



DEBRA BOWEN | SECRETARY OF STATE | STATE OF CALIFORNIA
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December 6, 2007

Mr. Lindsey McWilliams
Registrar of Voters
Solano County
675 Texas Street, Ste 2600
Fairfield, CA 94533

Dear Mr. McWilliams:

Thank you for your letter requesting one-time approval to use the Elections Systems & Software, Inc. (ES&S) AutoMARK A200 ballot marking device in the February 5, 2008, election. By this letter, I am administratively approving the use of the AutoMARK A200 for use with the ES&S Unity Version 2.4.3 voting system for the February 5, 2008, election under the following conditions:

- This administrative approval will apply only to the February 5, 2008, Presidential Primary Election and will expire on March 5, 2008.
- This administrative approval shall only apply in the counties of Colusa, Marin, Merced, San Francisco, and Solano that currently own the AutoMARK A200.
- Before any use in the February 5, 2008, Presidential Primary Election, jurisdictions must reinstall all software and firmware on all AutoMARK A200 ballot marking devices. AutoMARK software and firmware must be reinstalled using the currently approved version obtained directly from the federal testing laboratory or the Secretary of State. Prior to reinstallation, jurisdictions must capture an image of the software and firmware installed on each AutoMARK A200, and submit a copy of the image to the Secretary of State. If the county directs the vendor to implement this condition, the vendor may only act under the continuous supervision of county elections staff.
- To prevent potential viral propagation of malicious software that could be introduced through an AutoMARK device, all memory cards used in the AutoMARK devices to configure them for an election must be reformatted by a physically and logically isolated computer using commercial off-the-shelf software (not developed by ES&S) before the memory card can be reinserted into any other component of the voting system during that election or any subsequent election.
- Jurisdictions must conduct Logic and Accuracy testing on each AutoMARK A200 machine both prior to and after the February 5, 2008, Presidential Primary Election. The Logic and Accuracy testing must be conducted in accordance with the prevailing approved California Use Procedures for the certified ES&S Unity Version 2.4.3 voting system using paper ballots cast by the AutoMARK device. In Colusa, Merced and Solano Counties, the voted paper test ballots must be scanned using the M100 scanner component of the Election Systems and Software Unity Version 2.4.3 voting system. In the City and County of San Francisco, the voted paper test

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ballots must be scanned using the ES&S Optech IV-C scanner. A complete incident report shall be submitted to the Secretary of State for any ballot generated by the AutoMARK during the logic and accuracy test that is not accurately read by the applicable ES&S scanner. The requirements of this paragraph concerning scanning do not apply to Marin County, which does not use ES&S scanners or tally components but instead remakes all voted AutoMARK ballots onto optical scan ballots compatible with another voting system vendor's scanner and tally components.

- ES&S shall be required to reimburse the five affected counties for any and all additional costs associated with complying with these conditions. In the event that ES&S fails to do so, I will seek to recover those costs in the litigation pending in San Francisco Superior Court against ES&S regarding the AutoMARK A200 matter.
- These conditions supplement, and do not replace or eliminate, the conditions I have placed on the use of the Election Systems and Software Unity Version 2.4.3 with AutoMARK 1.0 for the February 5, 2008, Presidential Primary Election.

Please note this is a limited, one-time administrative approval, granted at your request. This approval is *not* being granted pursuant to a notice and request for approval from ES&S under Elections Code §19213 or §18564.5, and therefore may not be construed as a determination or approval made pursuant to those sections of law. ES&S has submitted the AutoMARK A200 to my office as part of its application for certification of its Unity 3.0.1.1 voting system. However, ES&S only recently completed the application and it is uncertain whether the new system will ultimately be certified and if so, when that certification will occur.

I'm sure you will take appropriate steps to ensure your county has approved voting equipment for future elections, and if I can be of assistance to you in that effort, please don't hesitate to contact my office. Finally, if you have any questions or concerns, please contact Lowell Finley, Deputy Secretary of State, Voting Systems Technology & Policy, at (916) 653-7244.

Sincerely,



Debra Bowen
Secretary of State

DB:elg:pg:jb/lf/bm

cc: Mr. Steven M. Pearson, Election Systems & Software, Inc.
Mr. Phil Recht, Mayer Brown LLP