



**DEBRA BOWEN** | SECRETARY OF STATE | STATE OF CALIFORNIA  
OFFICE OF VOTING SYSTEMS TECHNOLOGY ASSESSMENT  
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December 3, 2009

By Mail and E-mail to [david.jones@ironmountain.com](mailto:david.jones@ironmountain.com)

Mr. David Jones  
Client Executive, IPM Service Delivery  
Iron Mountain Intellectual Property Management, Inc.  
2100 Norcross Parkway, Suite 150  
Norcross, GA 30071

Dear Mr. Jones:

You are hereby notified that the Secretary of State has determined that the Iron Mountain Intellectual Property Management, Inc. ("Iron Mountain") escrow facility located at 5455 Kearny Villa Road, San Diego, CA 92123, is not in compliance with the California statutes and regulations governing facilities to store ballot tally software program source code. The Secretary of State hereby withdraws approval of the escrow facility, effective January 4, 2010. You are also hereby notified that the Secretary of State has determined that Iron Mountain is not in compliance with the California statutes and regulations that govern certification as an escrow company. The Secretary of State hereby revokes Iron Mountain's certification as an escrow company, effective January 4, 2010.

If, within the prescribed 10-day period following the date of mailing of this letter, Iron Mountain submits a written request for administrative appeal of the determination of noncompliance, that is pending on January 4, 2010, and the Secretary of State conducts an administrative hearing and denies the appeal, the withdrawal of approval and revocation shall be effective five (5) business days after the Secretary of State provides written notice of the decision to Iron Mountain.

**Legal Basis**

As authorized by section 19103(b) of the California Elections Code, regulations adopted by the Secretary of State require the placement of ballot tally software program source code in an approved escrow facility. (See California Code of Regulations (CCR), Title 2 Administration, Division 7 Secretary of State, Chapter 6 Escrow of Ballot Tally Software Program Source Codes, Sections 20610-20682.) The regulations require, among other things, that an approved escrow facility:

1. Be physically located in the State of California (CCR §20660).
2. Maintain temperatures and humidity levels within specified ranges at all times (CCR §20662(a)).
3. Permit the Secretary of State to audit source code materials at any time for purposes of verifying the contents (CCR §20671).

As discussed below, the Kearney Villa Road escrow facility is noncompliant with the humidity requirement. In addition, Iron Mountain personnel at the facility have prevented the Secretary of State from auditing some of the source code materials at the facility. Finally, Iron Mountain has deposited the source code for some ballot tally software programs used in California outside of the state in an unapproved, Georgia escrow facility rather than an approved facility in California.

The regulations authorize the Secretary of State to withdraw approval for an escrow facility that is not in compliance. The regulations establish procedures for that purpose, including provisions for notice to the escrow facility and escrow company, voting system vendors and customer jurisdictions, and for administrative appeal of the determination of noncompliance. Those regulations state:

**Section 20636. Action if Facility not in Compliance.** If the Secretary of State determines that any escrow facility is not in compliance with these regulations and other applicable law, he or she shall:

- (a) Withdraw approval of the escrow facility to store one or more source code(s); and,
- (b) Order the temporary removal of source code(s) from such facility, and the transfer of such source code(s) to facilities which are in compliance.

**Section 20637. Procedure to Withdraw Approval from Escrow Facility.**

(a) No action to withdraw approval of a facility to store ballot tally software program source code shall commence until the Secretary of State has mailed a written 30-day notice. The notice shall be sent to the escrow company, the escrow facility, and the vendor(s) storing source code(s) at the facility.

(b) Within ten days of the date of mailing of the 30-day notice, a representative of the escrow facility may request an administrative hearing with the Secretary of State to appeal the determination of non-compliance. The escrow facility shall notify the vendor that a hearing has been requested. If the vendor has received notice of request for administrative hearing, he or she shall notify the election jurisdiction, no later than three days after receipt of such notice, that a hearing has been requested and shall send copies of such notification(s) to the Secretary of State.

(c) Any vendor receiving a notice pursuant to subdivision (a) shall within 10 days of the date of the notice advise in writing any election jurisdiction using a ballot tally software program derived from the source code which has been placed in escrow that the Secretary of State will conduct an administrative hearing. The vendor shall notify the affected election jurisdiction(s) that a hearing has been requested.

(d) Within ten days of receipt of the request for an administrative hearing, the Secretary of State shall schedule the hearing and notify the

representative of the escrow facility, the vendor, and other interested parties.

(e) Within five days after the administrative hearing, the Secretary of State shall notify the representative of the escrow facility, the vendor, and other interested parties of the decision on the appeal.

The regulations also set forth requirements for certification as an escrow company and provide for revocation of certification by the Secretary of State. The regulations relevant to this matter provide:

**20650. Minimum Requirements for Certification.** A certified escrow company shall: (a) Be authorized by the Secretary of State to operate its escrow facilities.

[(b) through (f) omitted]

**Section 20653. Approval for Additional Facilities Required.**

Applications for approval of an escrow facility not included in the original application shall be made in writing to the Secretary of State on the form contained in Appendix A: Forms of Application for Certification and Approval.

**Section 20654. Term of Certification.** Certification remains valid until surrendered by the escrow company or until revoked by the Secretary of State.

**Factual Basis**

In accordance with California Elections Code (Elec. Code), section 19103(c) and California Code of Regulations (CCR), sections 20635(a) and 20671, two representatives from the Secretary of State's office, Jason Heyes and Ryan Macias, conducted an unannounced re-inspection on Thursday, November 19, 2009, of the currently approved voting system source code escrow storage facility operated by Iron Mountain, located at 5455 Kearny Villa Road, San Diego, CA 92123. Robert Simmons, Business Development Manager, and Adam Overbo, Operations Manager, Data Protection, supervised this re-inspection.

The re-inspection was conducted to determine whether Iron Mountain had corrected the deficiencies discovered during the last inspection on February 22, 2008. As stated in a letter dated June 9, 2008, from Lowell Finley, Deputy Secretary of State to Jan A. Johnson, Client Services Supervisor, failure to correct the deficiencies could result in withdrawal of approval of the facility by the Secretary of State pursuant to CCR §20636.

The re-inspection of the escrow facility revealed that Iron Mountain has not corrected multiple deficiencies and, as a result, is in violation of the escrow company certification requirements and escrow facility approval requirements:

- **General Storage Requirements [CCR §20662]:**
  - **Escrow facility shall maintain humidity between 33% and 37%:** *The Iron Mountain facility does not meet this requirement.* The humidity reading on the facility's hygrometer was 46.4%. Secretary of State Inspectors also found the humidity in the facility exceeded the maximum permitted by the regulation in the inspection on February 22, 2008.
  
- **Verification of Materials Placed in Escrow [Elec. Code, §19103(c), CCR §20671]:**
  - CCR §20671 provides: "The Secretary of State may, in furtherance of these regulations, for cause at any time, audit source code materials placed in escrow with an approved escrow facility or a facility for which approval has been withdrawn pursuant to these regulations, for purposes of verifying the contents." *The Iron Mountain facility does not meet this requirement.* The personnel at the Iron Mountain facility failed to produce the source code materials for HART InterCivic (Account Number 0801106) and for two Sequoia Voting Systems accounts (Account Numbers 1905001-00011 and 35975). Before Jason Heyes and Ryan Macias were allowed to inspect any vendor's source code deposits, Iron Mountain representatives stated that the verification process was going to take extra time because some of the source code materials were not on-site. Rather, they were at an Iron Mountain office elsewhere in San Diego for processing and would have to be transported to the approved Iron Mountain escrow storage facility. The Iron Mountain representatives also told Jason Heyes and Ryan Macias they would not identify the voting systems whose source code materials were located off-site. After approximately two hours passed, Iron Mountain personnel informed Ryan Macias that the voting system source code material from the off-site San Diego office had been delivered to the escrow facility. The Iron Mountain representatives also told Mr. Macias that, under the terms of the applicable escrow contracts, the Secretary of State did not have authorization to verify the contents of the source code materials retrieved from the off-site office. They did not permit Mr. Macias or Mr. Heyes to audit the materials for purposes of verifying their contents.
  
- **Storage of Source Code in an Unapproved Escrow Facility [CCR §20632]:**
  - CCR §20632 provides in relevant part: "No escrow facility may be used for escrow of any source code until certification has been granted to the escrow company and approval of the escrow facility for such use is received by the escrow company..." *Iron Mountain has violated this requirement.* The Iron Mountain representatives notified Mr. Macias that the company was storing the voting system source code materials deposited by Sequoia Voting Systems for Account Number 1905001-00011 [Sequoia WinEDS Voting System v. 3.1.012] outside the State of California, in a facility located in Norcross, Georgia.

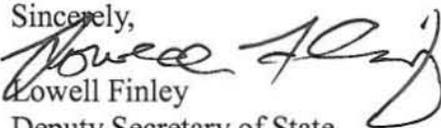
An escrow company that stores California-approved voting system source code materials in an escrow facility that is neither approved nor located in California violates not only CCR §20632, but also the following:

- CCR §20652 – “Applications for certification as an escrow company and for approval of each escrow facility shall be made in writing to the Secretary of State...”
- CCR §20653 – “Applications for approval of an escrow facility not included in the original application shall be made in writing to the Secretary of State...”
- CCR §20660 – “Each approved escrow facility shall be physically located within the State of California.”

Based on the foregoing, the Secretary of State finds that Iron Mountain’s multiple instances of uncorrected noncompliance with the regulations warrant withdrawal of approval, effective January 4, 2010, of the Kearny Villa Road escrow facility to store ballot tally software program source code for any voting system used in elections in California. The Secretary of State also finds that Iron Mountain has failed to comply with the regulations governing escrow company conduct and revokes the certification of Iron Mountain as an escrow company, also effective January 4, 2010.

Under CCR section 20637(b), Iron Mountain has 10 days from the date of mailing of this letter to request an administrative hearing to appeal the determination of noncompliance. If Iron Mountain requests an administrative hearing, the times within which other actions must be taken by Iron Mountain, voting system vendors and the Secretary of State are also set forth in section 20637 of the regulations (see pages 2 and 3 of this letter).

Please contact me at [lowell.finley@sos.ca.gov](mailto:lowell.finley@sos.ca.gov) or by telephone at (916) 653-7244 if you have any questions concerning this notice.

Sincerely,  
  
Lowell Finley  
Deputy Secretary of State  
Voting Systems Technology and Policy

cc: Adam Overbo, Operations Manager, Data Protection, 5455 Kearny Villa Road, San Diego, CA 92123  
Robert Simmons, Business Development Manager, 9210 Sky Park Court Suite 220, San Diego, CA 92123  
Election Systems and Software, Inc.  
Hart InterCivic, Inc.  
Sequoia Voting Systems, Inc.  
Unisyn Voting Solutions, Inc.  
Rebecca Martinez, President, California Association of Clerks and Election Officials