Scope

Section 100(a) is an editorial correction.

Section 100(e) was amended to comply with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sections 7001, et seq.) (E-SIGN Act). The Department finds that the regulations are consistent with Section 7001 of the E-SIGN Act since they do not deny the legal effect, validity, or enforceability of a transaction solely because it is in electronic form and does not add to the requirements of this section. The regulations are substantially justified to ensure the integrity and security of transmitted documents. Alternatively, the methods used to carry out that purpose are: substantially equivalent to the requirements imposed on records that are not electronic records; will not impose unreasonable costs on the acceptance and use of electronic records; and the methods selected to carry out these purposes to not require or accord greater legal status or effect to the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating or authenticating electronic records or electronic signatures.

Section 102 was added to provide for a severability clause.

These changes are sufficiently related and do not materially change the text of the regulations.

Article 2. Definitions

The Department has changed these definitions in order to simplify their interpretations, to correct syntax, correct alphabetical placement, and not duplicate references that are defined elsewhere within these regulations. The Department deems these changes as adding clarification and that they do not materially change the text of the regulations.

Sections 200 (a), 200 (a)(1), 200 (a)(5), 200 (a)(6), 200 (a)(7), 200 (a)(8), 200 (a)(9), 200 (a)(14), 200 (a)(16), 200(a)(17), 200 (a)(18), 200 (a)(21), 200 (a)(22), 200 (a)(31), 200 (a)(32), 200 (a)(34), 200 (a)(41), 200 (a)(42), 200 (a)(45), 200 (a)(47), 200 (a)(50), 200 (a)(51) and Authority cited.

Sections 200 (a)(19), 200 (a)(20) and 200 (a) (21) - Placed in alphabetical order.

Article 3. Fees

The Department deems these changes do materially change the text of the regulations, however, that they are sufficiently related to the originally proposed text and statutory intent.

Section 300 (a) – The Department has added the requirement that fees paid to the Department are nonrefundable to ensure sufficient compensation to process such an application.

Sections 300 (b), 300 (c) and 301 (d) – The Department has added this information to clarify the fee process.

Reference – Government Code added

Article 4. Fingerprinting and Criminal Records Checks

Sections 400 (a), 400 (c), 400 (d), 400 (e), 400 (f) – Adds Clarification

Section 400 (g)(1) and (2) – All information contained in 400 (g)(2) has been included in Section 400 (g)(1) and worded to add clarity. The Department deems these changes as adding clarification and that they do not materially change the text of the regulations.

Section 400 (h)(1) and (2) – Renumbering and edit required
Reference – Penal Codes added

Section 401 - Editorial correction only

Section 401(a) – The Department has revised the minimum fingerprinting requirements to limit the fingerprinting requirement to roles serving a Type 1 ERDS or a Type 1 and 2 ERDS and deletes the fingerprinting requirement for Type 2 only ERDS. The Department deems these changes do materially change the text of the regulations however that they are sufficiently related to the originally proposed text and statutory intent.

Sections 401 (a)(1) through (6) and 401 (a) (8) - Edited to show only those roles that would require fingerprinting. Information being deleted appears within these regulations in Article 2, Definitions, where each role is defined. The Department deems these changes as adding clarification, eliminating redundancy and that they do not materially change the text of the regulations.

Section 401 (a)(9) – Addition of a role. The Department deems this change as adding clarification and that it does not materially change the text of the regulations.

Article 5. Baseline Requirements and Technology Standards

The Department has changed the following sections in order to simplify their interpretations or to correct syntax, spelling or capitalization. The Department deems these changes as adding clarification and that they do not materially change the text of the regulations.

Section 500 (a), 502 (a), 503 (b), 503 (c), 504 (b), 509 (a) 509 (g), 510 (a), 510 (a)(3), 510 (c), 511, (a), 511 (b), 512 (a), 513 (a), 513 (a)(1), 513 (a)(3), 514 (a), 514 (a)(1)(b), 514 (a)(1)(C), 514 (a)(6), 514 (a)(8), 515 (a), 515 (a)(3), 515 (a)(4), 515 (a)(5), 515 (a)(6), 515 (a)(8)(C), 515(a)(9), 516 (a), 516 (a)(2), 516 (a)(3), 516 (a)(4), 516 (a)(5), 516 (a)(7)(D), 518 (a), 518 (c), 518 (d)(4), 518 (d)(11), 518 (d)(19), 518 (d)(22), 518 (d)(23), 518 (d)(24), 518 (d)(37), 518 (d)(40), 519 (a), 519 (b)(3), 519 (b)(4), 519 (b)(5), 519 (b)(6), 522 (a), 522 (a)(3), 525, and 526 (a).

Section 514 (a) – The Department has changed the minimum security requirements to extend to both Type 1 and Type 2 ERDS systems. While this is a syntax correction, the Department deems these changes do materially change the text of the regulations, however, that they are sufficiently related to the originally proposed text and statutory intent.

Section 517 (b), 517 (b)(1), 517 (b)(2), 517 (b)(3), 517 (c), 517 (c)(1), 517 (c)(2) and 517 (c)(3) -The Department has revised the minimum fingerprinting requirements to separate and delineate specific physical security requirements between Type 1 and Type 2 instruments rather than impose all of the same security requirements to Type 2 instruments. In addition, these sections describe physical security requirements and additional network security requirements to be met dependent upon the Type of ERDS being established. The Department deems these changes do materially change the text of the regulations; however, that they are sufficiently related to the originally proposed text and statutory intent.

Article 6. Electronic Recording Delivery System Certification

The Department has changed the following sections in order to simplify their interpretations or to correct syntax, spelling, renumbering or capitalization. The Department deems these changes as adding clarification and that they do not materially change the text of the regulations.

Sections 600 (b), 600 (d), 600 (f), 600 (h)(2), 600 (h)(4), 601 (b), 601 (c), 601 (c)(1)(B), 601 (c)(1)(D), 601 (c)(1)(E), 601 (c)(1)(F), 601 (c)(1)(G), 601 (c)(2)(D), 601 (c)(2)(E), 601 (c)(2)(F), 601 (c)(2)(G), 601 (c)(3)(A), 603, 603 (a), 603 (b)(3), 603 (b)(4), 603 (c), 603 (c)(1), 603 (c)(3), 603 (c)(4), 603 (c)(5)(B), 603 (c)(5)(C), 604, 605, 606, 606 (a), 607, 607 (a), 608, 608 (b), 609, 610, 611, 611 (a), 612, 613, 613 (a)(2), 613 (a)(3), 613 (b), 614.

As indicated in the Table of Contents, the following sections have been added to Article 6. It is the Department's belief that the text of these sections, that were included as part of Article 2, Definitions 34 and 47, are more appropriately placed within this Article. The Department deems these changes do not materially change the text of the regulations and that they are sufficiently related to the originally proposed text and statutory intent.

Section 602 (1) through (13) – As defined in these regulations, a Substantive Modification is a change that affects the functionality of an established ERDS. This section provides a listing of changes made to an established ERDS that would be classified as a Substantive Modification and that would require a modified system audit to be performed.

Section 604 (1) through (7) – As defined in these regulations, a Non-Substantive Modification does not affect the functionality of an ERDS. This section provides a listing of functions or events that would be classified as Non-Substantive. A Non-Substantive action to an ERDS would not require a modified system audit to be performed; however, shall be subject to review during audits and local inspections.

Article 7. Computer Security Auditor

Article 7 title has been edited. This change is sufficiently related to the originally proposed text and statutory intent.

The Department has changed the following sections in order to simplify their interpretations or to correct syntax, spelling, renumbering or capitalization. The Department deems these changes as adding clarification and that they do not materially change the text of the regulations.

Sections 700, 700 (a), 700 (b), 700 (c), 700 (c)(1)(A), 700 (c)(2), 700 (c)(2)(C), 700 (c)(2)(D), 700 (c)(2)(E), 700 (c)(2)(F), 700 (c)(3), 701 (a), 701 (a)(2), 701 (b), 702 (a), 702 (a)(2), 702 (b), 703 (a), 703 (b), 704 (a)(2), 705 (b), 706 (a), 706 (b), 706 (d), 707 (a).

The language was added to the following section to clarify, for a Computer Security Auditor, the result and effect of submitting an Application for Withdrawal to the ERDS Program. The Department deems this change as adding clarification and that it does not materially change the text of the regulations.

Section 706 (c)

Article 8. Vendor of Electronic Recording Delivery System Software

Article 8 title has been edited. This change is sufficiently related to the originally proposed text and statutory intent.

The Department has changed the following sections in order to simplify their interpretations or to correct syntax, spelling, renumbering or capitalization. The Department deems these changes as adding clarification and that they do not materially change the text of the regulations.

Sections 800 (a), 800 (b), 800 (c)(1), 800 (c)(4), 800 (c)(5), 801 (a)(1), 802 (a), 803 (a), 803 (a)(3), 803 (b), 804 (a), 804 (b), 805 (a)(2), 806 (a)(2), 806 (b), 806 (c), 807 (a)(1), 807 (a)(2), 807 (a)(3), 807 (c).

Article 9. Audits and Oversight

The Department has changed the following sections in order to simplify their interpretations or to correct syntax, spelling, renumbering or capitalization. The Department deems these changes as adding clarification and that they do not materially change the text of the regulations.

Sections 900 (b), 900 (c), 900 (c)(1), 900 (c)(2), 900 (d), 900 (d)(3)(H), 900 (d)(4), 900 (e), 900 (e)(3)(h), 900 (e)(4), 900 (f), 900 (f)(2), 900 (f)(3)(H), 900 (f)(4), 900 (f)(4)(D), 900 (g), 900 (g)(1), 900 (g)(2)(H), 900 (g)(3), 900 (g)(3)(D), 900 (g)(4)(B), 901 (a), 901 (a)(2), 901 (a)(3), 902 (c)(4), 902 (c)(5), 902 (c)(6), 902 (d), 902 (g), 902 (i)(1), 902 (i)(3), 903(a), 903 (b), 903 (c), 903 (d), 903 (e), 903 (f), 903 (g)(2), 904 (a), 904 (a)(1), 904 (a)(5), 904 (a)(6), 906 (c), 906 (d).

The following section was added to be consistent with the requirements of a County Recorder to maintain a list of ERDS users. Therefore, requiring the list to be verified by the Computer Security Auditor, the review of it becomes an auditable function and is to be included as part of an audit report format. The Department deems these changes do not materially change the text of the regulations and that they are sufficiently related to the originally proposed text and statutory intent.

901 (a)(7)

Language was added to the following section to identify all parties that would receive notification of the Department's determination upon receipt of a request for reconsideration, as a result of a suspension or termination of and ERDS. The Department deems this change does not

materially change the text of the regulations and that it is sufficiently related to the originally proposed text and statutory intent.

906 (b)

Summary of Comments Received

The Department received the following comments during the 45-day comment period which are included as an attachment within this section:

- E-mail submitted on behalf of the County Recordors Office, San Bernardino, CA (#1-4)
- Written comment submitted on behalf of Settleware Secure Services, Inc. (#5)
- E-mail submitted on behalf of the Sacramento County Clerk/Recorder, Sacramento, CA (#6-14)
- Letter submitted on behalf of First American Title Insurance Company (#15-19)
- Present at public hearing and extracted from official transcript on behalf of Alameda County Clerk/Recorder, Alameda, CA (#20)
- E-Mail submitted on behalf of CDB Consultancy LLC (#21)
- E-mail submitted on behalf of Property Records Industry Association (P.R.I.A.) (#22)
- E-mail submitted on behalf of the County Recordors Office, Salt Lake City, Utah (#23)

The Department received the following comments during the 15-day comment period which are included as an attachment within this section:

- E-mail submitted on behalf of the County Recordors Office, San Bernardino, CA (#1)
- E-mail submitted on behalf of the Sacramento County Clerk/Recorder, Sacramento, CA (#2-3)
- E-mail submitted on behalf of the County Recordors Office, Salt Lake City, Utah (#4)

Included within this section is a Response Table that has been prepared noting the submitter's comments and the Department's responses.

Alternatives Determination

The Department has determined that no alternative would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

Local Mandate Determination

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

Business Impact

These proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses.

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	Comment	Department's Response
#1	<p>Submitted by Larry Walker – Auditor/Controller-Recorder, San Bernardino County and Patrick Honny - San Bernardino County Recorders Office</p> <p>JPA Consortium: A group of county recorders may unite to form a JPA, a consortium or other legal entity for the purpose of jointly building a system for ERDS. The draft regulations do not specifically address the possibility of such an entity. We recommend that an entity composed entirely of California counties or county recorders be authorized in the regulations relating to “multi-county” efforts, with the same rights and responsibilities.</p>	<p>Regulations Article 6, section 601 and subsections therein allow for a JPA Consortium. The Department disagrees with the comment. The JPA, as described by the commenter, meets the definition and purpose of a “Multi-County ERDS” as presented within the proposed regulations. It has been determined that the intention of the statute requires the Attorney General to certify a system for the delivery of specified digitized electronic records and digital electronic records. By specifying within these regulations that a county may unite to form a JPA, a consortium or other legal entity the Department of Justice steps beyond the boundaries of delivery into the County’s business dealings. A Multi-County ERDS allows the counties to join their efforts, however, how they achieve it becomes their business process.</p>
#2	<p>Submitted by Larry Walker – Auditor/Controller-Recorder, San Bernardino County and Patrick Honny - San Bernardino County Recorders Office</p> <p>Developer/Vendor definition: The proposed regulations require that any developer or vendor, including all personnel that may have access to the application during development, be fingerprinted and background checked. This requirement presents severe logistical issues when dealing with global development firms. We recommend that the definition of “secure access” be revisited to determine the need for this requirement in those instances where the vendor will only be developing the application and have no further system interaction. Perhaps the Attorney General could be specifically authorized to make a finding that a proposed ERDS development meets the legislative requirement for “Secure Access” in an appropriate case where the applicant presents a security</p>	<p>The Department disagrees with the commenter’s suggestion to revisit the definition of “secure access”. The Department has identified specific roles as critical to the security and integrity of the ERDS. These roles were based upon recommendations from the department’s IT Specialists, consultants and the Advisory Committee. Once secure access was defined, it met with the approval of the Advisory Committee, comprised of representatives from the real estate industry, District Attorney’s Association and the County Recorders. Who the County Recorder hires for development of the application is a business decision and how they achieve it becomes their business process.</p>

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	Comment	Department’s Response
	plan that meets the definition even without the extent of fingerprinting currently envisioned.	
#3	<p>Submitted by Larry Walker – Auditor/Controller-Recorder, San Bernardino County and Patrick Honny - San Bernardino County Recorders Office</p> <p>Centralized contracting and MOU management: The proposed regulations require that each county have a separate agreement with each submitter. We agree with the need for all submitters and counties to have contractual relationships as a basis for the ERDS relationship. However, in the centralized, “Multi-County construct, the need for a streamlined environment exists. The number of agreements could quickly become unmanageable. We recommend that the regulations allow for a centralized capability to allow for all submitters and all counties to agree to, or to “sign on” to a single MOU or agreement that allows for county-specific differences.</p>	<p>The Department disagrees with the comment. The Department does not feel that the proposed regulations restrict participating County Recorders and submitters from designing a streamlined environment amongst themselves, once all parties involved have met their requirements with respect to the relationship to the Department of Justice and the ERDS Program. Thus, a Multi-County construct is allowed per Regulations Article 6, section 601 and subsections therein. A Multi-County ERDS allows the counties to join their efforts, however, how they achieve it becomes their business process. Therefore, no editing is required.</p>
#4	<p>Submitted by Larry Walker – Auditor/Controller-Recorder, San Bernardino County - and Patrick Honny - San Bernardino County Recorders Office</p> <p>Dispute and Interpretation resolution capability and process: The Attorney General has gone through a long and rigorous process in an effort to identify all possible issues relating to implementation of ERDS. Despite this effort, there will be occasions where a set of facts arises which was not anticipated by the drafters, or where some other circumstance requires the interpretation of an issue</p>	<p>The Department disagrees with editing the proposed regulations to include a formal process by which issues can be framed, and a decision rendered in a timely and authoritative manner. The ERDA authorizes the Attorney General to monitor each county’s ERDS (sections, 27392, and 27396). This envisions a process to request advice and counsel from the Attorney General’s legal office should a subsequent dispute, requiring interpretation, cannot be resolved at the program level.</p>

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	Comment	Department’s Response
	involved in an ERDS application with regard to its consistency with the law and regulations. We suggest that the regulations specifically provide for a formal process by which issues can be framed, and a decision rendered in a timely and authoritative manner, so that all parties can move forward confident of the certainty of the decision.	
#5	<p>Submitted by Rick Triola – Settleware Secure Services, Inc.: We do have a concern and are disappointed that the scope of e-Recording in the State of Ca of digital records is limited only to a few documents. There are many other interested parties that touch the real estate/mortgage transaction that will not be able to enjoy the benefits offered here today. (Consumers, escrow, lenders, notaries, etc.) The proposed guidelines offer the highest level of security available today, more than enough to allow for the e-Recording of higher liability records (deeds, etc.) in digital format and allow the Industry to move forward with a complete paperless and electronic real estate/mortgage transaction.</p>	<p>The Department disagrees with the comment. The ERDA set and limited the scope of participating entities and documents. The regulations address the statutory requirements of the ERDA which defines the specific document types that shall be submitted as digitized electronic records or digital electronic records. Therefore, no editing is required.</p>
#6	<p>Submitted by Craig Kramer/Clif Lawrence:</p> <p>Section: 200 Definitions (a) (1) & (5) Comment(s): Request Changes: The first sentences in both of these appear to be intended to be similar in construction, but they are not. Subsection 5 is clearer than subsection 1 (1) “Agent” means a representative and his/her employees who are authorized to submit documents on behalf of an Authorized Submitter who has entered into a contract with a County Recorder to deliver, and, when applicable, return</p>	<p>The Department agrees that editing to these definitions is needed to clarify and to be consistent. The Department deems this change as adding clarification and that it does not materially change the text of the regulations. The following edits have been made to accommodate the comment:</p> <p>(1) “Agent” means a representative and his/her employees who are authorized to submit documents on behalf of an Authorized Submitter who has entered into a contract with a County Recorder, and, assigned a role by the County Recorder, to deliver, and, when applicable, return</p>

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	Comment	Department’s Response
	<p>Type 1 and 2 instruments in a secure access role (excludes Type 2 instruments only) and/or Type 2 instruments via an ERDS. An Agent may not be.....</p> <p>(5) “Authorized Submitter” means a party and his/her employees that has entered into a contract with a County Recorder to deliver, and, when applicable, return Type 1 and 2 instruments in a secure access role (excludes Type 2 instruments only) and/or Type 2 instruments via an ERDS. An Authorized Submitter may not be.....</p>	<p>the submitted ERDS payloads via an ERDS. An Agent may not be . . .</p> <p>(5) “Authorized Submitter” means a party and his/her employees that has entered into a contract with a County Recorder, and, assigned a role by the County Recorder, to deliver, and, when applicable, return the submitted ERDS payloads via an ERDS. An Authorized Submitter may not be . . .</p>
#7	<p>Submitted by Craig Kramer/Clif Lawrence:</p> <p>Section: 200 Definitions (a) (34) Non-substantive Modification</p> <p>Comment(s): Please add to definition:</p> <p>“(8) Changes required to conform to updated Standards and Guidelines as required in Section 501.”</p>	<p>The Department agrees that changes to conform to updated Standards and Guidelines are considered a Non-substantive Modification. However, the Department disagrees with adding the commenter’s proposed language. It is sufficiently addressed in modified Article 6, section 604, which describes scenarios of updates and maintenance to an ERDS which would include conforming to the most current Standards and Guidelines. Therefore, the proposed language is not needed.</p>
#8	<p>Submitted by Craig Kramer/Clif Lawrence:</p> <p>Section: 401 Role Based Fingerprinting Requirement (a)</p> <p>(1) Agent or representative and his/her employees who are authorized to submit documents on behalf of an Authorized Submitter who has entered into a contract with a County Recorder to deliver, and, when applicable, return Type 1 and 2 instruments in a secure access role (excludes Type 2 instruments only) and/or Type 2 instruments via an ERDS. An Agent may not be.....</p>	<p>The Department agrees that editing this section is needed to clarify and to be consistent with edits made previously to the definitions of an Agent and Authorized Submitter. It is also the feeling of the Department that because “Agent” and “Authorized Submitter” have been defined, it is not necessary to restate those definitions here. The Department deems this change as adding clarification and that it does not materially change the text of the regulations. To accommodate both the commenter and the Department this section has been edited to read as:</p> <p>(1) Agent or representative and his/her employees who are authorized</p>

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	Comment	Department's Response
	<p>(2) Authorized Submitter and his/her employees is a party that has entered into a contract with a County Recorder to deliver, and, when applicable, return Type 1 and 2 instruments in a secure access role (excludes Type 2 instruments only) and/or Type 2 instruments via an ERDS. An Authorized Submitter may not be.....</p>	<p>to submit documents on behalf of an Authorized Submitter.</p> <p>(2) Authorized Submitter and his/her employees is a party that has entered into a contract with a County Recorder.</p>
#9	<p>Submitted by Craig Kramer/Clif Lawrence: Section: 505 Payload Structure, Content and Usage (a)</p> <p>Comment(s): 505 currently states “At a minimum, the ERDS payload structure shall contain a component for all of the following:</p> <ul style="list-style-type: none"> (1) Uniform Index Information. (2) One or more digital electronic record or digitized electronic records. (3) Information about the electronic signature of a notary. <p>The above is in conflict with language in Sections 506, 507(a) and 200 (a)(49) which says “..an ERDS shall be capable of including uniform index information.</p> <p>Please change Section 505 to read as follows:</p> <p>... At a minimum, the ERDS payload structure shall contain one or more digital electronic records or digitized electronic records and be capable of including the following:</p> <ul style="list-style-type: none"> (1) Uniform Index Information (2) Information about the electronic signature of a notary. 	<p>The Department disagrees with the comment and believes that the requirement, as stated, is reasonable as well as consistent with the statutory requirements.</p>

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	Comment	Department's Response
	NOTE: These changes to conform to language in Sections 506, 507(a) and 200(a)(49).	
#10	<p>Submitted by Craig Kramer/Clif Lawrence: Section: 510 Security Requirements for Computer Workstations</p> <p>Comment(s): 510(a) Please insert commas around “if applicable” in 2nd sentence as follows:</p> <p>“As such, workstations used to submit, retrieve, or return, if applicable, ERDS payloads are protected...”</p>	The Department agrees with the suggested comment and the text has been sufficiently modified in Article 5, section 510 (a). The Department deems this change as adding clarification and that it does not materially change the text of the regulations.
#11	<p>Submitted by Craig Kramer/Clif Lawrence: Section: 518 Auditable Events, Incidents and Reporting (a)</p> <p>Comment(s): (40) Remove redundant third sentence</p>	The Department agrees with the suggested comment and the text has been sufficiently modified in Article 5, section 518 (40).
#12, #13	<p>Submitted by Craig Kramer/Clif Lawrence: Section: 602 Substantive Modification(s) Application Procedure</p> <p>Comment(s): A new paragraph refers to “provisional activation” which is not defined elsewhere (including Section 200).</p> <p>Section: 900 Security Audits (f)</p> <p>Comment(s): “provisional basis” and “provisional implementation” are not defined elsewhere (including Section 200).</p>	The Department disagrees with adding definitions for “provisional activation”, “provisional basis” and “provisional implementation”. The Department has determined that further clarification is not needed and the intent of the phrases, as used, is clear in the text of Article 6, section 602 and Article 9, section 900(f).

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	Comment	Department’s Response
#14	<p>Submitted by Craig Kramer/Jim Person: Section: 510 Security requirements for Computer Workstation</p> <p>Comment(s): I recommend re-wording item (a-3) to say “Perimeter Firewall protection or host based Firewall configured to restrict inbound and outbound connections.” Many counties enjoy the security of perimeter-based Firewalls that provide excellent security and host-based Firewall products can present manageability and interoperability issues.</p>	<p>The Department disagrees with the comment. This section pertains to computer workstation security, therefore, the term “host based firewall” is appropriately used.</p>
#15	<p>Submitted by Keith Pearson, Esq. – First American Title Insurance Company:</p> <p>Sec. 200 (a) (15) should be changed to “Electronic Signature of the Notary” means a field, or set of fields, containing information about the electronic signature of the notary who notarized a digital electronic record or digitized electronic record. The notary will not be sealing or stamping electronic records.</p>	<p>The Department agrees with the comment. The definition has been changed to reflect the comment submitted. The Department deems this change as adding clarification and that it does not materially change the text of the regulations.</p>
#16	<p>Submitted by Keith Pearson, Esq. – First American Title Insurance Company:</p> <p>Sec. 200 (a) (20) - The definition term should be “ERDS Payload Structure” so that it merges with the language where this defined term is used.</p>	<p>The Department agrees with the comment. The definition has been changed to reflect the comment submitted. The Department deems this change as adding clarification and that it does not materially change the text of the regulations.</p>

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	Comment	Department’s Response
#17	<p>Submitted by Keith Pearson, Esq. – First American Title Insurance Company: Sec. 200 (a)(34) should be changed to start “Non-Substantive.....”</p>	<p>The Department agrees with the comment. The definition has been changed to reflect the comment submitted. The Department deems this change as adding clarification and that it does not materially change the text of the regulations.</p>
#18	<p>Submitted by Keith Pearson, Esq. – First American Title Insurance Company:</p> <p>Sec. 502 (a) treats instruments affecting a right, title, or interest in real property (Type 1 Documents) differently from instruments of reconveyance, substitution of trustee, or assignment of deeds of trust (Type 2 Documents). I respectfully suggest that both types of documents should be treated the same since both can be and have been used to commit real estate frauds. I respectfully suggest that both Type 1 and Type 2 documents require submitters to be fingerprinted, and both be allowed to be delivered as digitized OR digital electronic records.</p>	<p>The Department disagrees with the comment. The regulations address the statutory requirements of the ERDA which defines the specific document types that shall be submitted as digitized electronic records or digital electronic records. As stated in section 27397.5 (a), “a county recorder may include in the county’s 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 deeds of trust (Type 2 Documents).” Furthermore, sections, 27397.5 (c) and (d)(1), specifically states that the types of records described in 27397.5 (a), an instrument of reconveyance, substitution of trustee, or assignment of deeds of trust (Type 2 Documents), shall not meet the same requirements as instruments affecting a right, title, or interest in real property (Type 1 Documents) if the County Recorder and the Attorney General certifies that the method of submission allowed under the system will not permit an Authorized Submitter or its employees and agents, or any third party, to modify, manipulate, insert, or delete information in the public record, maintained by the County Recorder, or information in electronic records submitted. The Department feels that the Baseline Requirements and Technology Standards that have been established have met those requirements.</p>
#19	<p>Submitted by Keith Pearson, Esq. – First American Title Insurance Company:</p> <p>Section 518 (d) treats Type 1 and Type 2 documents</p>	<p>The Department disagrees with the comment. The regulations address the statutory requirements of the ERDA which defines the specific document types that shall be submitted as digitized electronic records or digital electronic records. As stated in section 27397.5 (a), “a</p>

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	<p>differently. I respectfully suggest that they be treated the same.</p>	<p>county recorder may include in the county's 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 deeds of trust (Type 2 Documents)." Furthermore, sections, 27397.5 (c) and (d)(1), specifically states that the types of records described in 27397.5 (a), an instrument of reconveyance, substitution of trustee, or assignment of deeds of trust (Type 2 Documents), shall not meet the same requirements as instruments affecting a right, title, or interest in real property (Type 1 Documents) if the County Recorder and the Attorney General certifies that the method of submission allowed under the system will not permit an Authorized Submitter or its employees and agents, or any third party, to modify, manipulate, insert, or delete information in the public record, maintained by the County Recorder, or information in electronic records submitted. The Department feels that the Baseline Requirements and Technology Standards that have been established have met those requirements.</p>
#20	<p>Presented at Public Hearing and extracted from official transcript – Frederick Garcia – Assistant County Clerk / Recorder – Alameda County</p> <p>Currently, many if not all of the county recorders are doing some sort of government-to-government recording with either state or local agencies. The documents are being submitted in a number of different ways. And so we are just asking for you to revisit the ERDS regulations and procedures and their applicability to these types of recordings. Again, these documents are being submitted in a number of ways and many of these other agencies, state and local agencies are not necessarily funded to do these</p>	<p>The Department disagrees with the comment. The regulations do not alter the fundamental nature of the document types being delivered to the County Recorder. In order to comply with the ERDA, documents were classified as Type 1 or Type 2 to differentiate the types of security applicable to each class of documents. Participation in the ERDS Program is strictly voluntary with no fiscal impact to non-participating counties. Furthermore, government-to-government recording is a business issue outside of the ERDA, thus not impacted by the regulations.</p>

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	upgrades to their systems.	
#21	<p>Submitted by Carmelo D. Bramante, Yuriy Dzambasow, David E. Ewan and John L. Jones – CDB Consultancy LLC</p> <ul style="list-style-type: none"> • Section 106 (13) of E-SIGN defines “transaction” as “an action or set of actions <i>relating to</i> the conduct of business, consumer, or commercial affairs between two or more persons, including any of the following types of conduct-...(B) the sale, lease, exchange, or <i>other disposition of any interest in real property</i>, or any combination thereof.” (Emphasis added). Thus, by its own terms, the ERDA positions itself as conflicting with E-SIGN Section 101 which preempts any “statute, regulation, or other rule of law... with respect to any transaction in or affecting interstate or foreign commerce” and establishes parity between paper transactions and their electronic equivalents. • Thus, the ERDA would be preempted by E-SIGN if it conflicts with any of the provisions of E-SIGN. • Moreover, since the regulations contemplate only specific technologies in implementing the regulatory scheme (see discussion below), the regulations do not comply with the provisions of Section 102(2) (2) (a) (ii) because they afford greater legal status 	<p>The Department disagrees with these comments. Consistent with the Opinion of the Attorney General, 85 Ops.Cal.Atty.Gen., 181 (2002), at pp. 187-190, E-SIGN does not have a preemptive effect on the regulations.</p> <p>Furthermore, as provided in Section 7004 of U.S.C. Title 15 (E-SIGN), the regulations are consistent with Section 7001 of U.S.C. Title 15. They also do not deny the legal effect, validity, or enforceability of a transaction solely because it is in electronic form and do not add to the requirements of section 7001. The Department finds that the regulations, moreover, are substantially justified to ensure the integrity and security of transmitted documents. Additionally, the methods used to carry out those purposes are: substantially equivalent to the requirements imposed on records that are not electronic records; will not impose unreasonable costs on the acceptance and use of electronic records; and the methods selected to carry out these purposes to not require or accord greater legal status or effect to the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating or authenticating electronic records or electronic signatures.</p> <p>A State may also specify performance standards to assure accuracy, record integrity, and accessibility of records that are required to be retained.</p> <p>The Department further finds that the performance standards in the regulations, serve an important governmental interest in ensuring the integrity and security of transmitted documents, and the performance</p>

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	<p>through the use of specific technology or specifications for performing the functions of storing, generating, receiving, communicating, and authenticating the electronic records covered therein.</p> <ul style="list-style-type: none"> • ESIGN recognizes that state agencies may have authority under any valid state law to issue orders or guidance regarding the interaction of a state law and ESIGN. However, the regulatory scheme is still preempted by ESIGN, and ESIGN itself provides necessary guidance on the ability of regulators to interpret authority under any statute. The limitations to regulatory interpretation are contained in ESIGN Section 104(b). Specifically, state agencies are preempted under Section 101 from adopting any regulation, order, or guidance unless: <ul style="list-style-type: none"> - The regulation, order, or guidance is consistent with Section 101, and it does not add to the requirements of Section 101, and the agency finds that there is substantial justification for issuing the regulation, order, or guidance, and - The methods selected to carry out the regulation are substantially equivalent to the requirements imposed on records that are not electronic records, and will not impose unreasonable costs on the acceptance and use of electronic records, and the method selected does not require or accord greater legal status or effect to the implementation or 	<p>standards are substantially related to the achievement of those objectives.</p>

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#22	<p>application of a specific technology or technology application. (Emphasis added.)</p> <p>It is in this area that the proposed regulations under ERDA truly run afoul of ESIGN.</p> <ul style="list-style-type: none"> • Additionally, taken as a whole , the ERDA and the proposed regulations are not consistent with ESIGN as required by Section 104(b)(2)(A) and 104(b)(2)(B), and do not contain the findings necessary pursuant to Section 104(b)(2)(C). To be valid regulations under Section 104(b)(2)(C), the issuing agency must find that there is substantial justification for the regulations; that the requirements imposed on the use of electronic media under the regulations are substantially equivalent to those imposed on non-electronic records; that the requirements will not impose unreasonable costs on the acceptance and use of electronic records; and that the regulations do not require (or accord greater legal status or effect to) the use of any specific technology. None of the mandatory findings or reasoning required by ESIGN appears in either the proposed regulations or the ERDA. 	<p>The Department disagrees with the comments. To meet the intent of the ERDS, the minimum standards and guidelines established within these regulations are based off information security "best practices" as</p>

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	<ul style="list-style-type: none"> • Because the security contemplated by the proposed regulations is so strict, and the California ERDS program is voluntary, we fear that an insufficient number of potential users of the ERDS will ever avail themselves of the benefits the ERDS has to offer. We also note that, due to the exceedingly rigorous security standards embraced in the regulations, the regulations may serve to preclude those outside of the State of California from utilizing the features of the ERDS system because they cannot comply with the regulatory requirements. • In this regard we urge the State of California to consider specific language requiring ERDS vendors to build their systems based on the current published version of the PRIA eRecording XML standards. The version 2.4.1 release presents these standards in XML DTD format as well as a zero-delta schema format. • We believe Section 505(c) of the proposed regulations would be more effective if it included a recommendation similar to the language appearing in URPERA. 	<p>defined in the Federal Information Processing Standards (FIPS) put forth by the National Institute Standards and Technology (NIST), designed to offer a layered security approach and will not preclude those outside of California from utilizing the features of the ERDS. Furthermore, the regulations do not prohibit the use of XML data exchange standards. The ERDS payload structure allows for standardized communication regardless of the data format used.</p>
#23	<p>Submitted by Gary Ott – Salt Lake County Recorder As a County Recorder that has been e-recording since 1999 I would like to suggest that if California has adopted UETA and E-Sign, E-Recording is already authorized in your state. All standards that apply to paper documents apply to</p>	<p>The Department disagrees with the comments. This comment entails payment methods which are outside of the scope of ERDA.</p>

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	<p>electronic documents however payments for recording in the E-World must be arranged in advance Payment methods such as draw-down accounts must be in place before Recording happens. This contractual agreement limits E-Recording to trusted trading partners, all others will record in the tried and true paper world by coming into the Recorder's Office. Electronic Notaries are also addressed in UETA. E-Recording does not have to be complex to work and the benefits are many.</p>	

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	Comment	Department's Response
#1	<p>Submitted by Patrick Honny - San Bernardino County Recorders Office</p> <p>The following appears: "The ERDS server shall run ERDS applications software, store ERDS payloads, authenticate ERDS credentials, and control ERDS access, based on assigned roles and log logged ERDS transactions."</p> <p>I believe that the previous version is correct. The ERDS server needs to control access, based on assigned roles, and log transactions.</p> <p>I do not believe that the intent is to control access based on logged transactions.</p>	<p>Regulations Article 5, section 515</p> <p>The Department agrees with the comment and has modified the text in Article 5, section 515.</p>
#2	<p>Submitted by Craig Kramer/Clif Lawrence/Jim Person – Sacramento County Recorders Office</p> <p>Uniform Indexing and Definitions: Section 505 is in conflict with language in Sections 506, 507(a) and 200 (a)(49).</p> <p>Sections 506, 507 and 200(a)(4) say “..an ERDS <i>shall be capable of including...</i> (e.g. uniform index information).</p> <p>However, 505 currently states “At a minimum, the ERDS payload structure shall contain a component for all of the following:</p>	<p>Regulations Article 5, section 505, 506, 507 (a), and 200 (a)(49)</p> <p>These comments were previously submitted during the 45 day comment period. See #9 on the 45 day comment period response table. The previous department response states “The Department disagrees with the comment and believes that the requirement, as stated, is reasonable as well as consistent with the statutory requirements”.</p>

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	<p>(1) Uniform Index Information.</p> <p>(2) One or more digital electronic record or digitized electronic records.</p> <p>(3) Information about the electronic signature of a notary.</p> <p>Please change Section 505 to read as follows:</p> <p>“... At a minimum, the ERDS payload structure shall contain one or more digital electronic records or digitized electronic records and be capable of including the following:</p> <p style="padding-left: 40px;">(1) Uniform Index Information</p> <p style="padding-left: 40px;">(2) Information about the electronic signature of a notary.</p> <p>NOTE: These changes to 505 would conform to language in Sections 506, 507(a) and 200(a)(49).</p>	
#3	<p>Security requirements for Computer Workstation: I recommend re-wording item (a-3) to say “Perimeter Firewall protection or host based Firewall configured to restrict inbound and outbound connections.” Many counties enjoy the security of perimeter-based Firewalls that provide excellent security and host-based Firewall products can present manageability and interoperability issues</p>	<p>Regulations Article 5, section 510</p> <p>These comments were previously submitted during the 45 day comment period. See #14 on the 45 day comment period response table. The previous department response states “The Department disagrees with the comment. This section pertains to computer workstation security, therefore, the term “host based firewall” is appropriately used.</p>

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#4	<p>Submitted by Gary Ott – Salt Lake County Recorder</p> <p>General Comment: It is my understanding that all fifty states have adopted the Uniform Electronic Transaction Act, UETA, and having done so have acknowledged that electronic documents and transactions have the same legal standing as paper documents.</p> <p>Nationally thousands of electronic documents are recorded every day. Is there a chance of fraudulent documents being recorder? Yes, however in my opinion the risk is less that that of a paper document. The standard for recording is the original paper document with wet ink signature and notary. I would ask you to ask yourself “what do I know” when I look at a paper document submitted for recording. You assume that you are looking at an original document if you see a wet ink notary and signature however if you did not personally witness the signing and notarization you have no idea who actually held the pen or the notary stamp. Unlike the paper model, electronic documents are never submitted by strangers, electronic documents must be submitted by “Trusted Trading Partners”. All submitters of electronic documents must establish a working business agreement with the Recorder’s Office, a method of payment must be in place to complete a transaction. Bad people will always do bad things and I expect to see the occasional bad actor in the e-recording world however never to the extent seen in the paper world.</p> <p>In short California is charting new territory. Electronic transactions happen every day and it is important that</p>	<p>This comment relates to the “recording” business, which does not pertain to these regulations which is the delivery system.</p>

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	California does not create an overly complex environment for E-commerce.	