

TITLE 8 SOCIAL SERVICES
CHAPTER 139 FOOD STAMP PROGRAM
PART 647 FOOD STAMP PROGRAM – ADMINISTRATIVE DISQUALIFICATION
PROCEDURES

8.139.647.1 ISSUING AGENCY: New Mexico Human Services Department
[02/01//95; 8.139.647.1 NMAC - Rn, 8 NMAC 3.FSP.000.1, 05/15/2001]

8.139.647.2 SCOPE: General Public
[02/01//95; 8.139.647.2 NMAC - Rn, 8 NMAC 3.FSP.000.2, 05/15/2001]

8.139.647.3 STATUTORY AUTHORITY: The Food Stamp Program is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the Act are contained in 7 CFR Parts 270-282. State authority for administering the Food Stamp Program is contained in Chapter 27 NMSA, 1978. Administration of the Human Services Department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).
[02/01//95; 8.139.647.3 NMAC - Rn, 8 NMAC 3.FSP.000.3, 05/15/2001]

8.139.647.4 DURATION: Permanent
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8.139.647.5 EFFECTIVE DATE: February 1, 1995
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8.139.647.6 OBJECTIVE: Issuance of the revised Food Stamp Program policy manual is intended to be used in administration of the Food Stamp Program in New Mexico. This revision incorporated the latest federal policy changes in the Food Stamp Program not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all Income Support Division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the Human Services Department.
[02/01//95; 8.139.647.6 NMAC - Rn, 8 NMAC 3.FSP.000.6, 05/15/2001]

8.139.647.7 DEFINITIONS: [RESERVED]

8.139.647.8 ADMINISTRATIVE DISQUALIFICATION PROCEDURES

A. Administrative Responsibility: HSD will be responsible for investigating any case of alleged Intentional Program Violation (IPV), and ensuring that appropriate cases are acted upon either through administrative disqualification hearings (ADH) or referral to a court of appropriate jurisdiction. Administrative disqualification procedures or referrals for prosecution should be initiated by HSD in cases in which HSD has sufficient documentary evidence to substantiate that an individual has committed one or more acts of Intentional Program Violation. A recommendation to pursue administrative disqualification of an individual is made by the Office of the Inspector General (OIG) upon review of documentary evidence submitted by the county office. If HSD does not initiate administrative disqualification procedures or refer for prosecution a case involving an over-issuance caused by a suspected act of IPV, HSD will take action to collect the over-issuance by establishing an inadvertent household error claim against a household in accordance with the procedures in Subsection B of 8.139.640.9 NMAC and Subsection A of 8.139.640.10 NMAC.

(1) Initiating Hearings: HSD should conduct administrative disqualification hearings in the following situations:

- (a)** In cases in which HSD believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system;
- (b)** In cases previously referred for prosecution that were declined by the appropriate legal authority, and
- (c)** In previously referred cases where no action was taken within a reasonable period of time

and the referral was formally withdrawn by HSD.

(2) When a Hearing is Not Initiated: HSD will not initiate an administrative disqualification hearing against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of appropriate jurisdiction, if the factual issues of the case arise out of the same, or related circumstances.

(3) Household Eligibility: HSD may initiate administrative disqualification procedures or refer a case for prosecution regardless of the current eligibility of an individual.

(4) Determination of Administrative Disqualification:

(a) HSD will base administrative disqualifications for IPV on the determinations of hearing authorities arrived at through administrative disqualification hearings, or on determinations reached by courts of appropriate jurisdiction.

(b) HSD has the option of allowing accused individuals either to waive their rights to administrative disqualification hearings or to sign disqualification consent agreements for cases of deferred adjudication. If HSD chooses either of these options, the administrative disqualification for IPV may be based on the waived right to an administrative disqualification hearing or on the signed disqualification consent agreement in cases of deferred adjudication.

B. Disqualification Penalties:

(1) Individuals found to have committed an Intentional Program Violation (IPV) either through an administrative disqualification hearing or by a Federal, State, or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, will be ineligible to participate in the Food Stamp Program as follows:

(a) For a period of six months for the first IPV; or for a period of one year for the first IPV if the offense occurred after August 22, 1996;

(b) For a period of one year for the second IPV; or for a period of two years for the second IPV if the offense occurred after August 22, 1996;

(c) Permanently for the third finding of an IPV.

(d) One or more Intentional Program Violations which occurred prior to the implementation of the disqualification periods specified above will be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration.

(2) Sale of Controlled Substances: Individuals found by a Federal, State or local court to have used or received food stamp benefits in a transaction involving the sale of a controlled substance (as defined in Sec. 102 of the Controlled Substances Act [21 USC 802]) will be ineligible to participate in the Food Stamp Program:

(a) For a period of one year upon the first occasion of such Violation; or for two years upon the first occasion of such Violation if the offense occurred after August 22, 1996; and

(b) Permanently upon the second occasion of such Violation.

(3) Permanent Disqualification from Participation in FSP:

(a) Individuals found by a Federal, State or local court to have used or received food stamp benefits in a transaction involving the sale of firearms, ammunition, or explosives will be permanently ineligible to participate in the FSP upon the first occasion of such Violation.

(b) Individuals convicted in federal or state court of trafficking food stamp benefits with a value of \$500 or more, for an offense which occurred after August 22, 1996.

(c) The penalties in (2) and (3) above will also apply in cases of deferred adjudication described in Subsection D of 8.139.647.11 NMAC, where the court makes a finding that the individual engaged in the conduct described in (2) or (3). Regardless of when an action taken by an individual which caused an IPV occurred, the disqualification periods in (2) and (3)(a) will apply to any case in which the court makes the requisite finding on or after September 1, 1994.

(4) Dual Participation in the FSP: An individual will be ineligible to participate in the FSP as a member of any household for a period of ten years upon a finding of IPV, or conviction in federal or state court, for having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple benefits simultaneously in the FSP. The provision applies only to an offense which occurred after August 22, 1996.

(5) Court Failure to Impose Disqualification: If a court fails to impose a disqualification period for the IPV, HSD will impose the disqualification penalties specified above, unless it is contrary to the court order.

(6) Disqualifying the Individual: HSD will disqualify only the individual found to have committed Intentional Program Violation, or who has signed the waiver of right to an administrative disqualification hearing or

disqualification consent agreement in cases referred for prosecution, and not the entire household.

(7) Restitution by Remaining Household Members: The remaining household members must agree to make restitution within thirty days of the date HSD's written demand letter is mailed, or the households monthly food stamp benefit amount will be reduced.

(a) If the remaining household members agree to make restitution but fail to do so, HSD will impose a benefit reduction on the household's monthly benefit amount.

(b) The remaining household members, if any, will begin restitution during the period of disqualification imposed by HSD or a court of law.

(c) All restitutions will be made in accordance with established procedures for cash repayment, benefit reduction, or coupons for repayment. See 8.139.640.11 NMAC for procedures on claims collection.

C. Notification to Applicant Households: HSD will inform a household in writing of the disqualification penalties for Intentional Program Violation each time a household applies for Program benefits.

D. Definition of IPV: For purposes of determining through administrative disqualification hearings whether or not an individual has committed an Intentional Program Violation, an IPV will consist of having intentionally:

(1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or

(2) Committed any act that constitutes a Violation of the Food Stamp Act, Food Stamp Program Regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp benefits.

[05/03/95, 05/15/97; 8.139.647.8 NMAC - Rn, 8 NMAC 3.FSP.647, 05/15/2001]

8.139.647.9 DISQUALIFICATION HEARINGS: HSD will publish clearly written rules of procedure for disqualification hearings, and will make these procedures available to any interested party.

A. HSD Conducted Hearings: When HSD has sufficient documentary evidence indicating that an individual may have committed an Intentional Program Violation (IPV), action will be taken to conduct an administrative disqualification hearing.

(1) Consolidation of ADH with Fair Hearing: An administrative disqualification hearing and a fair hearing may be combined into a single hearing if the factual issues arise out of the same or related, circumstances and the household receives prior notice that the hearing will be combined.

(a) Time Frames: If a disqualification hearing and fair hearing are combined, HSD will follow the time frames for conducting disqualification hearings.

(b) Claims and IPV Determination: If the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not Intentional Program Violation has occurred, the household will lose its right to a subsequent fair hearing on the amount of the claim.

(c) Waiving the 30-Day Advance Notice: HSD will allow, upon household request, a household to waive the required 30-day advance notice of hearing when the disqualification hearing and fair hearing are combined.

(2) Administrative Disqualification Hearing Procedures:

(a) Hearing Officers: HSD may use the same hearing official for disqualification hearings and fair hearings or may designate hearing officials to conduct only disqualification hearings.

(b) Advising Household or Representative: At the disqualification hearing the hearing official will advise the household member or representative that they may refuse to answer questions during the hearing.

(c) Time Limits for Decision: Within 90 days of the date the household member is notified in writing that the hearing has been scheduled HSD will conduct the hearing, arrive at a decision, and notify the household member and local agency of the decision.

(d) Postponing the Scheduled Hearing: The household member or representative is entitled to a postponement of the scheduled hearing provided that the request for postponement is made at least ten (10) days in advance of the date of the scheduled hearing. The hearing will not be postponed for more than a total of 30 days and HSD may limit the number of postponements to one. If the hearing is postponed the time limits above may be extended for as many days as the hearing is postponed.

(3) Advance Notice of Hearing: HSD will provide written notice to a household member suspected of Intentional Program Violation at least thirty days in advance of the date a disqualification hearing which is initiated by HSD has been scheduled.

(a) If mailed, the notice will be sent either first class mail or certified mail-return receipt

requested. The notice may also be provided by any other reliable method. If no proof of receipt is obtained, a showing of non-receipt by the household member will be considered good cause for not appearing at the hearing.

- (b) The notice will contain, at a minimum:
 - (i) The date, time and place of the hearing;
 - (ii) The charge(s) against the household member;
 - (iii) A summary of the evidence, and how and where the evidence can be examined;
 - (iv) A warning that the decision will be based solely on information provided by the county office if the household member fails to appear at the hearing;
 - (v) A statement that the household member or representative will have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;
 - (vi) A warning that a determination of IPV will result in disqualification periods as determined by 8.139.647.8 NMAC; and a statement of which penalty HSD believes is applicable to the case scheduled for a hearing;
 - (vii) A listing of the household's member's rights;
 - (viii) A statement that the hearing does not preclude the state or federal government from prosecuting the household member for IPV in civil or criminal court action, or from collecting the over-issuance;
 - (ix) The name of an individual or organization, if any, that provides free legal representation;
 - (x) The date that the signed waiver must be received by the hearing official to avoid holding the hearing;
 - (xi) A statement of the accused individual's right to remain silent concerning the charge(s), and that anything said or signed by the individual concerning the charge(s) can be used against him/her in a court of law;;
 - (xii) The telephone number and, if possible, the name of the person to contact for additional information; and
 - (xiii) The fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim.

(4) **Scheduling the Hearing:** The time and place of the hearing will be arranged so that the hearing is accessible to the household member suspected of IPV.

(5) **Failure to Appear:** If the household member or representative cannot be located or fails to appear at a hearing initiated by HSD without good cause, the hearing will be conducted without the household member being represented. Even if the household member is not represented, the hearing official is required to carefully consider the evidence and determine if Intentional Program Violation was committed based on clear and convincing evidence. If the household member is found to have committed Intentional Program Violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and HSD will conduct a new hearing. The household member has ten days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. The good cause decision will be documented into the case record.

(6) **Participation While Awaiting a Hearing:** A pending disqualification hearing will not affect the individual's or household's right to be certified and participate the Food Stamp Program. Since a household member cannot be disqualified for IPV until a hearing official finds that individual has committed IPV, HSD will determine eligibility and benefit amount of the household in the same manner it would be determined for any other household. Household benefits will be terminated if the certification period has expired and the household, after receiving its notice of expiration, fails to reapply. The household benefits will be reduced or terminated if HSD has documentation which substantiates that the household is ineligible or eligible for fewer benefits, even if these facts led to the suspicion of Intentional Program Violation and resulting disqualification hearing, and the household fails to request a fair hearing and continuation of benefits pending the hearing. For example, HSD may have documentation which substantiates that a household failed to report a change in circumstances even though HSD has not yet demonstrated that the failure to report involved an act of Intentional Program Violation.

(7) **Criteria for Determining IPV:** The hearing officer will base the determination of IPV on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit Intentional Program Violation as defined in Subsection D of 8.139.647.8 NMAC.

(8) **Imposition of Disqualification Penalties:**

(a) **Beginning the Disqualification:** The period of disqualification will begin with the first month which follows the date the household member receives written notification of the disqualification. If the act

of IPV which led to the disqualification occurred prior to the disqualification periods specified in Subsection B of 8.139.647.8 NMAC, the household member will be disqualified in accordance with the disqualification periods in effect at the time of the offense.

(b) No Further Appeal: No further administrative appeal procedure exists after an ADH conducted by HSD. The determination of IPV made by a hearing officer cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(c) Ineligibility at Disqualification: If the individual is not certified to participate in the Food Stamp Program at the time the disqualification period is to begin, the disqualification penalty will be imposed immediately upon a determination of IPV, as though the individual was a participant in the FSP.

(d) Disqualification Period Continues: Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification will continue uninterrupted until completed, regardless of the eligibility of the disqualified member's household. The disqualified member's household will continue to be responsible for repayment of the over-issuance which resulted from the disqualified member's Intentional Program Violation, regardless of the household's eligibility for food stamp benefits.

(9) Notification of Disqualification: If the hearing officer finds that the household member committed IPV, HSD will provide written notice to a household member prior to disqualification.

(a) The notice will inform the household member of the decision; the reason for the decision; and the date the disqualification penalty begins and ends.

(b) Written notice will also be provided to any remaining household members of the benefit amount they will receive during the period of disqualification or that they must reapply because the certification period has expired. A written demand letter for restitution will also be provided.

B. Waived Hearings: HSD will provide written notification to the household member suspected of Intentional Program Violation that the member can waive his/her right to an administrative disqualification hearing. Prior to providing written notification to the household member, the evidence must be reviewed by the Office of Inspector General (OIG). OIG must have made a determination the such evidence warrants scheduling a disqualification hearing.

(1) Contents of Written Notice: The written notification provided to the household member will include, at a minimum:

(a) The date that the signed waiver must be received by HSD to avoid the holding of a hearing and a signature block for the accused individual along with a statement that the head of household must also sign the waiver if the accused individual is not the head of household, with an appropriately designated signature block;

(b) A statement of the accused individual's right to remain silent concerning the charge(s), and that anything said or signed by the individual concerning the charge(s) can be used against him/her in a court of law;

(c) The fact that a waiver of the disqualification hearing will result in disqualification and a reduction in benefits for the period of disqualification, even if the accused individual does not admit to the facts as presented by HSD;

(d) An opportunity for the accused individual to specify whether or not he/she admits to the facts as presented by HSD. This opportunity will consist of the following statements:

(i) "I admit to the facts as presented, and understand that a disqualification penalty will be imposed if I sign this waiver;" and

(ii) "I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result."

(e) The telephone number and if possible the name of the individual to contact for additional information;

(f) The fact that the remaining household members if any will be held responsible for repayment of the resulting claim.

(2) Imposition of Disqualification Penalties: If the household member suspected of IPV signs the waiver of right to an ADH and the signed waiver is received within the time frames specified by HSD, the household member will be disqualified in accordance with the disqualification periods in Subsection B of 8.139.647.8 NMAC above.

(a) Beginning the Disqualification: The period of disqualification will begin with the first month following the date the household member receives written notification of the disqualification. If the act of IPV which led to the disqualification occurred prior to the written notification of the disqualifications specified in

Subsection B of 8.139.647.8 NMAC, the household member will be disqualified in accordance with the disqualification period in effect at the time of the offense. The same act of IPV repeated over a period of time will not be separated so that separate penalties can be imposed.

(b) No Further Appeal: No further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty cannot be changed by a subsequent fair hearing decision. The household member is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(c) Ineligibility at Disqualification: If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the disqualification penalty will be imposed immediately upon a determination of an IPV, as though the individual was a participant in the FSP.

(d) Disqualification Continues: Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification will continue uninterrupted until completed regardless of the eligibility of the disqualified members household. The disqualified member's household will continue to be responsible for repayment of the over-issuance which resulted from the disqualified member's IPV regardless of the household's eligibility for Program benefits.

(3) Written Notification: Written notice will be provided to the household member prior to disqualification. Written notice will also be provided to any remaining household members of the allotment they will receive during the period of disqualification or that the household must reapply because the certification period has expired. A written demand letter for restitution, will also be provided.

C. Court Referrals: HSD will refer cases of alleged IPV for prosecution in accordance with an agreement with prosecutors or State Law. The agreement will include the understanding that prosecution will be pursued in cases where appropriate. The agreement will also include information on how and under what circumstances cases will be accepted for possible prosecution and any other criteria set by the prosecutor for accepting cases for prosecution. HSD is encouraged to refer for prosecution under State or local statutes those individuals suspected of committing IPV, particularly if large amounts of food stamp benefits are suspected of having been obtained by IPV, or the individual is suspected of committing more than one act of IPV.

(1) Imposition of Disqualification Penalties: HSD will disqualify an individual found guilty of IPV for the length of time specified by the court. If the court fails to impose a disqualification period, HSD will impose a disqualification period in accordance with the provisions in Subsection B of 8.139.647.8 NMAC, unless contrary to the court order. If disqualification is ordered but a date for initiating the disqualification period is not specified, HSD will initiate the disqualification period for currently eligible individuals within 45 days of the date the disqualification was ordered. Any other court imposed disqualification will begin within 45 days of the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud.

(2) Beginning the Disqualification: If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the disqualification penalty will be imposed immediately upon a determination of IPV, as though the individual was a participant in the FSP.

(3) Disqualification Continues: Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification will continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. The disqualified member's household will continue to be responsible for repayment of the over-issuance which resulted from the disqualified members IPV regardless of the household's eligibility for Program benefits.

(4) Notification of Disqualification: If the court finds that the household member committed IPV HSD will provide written notice to the household member. The notice will be provided prior to disqualification, whenever possible. The notice will inform the household member of the disqualification and the date the disqualification will take effect. HSD will provide written notice to the remaining household members, if any, of the benefit amount they will receive during the period of disqualification or that they must reapply because the certification period has expired. HSD will provide a written demand letter for restitution.

D. Deferred Adjudication: HSD may allow individuals to sign disqualification consent agreements in cases referred for prosecution. HSD may use this option for those cases in which a determination of guilt is not obtained from a court due to the accused individual having met the terms of a court order or which are not prosecuted due to the accused individual having met the terms of an agreement with the prosecutor.

(1) Advance Notification:

(a) HSD will enter into an agreement with the State's Attorney General's office or where necessary, with county prosecutors which provides for advance written notification to the household member of the

consequences of consenting to disqualification in cases of deferred adjudication.

(b) The written notification provided to the household member which informs him/her of the consequences of consenting to disqualification as a part of deferred adjudication will include, at a minimum:

(i) A statement for the accused individual to sign that the accused understands the consequences of consenting to disqualification, along with a statement that the head of household must also sign the consent agreement if the accused individual is not the head of household, with an appropriately designated signature block.

(ii) A statement that consenting to disqualification will result in disqualification and a reduction in benefits for the period of disqualification, even though the accused individual was not found guilty of civil or criminal misrepresentation or fraud.

(iii) A warning that the disqualification periods for IPV under the Food Stamp Program are as specified in Subsection B of 8.139.647.8 NMAC, and a statement of which penalty will be imposed as a result of the accused individual having consented to disqualification.

(iv) A statement of the fact that the remaining household members, if any will be held responsible for repayment of the resulting claim, unless the accused individual has already repaid the claim as a result of meeting the terms of the agreement with the prosecutor or the court order.

(2) **Imposition of Disqualification Penalties:** If the household member suspected of IPV signs the disqualification consent agreement, the household member will be disqualified in accordance with the disqualification periods specified in Subsection B of 8.139.647.8 NMAC, unless contrary to the court order. The disqualification period will begin within 45 days of the date the household member signed the disqualification consent agreement. However, if the court imposes a disqualification period or specifies the date for initiating the disqualification period, HSD will disqualify the household member in accordance with the court order.

(3) **Beginning the Disqualification:** If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the disqualification penalty will be imposed immediately upon a determination of IPV, as if the individual was a participant in the FSP.

(4) **Disqualification Continues:** Once a disqualification penalty has been imposed against a currently participating household member, the disqualification period will continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. The disqualified member's household will continue to be responsible for repayment of the over-issuance which resulted from the disqualified member IPV regardless of the household's eligibility for Program benefits.

(5) **Notification of Disqualification:** If the household member suspected of IPV signs the disqualification consent agreement, HSD will provide written notice to the household member. The notice will be provided prior to disqualification whenever, possible. The notice will inform the household member of the disqualification and the date the disqualification will take effect. HSD will also provide written notice to the remaining household members, if any, of the benefit amount the household will receive during the disqualification period or that the household must reapply because the certification period has expired. HSD will provide a written demand letter for restitution.

E. Reporting Requirements:

(1) HSD will report to Food and Consumer Services (FCS) information concerning individuals disqualified for IPV based on the determination of an administrative disqualification hearing official or a court of appropriate jurisdiction, and those individuals disqualified as a result of signing either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases referred for prosecution. The information must be submitted so that it is received by FCS no later than 30 days after the effective date of the disqualification. HSD will submit required information on each individual disqualified for IPV through a reporting system in accordance with procedures specified by FCS. The following information concerning the individual will be reported to FSC:

- (a) Social Security Number, date of birth, full name;
- (b) The type and number of the disqualification (1st, 2nd, 3rd);
- (c) The State and county in which the disqualification took place;
- (d) The date on which the disqualification took effect;
- (e) The length of the disqualification period imposed.

(2) **Availability to All State Agencies:** All data submitted will be available for use by any State Welfare Agency. The data will be used, at a minimum, for the following:

(a) To determine eligibility of individual Program applicants prior to certification in cases where there is reason to believe a household member is subject to disqualification in another political jurisdiction

and

(b) To ascertain the appropriate penalty to impose, based on past disqualifications in a case under consideration.

(c) **Other Uses:** HSD may also use the data in other ways, such as the following:

(i) To screen all program applicants prior to certification, and

(ii) To periodically match the entire list of disqualified individuals against their current

caseloads.

(3) **Disqualification Valid in All Political Jurisdictions:** The disqualification of an individual for IPV in one political jurisdiction will be valid in another. However, one or more Intentional Program Violations which occurred prior to the implementation of the disqualification periods specified in Paragraph 1 of Subsection B of 8.139.647.8 NMAC will be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration, regardless of where the disqualification(s) took place. HSD is required to identify any individuals disqualified for fraud prior to implementation of this rule and to submit the information required by this section on such individuals.

(4) **Court Reversal of the Disqualification:** In cases where the disqualification for IPV is reversed by a court of appropriate jurisdiction, HSD will submit a report to purge the file of the information relating to the disqualification which was reversed. In cases where the determination of IPV is reversed by a court of appropriate jurisdiction, HSD will reinstate the individual in the Program if the household is eligible. Food stamp benefits that were lost as a result of the disqualification will be restored.

[05/03/95, 05/15/97; 8.139.647.9 NMAC - Rn, 8 NMAC 3.FSP.648, 05/15/2001]

History of 8.139.647 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

ISD 426.0000, Fraud Disqualifications, 8-1-80.

ISD-Rule 462.0000, Food Assistance - Fraud Disqualifications, 11-5-82.

ISD-Rule 462.0000, Disqualification For Intentional Program Violation, 5-31-83.

ISD-Rule 462.0000, Disqualification For Intentional Program Violation, 9-13-83.

ISD FS 530, Food Stamp Administrative Disqualification, 3-2-88.

ISD FS 540, Trafficking Of Food Assistance Benefits, 8-31-94.

History of Repealed Material: [Reserved]