DEBRA BOWEN | SECRETARY OF STATE | STATE OF CALIFORNIA
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August 15, 2008

Mr. Stephen Jones
Auditor-Controller, Recorder, Clerk
Merced County
2222 "M" Street
Merced, CA 95340

Dear Mr. Jones:

By this letter, the Secretary of State is approving the use of the AutoMARK A200 with the ES&S Unity Version 2.4.3.1 voting system in the November 4, 2008, election and subsequent elections. This approval for use of the AutoMARK A200 with the Unity Version 2.4.3.1 voting system is based on the Secretary of State's June 30, 2008, approval of the AutoMARK A200 as part of the Unity Version 3.0.1.1 voting system.

This approval is ***not*** being granted in response to ES&S's very late written notice under Elections Code § 19213, dated April 10, 2008, of changes and modifications it had made to AutoMARKs sold and used in California two years earlier. As described below, by the time ES&S issued its April 2008 notice, the Secretary of State had already conducted comprehensive testing of the changed and modified AutoMARK (known as the A200) pursuant to ES&S's separate, 2007 application for approval of its upgraded ES&S Unity Version 3.0.1.1 optical scan voting system. That testing was conducted pursuant to Elections Code §§ 19202 through 19209, not § 19213. Both versions of the AutoMARK (the original A100 and the modified A200) were included in ES&S's application for approval of the Unity Version 3.0.1.1 system. The testing included full-scale functional, volume and security examinations of the AutoMARK A200. The results of the examination and testing of the AutoMARK A200 were satisfactory.

Under Elections Code § 19213, the Secretary of State may not authorize use of a changed and modified part of a voting system unless she has sufficient information to determine whether and to what degree the changes and modifications affect its accuracy and efficiency. Without that information, the Secretary of State must require the voting system to undergo the full process provided for in §§ 19202 through 19209 of the Elections Code. That process includes a formal application by the vendor, examination by the Secretary of State's experts and, if warranted, approval by the Secretary of State.

Compared to the original AutoMARK A100 model, the AutoMARK A200 contained hundreds of significant changes and modifications. Had ES&S submitted a timely written notice of the changes and modifications under Elections Code § 19213 before the AutoMARK A200 had been tested pursuant to other code provisions, some amount of examination and testing would have been necessary for the Secretary of State to make threshold determinations on the effect of the changes and modifications on the accuracy and efficiency of the AutoMARK.

As noted above, the Secretary of State had completed comprehensive examination and testing of the AutoMARK A200 pursuant to Elections Code §§ 19202-19209 before ES&S submitted its § 19213 written notice of the changes and modifications incorporated in the A200 model. It was therefore unnecessary to determine the nature and extent of examination and testing appropriate under Elections Code § 19213 when a vendor gives written notice of hundreds of modifications to part of a voting system.

If you have questions or I can be of any other assistance, please don't hesitate to call me, or any member of the Office of Voting Systems Technology Assessment staff, at (916) 653-7244.

Sincerely,

Lowell Finley
Deputy Secretary of State
Voting Systems Technology and Policy

cc: Mr. Steven M. Pearson, ES&S
Mr. John S. Groh, ES&S