

## DEPARTMENT OF EDUCATION

## Notice of Written Findings and Compliance Agreement

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice of written findings and compliance agreement.

**SUMMARY:** Section 457 of the General Education Provisions Act (GEPA) authorizes the U.S. Department of Education to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements. In order to enter into a compliance agreement, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements, and that a compliance agreement is a viable means of bringing about such compliance. On April 4, 2002, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) entered into a compliance agreement with the Montana Office of Public Instruction (OPI). Under section 457(b)(2) of GEPA, the written findings and compliance agreement must be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Carlos Martinez, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., Room 3W212, Washington, DC 20202-6132. Telephone: (202) 260-2493.

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**SUPPLEMENTARY INFORMATION:** Under Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997-98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do. Each State also was required to develop or adopt performance standards aligned with its content standards that describe three levels of proficiency to determine how well students are mastering the content standards. Finally, by the 2000-2001

school year, each State was required to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools in enabling students to meet the State's performance standards.

OPI submitted, and the Department approved, evidence that it has content standards in at least reading/language arts and mathematics. In November 2000, OPI submitted evidence of its final assessment system. The Department submitted that evidence to a panel of three assessment experts for peer review. Following that review, the Acting Deputy Assistant Secretary for Elementary and Secondary Education (Acting Deputy Assistant Secretary) concluded that OPI's proposed final assessment system did not meet a number of the Title I requirements.

Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it determines that a recipient "is failing to comply substantially with any requirement of law" applicable to Federal program funds the Department administers. Specifically, the Department is authorized to—

- (1) Withhold funds;
- (2) Obtain compliance through a cease and desist order;
- (3) Enter into a compliance agreement with the recipient; or
- (4) Take any other action authorized by law.

20 U.S.C. 1234c(a)(1) through (a)(4).

In a letter dated July 6, 2001 to Linda H. McCulloch, Superintendent of Public Instruction for Montana, the Acting Deputy Assistant Secretary notified OPI that, in order to remain eligible to receive Title I funds, it must enter into a compliance agreement with the Department. The purpose of a compliance agreement is "to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). In order to enter into a compliance agreement with a recipient, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements, and that a compliance agreement is a viable means for bringing about such compliance.

On April 4, 2002, the Assistant Secretary issued written findings, holding that compliance by OPI with the Title I standards and assessment requirements is genuinely not feasible until a future date. Having submitted its

assessment system for peer review in November 2000, OPI was not able to make the significant changes to its system that the Department's review required in time to meet the spring 2001 statutory deadline to have approved assessments in place. As a result, OPI administered its unapproved assessment system in 2001. The Assistant Secretary also determined that a compliance agreement represents a viable means of bringing about compliance because of the steps OPI has already taken to comply and the plan it has developed for further action. The agreement sets out the action plan that OPI must meet to come into compliance with the Title I requirements. This plan, coupled with specific reporting requirements, will allow the Assistant Secretary to monitor closely OPI's progress in meeting the terms of the compliance agreement. The Superintendent of Public Instruction for Montana, Linda H. McCulloch, signed the agreement on April 1, 2002 and the Assistant Secretary signed the compliance agreement on April 4, 2002.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the text of the Assistant Secretary's written findings is set forth as appendix A and the compliance agreement is set forth as appendix B of this notice.

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(Authority: 20 U.S.C. 1234c, 1234f, 6311)

Dated: March 12, 2003.

**Eugene W. Hickok,**  
*Under Secretary of Education.*

## Appendix A—Text of the Written Findings of the Assistant Secretary for Elementary and Secondary Education

## I. Introduction

The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) of the U.S. Department of Education (Department) has determined, pursuant to 20

U.S.C. 1234c and 1234f, that the Montana Office of Public Instruction (OPI) has failed to comply substantially with certain requirements of Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), 20 U.S.C. 6301 *et seq.*, and that it is not feasible for OPI to achieve full compliance immediately. Specifically, the Assistant Secretary has determined that OPI failed to meet a number of the Title I requirements concerning the development of performance standards and an aligned assessment system within the statutory timeframe.

For the following reasons, the Assistant Secretary has concluded that it would be appropriate to enter into a compliance agreement with OPI to bring it into full compliance as soon as feasible. During the effective period of the compliance agreement, which ends three years from the date of these findings, OPI will be eligible to receive Title I funds as long as it complies with the terms and conditions of the agreement as well as the provisions of Title I, Part A and other applicable Federal statutory and regulatory requirements.

## II. Relevant Statutory and Regulatory Provisions

### A. Title I, Part A of the Elementary and Secondary Education Act of 1965

Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), 20 U.S.C. 6301 *et seq.*, provides financial assistance, through State educational agencies, to local educational agencies to provide services in high-poverty schools to students who are failing or at risk of failing to meet the State's student performance standards. Under Title I, each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do and performance standards, aligned with those content standards, that describe three levels of proficiency to determine how well students are mastering the content standards.

By the 2000–2001 school year, Title I required each State to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools and school districts in enabling students to meet the State's performance standards. These assessments must meet the following requirements:

- The assessments must be aligned to a State's content and performance standards.
- They must be administered annually to students in at least one grade in each of three grade ranges: grades 3 through 5, grades 6 through 9, and grades 10 through 12.
- They must be valid and reliable for the purpose for which they are used and of high technical quality.
- They must involve multiple measures, including measures that assess higher-order thinking skills.
- They must provide for the inclusion of all students in the grades assessed, including students with disabilities and limited English proficient students.

- They must provide individual reports.
  - Results from the assessments must be disaggregated and reported by major racial and ethnic groups and other categories.
- 20 U.S.C. 6311(b)(3).<sup>1</sup>

### B. The General Education Provisions Act

The General Education Provisions Act (GEPA) provides a number of options when the Assistant Secretary determines a recipient of Department funds is "failing to comply substantially with any requirement of law applicable to such funds." 20 U.S.C. 1234c. In such case, the Assistant Secretary is authorized to—

- (1) Withhold funds;
- (2) Obtain compliance through a cease and desist order;
- (3) Enter into a compliance agreement with the recipient; or
- (4) Take any other action authorized by law. 20 U.S.C. 1234c(a)(1) through (a)(4).

Under section 457 of GEPA, the Assistant Secretary may enter into a compliance agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. 1234f. The purpose of a compliance agreement is "to bring the recipient into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). Before entering into a compliance agreement with a recipient, the Assistant Secretary must hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. At that hearing, the recipient has the burden of persuading the Assistant Secretary that full compliance with the applicable requirements of law is not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance. 20 U.S.C. 1234f(b)(1). If, on the basis of all the available evidence, the Assistant Secretary determines that compliance until a future date is genuinely not feasible and that a compliance agreement is a viable means for bringing about such compliance, the Assistant Secretary must make written findings to that effect and publish those findings, together with the substance of any compliance agreement, in the **Federal Register**. 20 U.S.C. 1234f(b)(2).

<sup>1</sup> On January 8, 2002, Title I of the Elementary and Secondary Education Act was reauthorized by the No Child Left Behind Act of 2001 (NCLB) (Pub. L. 107–110). The NCLB made several significant changes to the Title I standards and assessment requirements. First, it requires that each State develop academic content and student achievement standards in science by the 2005–06 school year. Second, by the 2005–06 school year, it requires a system of aligned assessments in each of grades 3 through 8 and once during grades 10 through 12. Third, it requires science assessments in at least three grade spans by the 2007–08 school year. Fourth, the NCLB significantly changes the definition of adequate yearly progress each State must establish to hold schools and school districts accountable, based on data from the 2001–02 test administration. Finally, by the 2002–03 school year, the NCLB requires State and school district report cards that include, among other things, assessment results disaggregated by various subgroups, two-year trend data, and percent of students tested.

A compliance agreement must set forth an expiration date, not later than three years from the date of these written findings, by which time the recipient must be in full compliance with all program requirements. 20 U.S.C. 1234f(c)(1). In addition, a compliance agreement must contain the terms and conditions with which the recipient must comply during the period that agreement is in effect. 20 U.S.C. 1234f(c)(2). If the recipient fails to comply with any of the terms and conditions of the compliance agreement, the Assistant Secretary may consider the agreement no longer in effect and may take any of the compliance actions described previously. 20 U.S.C. 1234f(d).

## III. Analysis

### A. Overview of Issues To Be Resolved in Determining Whether a Compliance Agreement Is Appropriate

In deciding whether a compliance agreement between the Assistant Secretary and OPI is appropriate, the Assistant Secretary must first determine whether compliance by OPI with the Title I standards and assessment requirements is genuinely not feasible until a future date. 20 U.S.C. 1234f(b). The second issue that the Assistant Secretary must resolve is whether OPI will be able, within a period of up to three years, to come into compliance with the Title I requirements. Not only must OPI come into full compliance by the end of the effective period of the compliance agreement, it must also make steady and measurable progress toward that objective while the compliance agreement is in effect. If such an outcome is not possible, then a compliance agreement between the Assistant Secretary and OPI would not be appropriate.

### B. OPI Has Failed To Comply Substantially With Title I Standards and Assessment Requirements

In November 2000, OPI submitted evidence of its final assessment system. The Assistant Secretary submitted that evidence to a panel of three assessment experts for peer review. Following that review, the Acting Deputy Assistant Secretary for Elementary and Secondary Education (Acting Deputy Assistant Secretary) concluded that OPI's proposed final assessment system did not meet a number of the Title I requirements. Specifically, the Acting Deputy Assistant Secretary determined that OPI must do the following:

- Provide evidence that Montana's performance standards are aligned with your State content standards, and that a broad base of stakeholders was involved in the development of the performance standards.
- Complete the development of the second phase of the Montana assessment system addressing multiple measures that assess higher order thinking skills and the portions of the State standards that are not currently being assessed. Montana must describe the design of this phase of the assessment system, including the content to be assessed, the processes by which the system is to be created, the nature of the scores to be produced, and how the scores will be aggregated for decision making at the school, district, and State levels.

- Provide evidence of further objective alignment studies completed by teachers and other experts knowledgeable about Montana's content standards and submit the results for peer review. Montana previously submitted for peer review evidence of a study done by the contractor of the alignment between the ITBS and ITED and Montana's content standards.

- For the Alternate Assessment Scale, Montana must provide evidence of technical quality, the timeline for implementation, and the role of the Scale in the State's accountability system.

- Provide complete participation data for students with disabilities and limited English proficient students so that Montana's inclusion practices relating to assessment, reporting, and accountability can be evaluated.

- Provide data showing that all assessments used in Montana for Title I accountability meet commonly accepted professional standards for technical quality consistent with the uses made of the results.

- Develop and disseminate annual school reports that display assessment results for all students, disaggregated by gender, major racial/ethnic groups, limited English proficient status, migrant status, students with disabilities as compared to non-disabled students, and economically disadvantaged students compared to non-disadvantaged students.

- Upon completion of the development of performance standards, individual student interpretive and descriptive reports must be generated and disseminated to parents to inform them how well their students are meeting those performance standards.

- Provide the Department with the State's definition of "full academic year" for including students in determining adequate yearly progress.

#### *C. OPI Cannot Correct Immediately its Noncompliance With the Title I Standards and Assessment Requirements*

Under the Title I statute, OPI was required to implement its final assessment system no later than the 2000–2001 school year. 20 U.S.C. 6311(b)(6). OPI submitted evidence of its assessment system in November 2000, but the Acting Deputy Assistant Secretary determined, on the basis of that evidence, that OPI's system did not fully meet the Title I requirements. Due to the enormity and complexity of developing a new assessment system that addressed the Acting Deputy Assistant Secretary's concerns, OPI was not able to complete that task between the time it submitted its system for review and the spring 2001 assessment window. Thus, in March 2001, OPI administered the assessment that the Acting Deputy Assistant Secretary had determined did not meet the Title I requirements. As a result, the Assistant Secretary finds that it is not genuinely feasible for OPI to come into compliance until a future date.

#### *D. OPI Can Meet the Terms and Conditions of a Compliance Agreement and Come Into Full Compliance With the Requirements of Title I Within Three Years*

At the public hearing, OPI presented evidence of its commitment and capability to

come into compliance with the Title I standards and assessment requirements within three years. For example, OPI developed, for grades 4, 8 and 12, a set of approved content standards in reading and mathematics as well as standards in a number of other areas such as science and social studies. OPI also developed performance descriptors in reading and mathematics. OPI has also developed and administered an Alternate Assessment Scale for students with disabilities. It must modify the Alternate Assessment Scale, however, to ensure full alignment and inclusion of all students. Moreover, OPI has committed resources and personnel to continue the work of developing, aligning, implementing, and evaluating its assessment system.

Finally, OPI has developed a comprehensive action plan, incorporated into the compliance agreement, that sets out a very specific schedule that OPI has agreed to meet during the next three years for attaining compliance with the Title I standards and assessment requirements. As a result, OPI is committed not only to coming into full compliance within three years, but to meeting a stringent, but reasonable, schedule for doing so. The action plan also demonstrates that OPI will be well on its way to meeting the new standards and assessment requirements of the No Child Left Behind Act of 2001. The compliance agreement also sets out documentation and reporting procedures that OPI must follow. These provisions will allow the Assistant Secretary to ascertain promptly whether OPI is meeting each of its commitments under the compliance agreement and is on schedule to achieve full compliance within the effective period of the agreement.

The task of developing an assessment system that meets the Title I requirements is not a quick or easy one. However, the Assistant Secretary has determined that, given the commitment of OPI to comply with the terms and conditions of the compliance agreement, it is possible for OPI to come into full compliance with the Title I standards and assessment requirements within three years.

#### **IV. Conclusion**

For the foregoing reasons, the Assistant Secretary finds the following: (1) That full compliance by OPI with the standards and assessment requirements of Title I is not feasible until a future date; and (2) that OPI can meet the terms and conditions of the attached compliance agreement and come into full compliance with the Title I standards and assessment requirements within three years of the date of these findings. Therefore, the Assistant Secretary has determined that it is appropriate to enter into a compliance agreement with OPI. Under the terms of 20 U.S.C. 1234f, that compliance agreement becomes effective on the date of these findings.

Dated: April 4, 2002.

**Susan B. Neuman,**

*Assistant Secretary for Elementary and Secondary Education.*

#### **Appendix B—Text of the Compliance Agreement**

##### **Compliance Agreement Under Title I of the Elementary and Secondary Education Act Between the United States Department of Education and the Montana Office of Public Instruction**

##### *Introduction*

Title I of the Elementary and Secondary Education Act of 1965 (Title I) required each State, including the District of Columbia and Puerto Rico, to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do and performance standards, aligned with those content standards, that describe three levels of proficiency to determine how well students are mastering the content standards. By the 2000–2001 school year, Title I required each State to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools and school districts in enabling students to meet the State's performance standards.

The Montana Office of Public Instruction (OPI) was not able to meet these requirements by the statutory deadlines. In order to be eligible to continue to receive Title I funds while working to comply with the statutory requirements, the Superintendent of Public Instruction indicated OPI's interest in entering into a compliance agreement with the Office of Elementary and Secondary Education (OESE) of the United States Department of Education. On December 10, 2001, OESE conducted a public hearing regarding OPI's ability to come into compliance with the Title I standards and assessment requirements within three years. Based on testimony at that hearing, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) determined that compliance by OPI with the Title I standards and assessment requirements was genuinely not feasible until a future date. The Assistant Secretary also determined that a compliance agreement represents a viable means of bringing about compliance because of steps OPI has already taken to address its noncompliance, its commitment of resources and the action plan it has developed. The Assistant Secretary's written findings are incorporated into this agreement.

Pursuant to this compliance agreement under 20 U.S.C. 1234f, OPI must be in full compliance with the requirements of Title I no later than three years from the effective date of this agreement. Specifically, OPI must meet, and document that it has met, the following requirements:

1. Complete development of performance standards by aligning performance descriptors to Montana's content standards and set cut scores on the assessments that define levels of performance.

2. Develop or select an academic assessment system that represents the full range of Montana's content standards and performance standards in at least reading/language arts and mathematics consistent with the Title I requirements for use of multiple measures of student achievement, including measures that assess higher-order thinking and understanding. Document the alignment of the assessment system with Montana's content and student performance standards.

3. Document that all students are included in the assessment system, particularly limited English proficient students and students with disabilities. Include test results for all students in school accountability measures. Monitor school-level decisions regarding inclusion of all students in the assessment system.

4. All assessments used in the State for Title I accountability must meet commonly accepted professional standards for technical quality consistent with the uses made of the results. For the Alternate Assessment Scale, Montana must provide evidence of technical quality.

5. Develop and disseminate individual student interpretive and descriptive reports. Report assessment results for the state, each district, and school that are disaggregated by all required categories.

6. Meet requirements under the No Child Left Behind Act of 2001 related to assessments and accountability.

During the period that this compliance agreement is in effect, OPI is eligible to receive Title I, Part A funds if it complies with the terms and conditions of this agreement, as well as the provisions of Title I, Part A and other applicable Federal statutory and regulatory requirements. Specifically, the compliance agreement sets forth action steps OPI must meet to come into compliance with the Title I standards and assessment requirements. OPI must submit documentation concerning its compliance with these action steps.

The action steps incorporated into this compliance agreement may be amended by joint agreement of the parties, provided full compliance can still be accomplished by the expiration date of the agreement.

If OPI fails to comply with any of the terms and conditions of this compliance agreement, including the action steps below, the Department may consider the agreement no longer in effect and may take any action authorized by law, including the withholding of funds or the issuance of a cease and desist order. 20 U.S.C. 1234f(d).

For the Montana Office of Public Instruction:

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Linda H. McCulloch,  
*Superintendent of Public Instruction.*  
*April 1, 2002*

For the United States Department of Education:

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Susan B. Neuman,  
*Assistant Secretary, Office of Elementary and Secondary Education.*  
*April 4, 2002.*

Date this compliance agreement becomes effective: April 5, 2002  
Expiration date of this agreement: April 5, 2005.

**BILLING CODE 4001-01-P**

COMPLIANCE AGREEMENT  
 UNDER TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT  
 BETWEEN THE UNITED STATES DEPARTMENT OF EDUCATION AND  
 THE MONTANA OFFICE OF PUBLIC INSTRUCTION

ACTION PLAN

REQUIREMENT 1 - Complete development of performance standards by aligning performance descriptors to Montana's content standards and set cut scores on the assessments that define levels of performance. [Performance Standards]

Action Steps for Requirement 1	Completion Date	Evidence	Office Responsible	Fiscal Resources
Describe the process to be used for developing performance standards in reading and math; including procedures for setting cut scores.	June 30, 2002	Work plan	Assessment Office Title I Office	Title II, Title VI
Review the previously state approved performance descriptors and levels with an external consultant leading Montana educators through the process. The process will validate alignment to content standards with revisions as necessary.	August 31, 2002	New document demonstrating the performance levels and descriptors  Documentation of alignment with content standards	Assessment Office Title I Office Accreditation Office Special Education Office Bilingual Office	Title VI; Special Education
<ul style="list-style-type: none"> <li>- Review existing labels for four performance levels.</li> <li>- Include broad-based groups of Montana educators (including</li> </ul>				

experts in special education and LEP) in the review and revision of performance descriptors for each level to align with each content standard and benchmark for each grade.	September 30, 2002	Documentation of alignment of performance descriptors with content standards and assessments	Assessment Office Title I Office Accreditation Office Special Education Office Bilingual Office	Title VI; Special Education
Complete a review to ensure alignment of performance descriptors with content standards and assessments considering comprehensiveness, emphasis, and depth. Ensure that specificity of skills identified for the performance descriptors are sufficiently detailed for subsequent work in augmenting the CRTs, revising the Alternate Assessment Scale, and establishing cut scores.	August 31, 2003	Preliminary cut scores based on performance levels and descriptors	Assessment Office Title I Office Accreditation Office Special Education Office Bilingual Office	Title VI
Review performance descriptors based on results of the pilot test administration of assessments (including the revised Alternate Assessment Scale). Set preliminary cut scores on assessments by applying generally accepted standards and procedures.				

Review performance descriptors based on results of first full administration of assessments. Set final cut scores on assessments by applying generally accepted standards and procedures.	July 31, 2004	Final cut scores based on performance levels and descriptors	Assessment Office Title I Office Accreditation Office	Title VI
Documentation that the state has formally approved the performance cut scores.	August 31, 2004	Letter with the approval date provided by the State Superintendent to ED	Assessment Office Title I Office Accreditation Office	Title VI
Document how performance standards are aligned with the content standards, are challenging for all students, were developed with broad-based involvement, and that all students are held to the same, high performance standards.	October 31, 2004	Alignment report, technical manual, list of people that participated in development, and participation rates for all students	Assessment Office Title I Office Accreditation Office	Title VI
Documentation sent to the USED for formal peer review of performance standards, along with entire set of assessment evidence for peer review.	November 30, 2004	Documents shipped, including Superintendent's approval letter	Assessment Office Title I Office Accreditation Office	Title VI

REQUIREMENT 2 - Develop or select an academic assessment system that represents the full range of Montana's content standards and performance standards in at least reading/language arts and mathematics consistent with the Title I requirements for use of multiple measures of student achievement, including measures that assess higher-order thinking and understanding. Document the alignment of the assessment system with Montana's content and student performance standards. [Full assessment system and alignment]

Action Steps for Requirement 2	Completion Date	Evidence	Office Responsible	Fiscal Resources
Issue a Request for Proposals for an off-the-shelf criterion-referenced test in reading and math for grades 4, 8 & 11.	February 1, 2002	Copy of RFP	Title I Office Assessment Office	Title I, Title II
Form broad-based advisory groups consisting of content area teachers, superintendents, principals, curriculum directors, special educators, state Title III director, and representatives of professional education organizations. Form RFP Evaluation Committee representative of the above, geographic regions, and district size.	March 18, 2002	Letters of invitation and list of advisors and the Evaluation committee members	Title I Office Assessment Office	Title I, Title II
Review by teachers of content area match in proposals submitted by vendors; written advice submitted.	April 5, 2002	Written advice to RFP selection committee	Title I Office Assessment Office	Title I, Title II



Review by other advisors of proposals; written advice submitted.	April 5, 2002	Written advice to RFP selection committee	Title I Office Assessment Office	Title I, Title II
Review of proposals and recommendation by RFP Evaluation committee.	April 10, 2002	Written recommendation to State Procurement Bureau	Title I Office Assessment Office	Title I, Title II
Negotiate and sign a contract for a CRT for Phase 2 of an assessment system for Title I purposes. (MontCAS Phase 2).	April 30, 2002	Signed Contract	Title I Office Assessment Office	Title I, Title II
Conduct an analysis of the alignment of the selected reading and math assessments for grades 4, 8, and 11 with Montana's standards, identifying any gaps or weaknesses in the alignment. Process to be conducted by external independent consultant(s) as arranged by Northwest Regional Educational Laboratory (NWREL).	June 30, 2002	Report on persons involved, activities, dates, and preliminary findings	Title I Office Assessment Office	Title I, Title II, NWREL resources
Report on alignment study for reading and math, grades 4, 8, and 11.	August 31, 2002	Report of alignment study	Title I Office Assessment Office	Title I, Title II, NWREL resources

Develop items to fill gaps in alignment for reading and math, grades 4, 8, and 11 utilizing content standards and revised performance descriptors to ensure that higher order thinking skills are included.	December 31, 2002	Test items map and specifications	Title I Office Assessment Office	Title VI
Develop procedures for pilot test administration, scoring, and data analysis.	January 31, 2003	Testing Procedures Document	Title I Office Assessment Office	Title VI
Conduct item try-outs for reading and math, grades 4, 8, and 11 using an empirical sample.	February 28, 2003	Analysis of new item performance	Title I Office Assessment Office	Title VI
Complete review of these test items for bias to ensure that results measure the essence of the standards and do so for students of diverse backgrounds.	March 31, 2003	Results of item analyses (DIF)	Title I Office Assessment Office	Title VI
Conduct inservice for district test coordinators for pilot administration.	April 30, 2003	Schedule of training	Title I Office Assessment Office	Title VI
Administer pilot tests in reading and math, grades 4, 8, and 11 including new added items.	May 31, 2003	Pilot test schedule	Title I Office Assessment Office	Title VI
Complete any needed adjustments in the test forms and administration procedures for new tests in reading and math, grades 4, 8, and 11.	December 31, 2003	Report adjustments made	Title I Office Assessment Office	Title VI

Conduct inservice for district test coordinators for full administration.	March 31, 2004	Schedule of training	Title I Office Assessment Office	Title VI
First full administration of new tests in reading and math, grades 4, 8, and 11 with the additional new items.	April 30, 2004	Schedule for testing	Title I Office Assessment Office	Title VI
Set Performance Standards (see details under Requirement 1 above).	August 31, 2004			
Submit assessment system to USED for peer review.	October 31, 2004	Documents shipped, including Superintendent's approval letter	Title I Office Assessment Office	Title VI

REQUIREMENT 3 - Document that all students are included in the assessment system, particularly limited English proficient students and students with disabilities. Include test results for all students in school accountability measures. Monitor school-level decisions regarding inclusion of all students in the assessment system. [Inclusion]

Action Steps for Requirement 3	Completion Date	Evidence	Office Responsible	Fiscal Resources
Investigate the appropriate accommodations for LEP students (linguistically appropriate) and for students with disabilities to determine the practicality of those accommodations for the CRT.	September 30, 2002	List and description of accommodations for the CRT	Assessment Office Title I Office Special Education Office Bilingual Office	Title VI Special Education Title III

Review and refine as necessary previously developed policies for including students with disabilities in the statewide assessment system. Revise and refine as necessary/reissue Guidance Document, as necessary.	November 30, 2002	Guidance Document and Policies	Assessment Office Title I Office Special Education Office	Title VI Special Education
Review and refine as necessary previously developed policies for including LEP students in the statewide assessment system. Revise and refine as necessary/reissue Guidance Document, as necessary.	November 30, 2002	Guidance Document and Policies	Assessment Office Title I Office Bilingual Office	Title VI Title III
Develop statewide monitoring procedures to ensure the inclusion of all students.	November 30, 2003	Monitoring procedures	Assessment Office Title I Office Bilingual Office Special Education Office	Title VI Title III Special Education
Complete technical studies and manual for Alternate Assessment Scales.	August 31, 2004	Technical Manual	Assessment Office Title I Office Bilingual Office Special Education Office	Title VI Special Education
Complete technical studies and manual for accommodating LEP students in the state assessments.	August 31, 2004	Technical Manual	Assessment Office Title I Office Bilingual	Title VI Title III Special Education

Document that all students are included in the assessment system, especially LEP and students with disabilities.	August 31, 2004	Participation rates	Office Special Education Office Assessment Office Title I Office Bilingual Office Special Education Office Measurement and Accountability Office	Title VI Title III Special Education
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Requirement 4 - All assessments used in the State for Title I accountability must meet commonly accepted professional standards for technical quality consistent with the uses made of the results. For the Alternate Assessment Scale, Montana must provide evidence of technical quality. [Technical Quality]

Action Steps for Requirement 4	Completion Date	Evidence	Office Responsible	Fiscal Resources
Establish a Technical Advisory Panel consisting of external experts. The primary purpose of the panel is to provide technical advice and assistance. Panel will meet quarterly.	May 31, 2002	List of panel members	Title I Office Assessment Office Special Education Office Bilingual Office	Title VI, Special Education

Conduct preliminary technical quality analyses of the pilot of the CRT and the revised AAS, consistent with requirements under USED Peer Review Guidance.	August 31, 2003	Technical reports and report of the Technical Advisory Panel	Title I Office Assessment Office Special Education Office Bilingual Office	Title VI, Special Education
Make any necessary adjustments to the CRT and AAS based on the findings from the review of the technical reports by the Technical Advisory Panel.	December 31, 2003	Confirmation of changes made to the assessments	Title I Office Assessment Office Special Education Office Bilingual Office	Title VI, Special Education
Conduct technical quality analyses of the first full administration of the CRT (and the AAS, if necessary).	July 31, 2004	Technical reports and report of the Technical Advisory Panel	Title I Office Assessment Office Special Education Office Bilingual Office	Title VI, Special Education
Complete all technical reports for the CRT and AAS.	August 31, 2004	Technical reports/manuals	Title I Office Assessment Office Special Education Office	Title VI, Special Education

			Bilingual Office	
Provide evidence of technical quality to USED for peer review.	November 30, 2004	Technical manuals	Title I Office Assessment Office Special Education Office Bilingual Office	Title VI, Special Education

REQUIREMENT 5 - Develop and disseminate individual student interpretive and descriptive reports. Report assessment results for the state, each district, and school that are disaggregated by all required categories. [Reporting]

Action Steps for Requirement 5	Completion Date	Evidence	Office Responsible	Fiscal Resources
Design a reporting template that has all required categories of disaggregated students by achievement level.	November 30, 2003	Sample report	Title I Office Assessment Office	Title VI

Design and provide a reporting template for school, district, and state profiles that clearly communicates to educators, parents and stakeholders how the assessments relate to the content and achievement standards.	November 30, 2003	Sample report	Title I Office Assessment Office	Title VI
Design an individual student interpretive and descriptive report that is understandable for all parents.	November 30, 2003	Sample report	Title I Office Assessment Office	Title VI
Describe the procedures for reporting the performance of small schools, small student subgroups, and K-3 schools.	December 31, 2003	Written procedures	Title I Office Assessment Office	Title VI
Document that the state provides school, district, and state reports disaggregated by all required categories.	August 31, 2004	Actual reports that are disseminated and posted on the website	Title I Office Assessment Office	Title VI
Document that the state provides individual information from the State assessment showing how well each student has performed relative to the content and performance standards.	August 31, 2004	Actual reports that are disseminated	Title I Office Assessment Office	Title VI
Document that LEAs publicize and disseminate the profiles to all the required audiences in a language and format that is understandable to all to the extent practicable.	August 31, 2004	Actual Profiles disseminated by LEAs	Title I Office Assessment Office	Title VI



Description of the state's monitoring process to ensure the quality of all reports.	September 30, 2004	Actual Monitoring document	Title I Office Assessment Office	Title VI
Submit manuals and/or guidelines on the interpretation of these reports with the entire assessment system for peer review.	October 31, 2004	Actual Manuals or Guidelines	Title I Office Assessment Office	Title VI

REQUIREMENT 6 - Meet requirements under the No Child Left Behind Act related to assessments and accountability. [NCLB assessment and accountability requirements]

NOTE: Montana will need to modify the contents of reports temporarily until all required assessment components are implemented.

<p>Action Steps for Requirement 6</p> <p>These action steps are goals to be accomplished by the date shown. Montana, and other Compliance agreement States, will have until 6 months from the date of the agreement or 30 days after publication of final regulations (whichever comes first) to determine the specific tasks and dates required to satisfy each goal.</p>	Completion Date	Documentation	Office Responsible	Fiscal Resources

Content standards in science: Completed for grades 4, 8, and 11 and adopted by State Board of Education	October 1999	Administrative Rules of Montana	Accreditation office	State
Develop standards-based assessments reading and math in remaining grades 3, 5, 6, and 7  Complete alignment study of purchased criterion-referenced test  Draft & field test items  Pilot assessments in the grades not tested in 2004  Full Administration of reading and math in grades 3,5,6, and 7 (along with grades 4, 8, and 11)	November 30, 2003  April 30, 2004 April 30, 2005  April 30, 2006	Report of alignment  Field test data Pilot administration manual  Schedule for testing; tests given as scheduled	Title I Office Assessment Office	Title VI
Dissemination of disaggregated data at the school and district levels from the assessments currently in use. Assessment reports to include: gender, major racial/ethnic groups, English proficiency status, migrant status, students with disabilities as compared to nondisabled students, and economically	Aug 31, 2002 (as available)  Aug 31, 2003 (all subgroups) AND Annually thereafter	Reports based on ITBS/ITED tests administered in 2001-02.	Title I Office Assessment Office Measurement and Accountability Office	Title VI

disadvantaged students as compared to students who are not economically disadvantaged.					
Distribution of an itemized score analysis to support instructional improvement.	Aug 31, 2003 AND Annually thereafter	Sample report based on test administered in 2001-02	Title I Office Assessment Office Measurement and Accountability Office	Title VI	
<p>Implementation of the English language proficiency testing required under Title I and Title III</p> <ul style="list-style-type: none"> <li>Identify test(s) that will be used</li> <li>Administer to all LEP students</li> <li>Define annual measurable objectives for gains in English proficiency as required in Sec. 3122</li> <li>Report results as required by NCLB</li> </ul>	2002-03 AND Annually thereafter	Instructions to districts and schools, test administration manuals, sample reports	Title I Office Assessment Office Title III Office	Title VI; Title III	
Participation in the National Assessment of Educational Progress in 2003 and 2005 and, if selected, participation in the field test in off-years	May 28, 2002	Documented in Consolidated Application	Assessment office	ED/NAEP	

<p>Distribution of a state report card as required under Section 1111 of Title I. State report card must include the following assessment components by dates shown</p> <ul style="list-style-type: none"> <li>• Disaggregated student achievement results by performance level by Sept 30, 2002</li> <li>• Percent of students not tested, disaggregated by Aug 31, 2003</li> <li>• Comparison between annual objectives and actual performance for each student group by Aug 31, 2004</li> </ul> <p>All other report card requirements must be met as quickly as possible, consistent with implementation of final assessments.</p>	<p>See deadlines for each item</p>	<p>Copy of state report card Copy of state report card Copy of state report card</p>	<p>Title I Office Assessment Office Measurement and Accountability Office</p>	<p>Title VI</p>
<p>A. Continued identification of schools in need of improvement, based on data from the current assessment(s) for all children in the grades assessed and, to also include:</p> <ul style="list-style-type: none"> <li>• Performance of subgroups (of statistically reliable size)</li> <li>• Application of the 95%</li> </ul>	<p>Sept 30, 2002 (as available) Aug 31, 2003</p>	<p>Description of school accountability system, to include the data source (assessments) and formula or decision sequence used to</p>	<p>Title I Office Measurement and Accountability Office</p>	<p>Title I; Title VI</p>

<p>participation rule</p> <ul style="list-style-type: none"> <li>• HS graduation and the other indicators required by NCLB,</li> </ul> <p>B. Establish AYP baseline, based on data from the new assessment(s) for all children in the grades assessed</p> <p>Use transitional rules under NCLB, Sec. 1116 to identify schools in need of improvement</p>	<p>Aug 31, 2004</p>	<p>determine school classifications.</p> <p>List of schools &amp; districts identified for improvement</p> <p>Communication of baseline values and AYP design to schools and districts</p> <p>List of schools &amp; districts identified for improvement</p>	<p>Title I Office Measurement and Accountability Office Assessment Office Accreditation Office</p> <p>Title I; Title VI; State</p>	
<p>Annual report to the Secretary as described in Section 1111(h)(4)</p> <ul style="list-style-type: none"> <li>• Information on State progress in developing all required academic assessments (2002-03)</li> <li>• Student achievement data, disaggregated (2002-03)</li> <li>• Data on acquisition of English proficiency by LEP (2002-03)</li> <li>• Number and names of schools identified for school improvement, the reason for identification, and measures taken to address achievement problems</li> <li>• Number of students and schools</li> </ul>	<p>Aug 2002 and annually thereafter</p>	<p>Data will be reported as part of the Annual Title I Performance Report</p>	<p>Title I Office Measurement and Accountability Office Assessment Office</p> <p>Title I; Title VI; State</p>	

that participated in public school choice and supplemental services • Information on quality of teachers and percent of classes taught by highly qualified (2002-03)					
All other requirements of NCLB pertaining to schools identified for improvement, corrective action, or restructuring during the period of the compliance agreement	2002-03	Implementation of and documentation of choice, supplemental services, corrective actions, as appropriate	Title I Office	Title I; Title VI; State	

[FR Doc. 03-6949 Filed 3-21-03; 8:45 am]

BILLING CODE 4000-01-C

## DEPARTMENT OF ENERGY

### National Nuclear Security Administration, Los Alamos Site Office; Floodplain Statement of Findings for the Fire Road Project at Los Alamos National Laboratory, Los Alamos, NM

**AGENCY:** National Nuclear Security Administration, Los Alamos Site Office, Department of Energy.

**ACTION:** Floodplain Statement of Findings.

**SUMMARY:** This Floodplain Statement of Findings is for the construction of improvements to existing firebreaks and access roads into remote forested areas at Los Alamos National Laboratory (LANL) for the purpose of providing reliable access for fire fighting crews. The improvements will focus on changes to drainage crossings and improved roadbeds within floodplain areas. Improvements would be minor and would mostly consist of installing culverts and stabilizing roadbeds. These roads are limited use roads that are restricted to official access only. In accordance with 10 CFR part 1022, NNSA has prepared a floodplain/wetland assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Withers, U.S. Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544. Telephone (505) 667-8690, facsimile (505) 667-9998, or electronic address: ewithers@doeal.gov. For further information on General DOE Floodplain Environmental Review Requirements, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH-42, Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585-0119. Telephone (202) 586-4600 or (800) 472-2756, facsimile (202) 586-7031.

**SUPPLEMENTARY INFORMATION:** After the May 2000 Cerro Grande Fire event, NNSA developed a Wildfire Hazard Reduction Program for LANL. This program includes the improvement of firebreaks (also known as "fuel brakes") and fire roads for access to remote portions of LANL through the upgrade and maintenance of the existing fire road network. There are about 12 firebreaks and 40 fire roads at LANL that will be improved as part of this

project (see the attached figure). These improvements will require the following: (1) Clearing each road of hazard trees (mostly these are dead or dying trees) to keep the road open and passable; (2) grading of the roads and realignment of sharp curves to improve drainage; (3) cut and fill of road areas where needed to accommodate heavy fire fighting equipment; and (4) installation of culverts only in areas where the substrate is unstable, so as to minimize the number of culverts requiring maintenance. Disturbed soil will be revegetated after work is completed. Firebreak and road improvements will commence in fiscal year 2003 and be completed over the next 9 months.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), NNSA prepared a floodplain/wetland assessment for this action. The NNSA published a Notice of Floodplain Involvement (volume 68, number 39). This notice announced that the floodplain/wetland assessment document was available for a 15-day review period at two public DOE reading rooms in Los Alamos and Albuquerque, New Mexico, and that copies of the document could be obtained by contacting Ms. Withers at the above address. No comments were received from the **Federal Register** notice on the proposed floodplain action.

**Project Description:** Implementing the proposed improvements to firebreaks and fire roads would allow the passage of emergency fire fighting vehicles into remote portions of LANL. Each road would be graded and drainage crossings would be improved. All of the drainage crossings on the roads in the project area receive intermittent flow during seasonal storms and spring runoff.

Hazard trees that impede emergency vehicle passage would first be removed. Drainages would be graded to existing channel depth or crossed with a culvert. Most of the drainages are composed of hard substrate, and would not need a culvert. Where the substrate is soft and unstable and where the channel is much deeper than the roadbed, a culvert would be installed. Because of the high maintenance costs associated with culvert crossings, this method of drainage improvement would be limited to the extent practicable.

All roads would be stabilized with drainage improvements. At appropriate locations, water bars and off-drains would be constructed in the improved road. Each of these drainage features would be stabilized with rock or erosion

matting to prevent erosion. They would be built to temporarily impede flow without impounding water. This would reduce erosion and sediment transport into the streams. Steep slopes created by the road improvements would be rehabilitated using revegetation, soil stabilization mats, hydro mulching, and other soil stabilization methods, as appropriate. Fuel breaks would be treated the same as fire roads.

**Alternatives:** Alternative methods were considered for constructing improvements to the firebreaks and fire roads at LANL. A combination of methods were selected that would minimize the environmental impacts and be the least disruptive to existing environmental resources in the area.

**Floodplain Impacts:** The proposed action would have the potential for minimal impacts to the floodplain. Possible impacts of the proposed project on the floodplains would include movement or ponding of water within the project area and the subsequent displacement of sediment; however, these improvements are anticipated to improve existing conditions in the floodplain by correcting erosion problems with road crossings. Should a rain event occur during this activity, there may be some sediment movement down canyon because of the loosened condition of the soil from the clearing and construction activities.

**Floodplain Mitigation:** Impacts to the floodplain would be minimized by following Best Management Practices at the construction area (such as the placement of silt fences, straw bales or wattles, or wooden or rock structures to slow down water runoff and run-on at cleared sites). Post-construction reseeded and re-vegetation along the sides of the stream channel will minimize soil disturbance and reduce or prevent the potential for soil erosion. Specific local mitigation actions for each fire road are described in section 6.1 of the floodplain/wetland assessment.

No debris will be left at the work site. No vehicle maintenance or fueling would occur within 100 feet of the stream channel. Any sediment movement from the site would be short term and temporary.

Issued in Los Alamos, NM on March 17, 2003.

**Ralph E. Erickson,**

Manager, Department of Energy, National Nuclear Security Administration, Los Alamos Site Office.

BILLING CODE 6910-01-P