

281—120.703(34CFR303) Department review and determination regarding EIS program performance.

120.703(1) *Review.* The department shall annually review the performance of each EIS provider, including but not limited to data on indicators identified in the state's performance plan, information obtained through monitoring visits, and any other public information made available.

120.703(2) *Determination.* Based on the information provided in subrule 120.703(1) to the department, the department shall determine if each EIS provider:

- a. Meets the requirements and purposes of Part C of the Act;
- b. Needs assistance in implementing the requirements of Part C of the Act;
- c. Needs intervention in implementing the requirements of Part C of the Act; or
- d. Needs substantial intervention in implementing the requirements of Part C of the Act.

120.703(3) *Notice and opportunity for a hearing.* For determinations made under paragraphs 120.703(2) "c" and "d," the department shall provide reasonable notice of its determination and may, in its sound discretion, grant an informal hearing to the EIS provider; however, if withholding of funds is a remedy associated with any particular determination, the department shall provide a hearing under rule 281—120.705(34CFR303). Under any hearing granted under this subrule or rule 281—120.705(34CFR303), the EIS provider must demonstrate that the department abused its discretion in making the determination described in subrule 120.703(2).

120.703(4) *Criteria for determinations.* The department shall develop criteria for making the determinations required by subrule 120.703(2).

120.703(5) *Adjustment or variance of determination.* In making the determination required by subrule 120.703(2), the department in its discretion may adjust or vary from the criteria described in subrule 120.703(4) based on unusual, unanticipated, or extraordinary aggravating or mitigating measures, on a case-by-case basis.

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