

This is an amendment to 11.3.300 NMAC, Sections 1, 3, 5, 6, 301 - 325. The rule was also renumbered and reformatted from 11 NMAC 3.300 to comply with current NMAC requirements.

**11.3.300.1 ISSUING AGENCY:** ~~[NM]~~ New Mexico Department of Labor, Employment Security Division, ~~[Unemployment Insurance Bureau]~~, P.O. Box 1928 Albuquerque, NM 87103. [7-15-98; 11.3.300.1 NMAC - Rn & A, 11 NMAC 3.300.1, 01-01-2003]

**11.3.300.3 STATUTORY AUTHORITY:** NMSA 1978 Sections 51-1-1 to ~~[51-1-58]~~ 51-1-59. [7-15-98; 11.3.300.3 NMAC - Rn & A, 11 NMAC 3.300.3, 01-01-2003]

**11.3.300.5 EFFECTIVE DATE:** July 15, 1998, unless a different date is cited at the end of a section ~~[or paragraph]~~. [5-15-97, 7-15-98; 11.3.300.5 NMAC - Rn & A, 11 NMAC 3.300.5, 01-01-2003]

**11.3.300.6 OBJECTIVE:** ~~[The purpose of the claims administration regulations, Part 300, is to provide clarification and legal interpretation of the provisions of the unemployment compensation law of New Mexico].~~ The purpose of this rule is to provide clarification of the Unemployment Compensation Law. This rule assists claimants in better understanding how specific sections of the law are administered by the department. The rule assists claimant to better comply and better understand the department's procedures. [5-15-97, 7-15-98; 11.3.300.6 NMAC - Rn & A, 11 NMAC 3.300.6, 01-01-2003]

**11.3.300.301 FILING INITIAL, ADDITIONAL AND REOPENED CLAIMS:**

A. As used in 11.3.300.301 NMAC:

(1) "Claimant" means an individual who has filed an initial claim, additional claim or reopened claim for unemployment compensation benefits and this filing is within a benefit year or other eligibility period.

(2) An "initial claim" means a new claim ~~[which is an application]~~ application submitted by the claimant to establish a benefit year and to obtain a determination of weekly and maximum benefit amounts.

(3) An "additional claim" ~~[is]~~ means a claim application which reactivates a claim during an existing benefit year or other eligibility period and certifies to a period of employment other than self-employment which occurred subsequent to the date of filing the last initial, additional or reopened claim.

(4) A "reopened claim" ~~[is]~~ means a claim application which reactivates a claim during an existing benefit year or other eligibility period and certifies to a continuous period of unemployment for which the claimant did not file timely continued claims and during which the claimant either remained unemployed or had a period of self-employment since last reporting on this claim.

(5) "A transitional claim" means a claim filed to request a determination of eligibility and establishment of a new benefit year having an effective date within a seven-day period immediately following the benefit year ending date and a week for which compensation or waiting week credit was claimed; i.e. continuous certification.

B. Unless otherwise prescribed, any claimant wishing to claim benefits shall ~~[report in person to a labor service center]~~ register for work, file an initial, additional, transitional or reopened claim for benefits and provide the name and address of his last employer. For purposes of this section, "last employer" means:

(1) The most recent employer or employing unit from which the claimant separated for reasons other than lack of work; or

(2) In the event of a separation for lack of work, the employer or employing unit from which the claimant separated for reasons other than lack of work if the claimant, subsequent to his ~~[or her]~~ separation for reasons other than lack of work, has not worked and earned wages in insured work or bona fide employment other than self-employment in an amount equal to or exceeding five times the claimant's weekly benefit amount.

C. The date of filing of any initial, additional or reopened claim shall be the Sunday of the week in which filed. Upon a showing of good cause, any initial claim or additional claim may be back-dated to the Sunday of the week immediately following the week in which the claimant was separated, and any reopened claim may be back-dated up to a maximum of twenty-one days from the preceding Sunday of the date of the request for back-dating. "Good cause," as used in this section, exists when it is established that factors or circumstances beyond the reasonable control of the claimant caused the delay in filing. All requests for back-dating ~~[shall be accompanied by a fact finding report from the labor service center]~~ or post-dating shall include a fact-finding report. [7-15-98; 11.3.300.301 NMAC - Rn & A, 11 NMAC 3.300.301, 01-01-2003]

**11.3.300.302 FILING CONTINUED CLAIMS:** ~~[In order to establish and maintain eligibility for benefits or for waiting period credit during a continuous period of unemployment the claimant shall continue to report weekly or bi-weekly as directed and file continued claims for benefits either in person or by mail through at the State Office Claims. Intrastate claimants may also file continued claims for benefits through the interactive telephone system at the state claims office in Albuquerque.]~~ In order to establish and maintain eligibility for benefits or for waiting period credit during a continuous period of unemployment a claimant shall continue to report weekly as directed and file continued claims for benefits through the interactive voice response (IVR) system, or through the Internet. The assistant unemployment bureau chief for claims may approve paper certification where that person deems necessary to provide prompt, appropriate, accurate, efficient service to a claimant.  
[5-15-97; 11.3.300.302 NMAC - Rn & A, 11 NMAC 3.300.302, 01-01-2003]

**11.3.300.303 TIMELY RESPONSE TO REQUEST FOR INFORMATION:**

A. ~~[Any response to a request for additional information mailed by the division prior to issuance of an initial determination must be received by the division at the State Claims office in Albuquerque within ten (10) calendar days from the date mailed, unless the division's request specifically requires that the response be made in person at a local labor service. The response may be in writing in person, mail or by telephone directly to the State Claims office. Where the request specifically requires that the response be made in person at a local labor service center, the response will be considered timely if made by the date specified in the request.]~~ Any response to a request for additional information from the department prior to issuance of an initial determination must be received by the department at the state office claims within ten calendar days from the date transmitted. The response may be transmitted in writing, by facsimile, by electronic mail or by telephone to the state office claims.

B. The ten calendar day period shall begin to run on the first day after the date the request was ~~mailed~~ transmitted to the claimant or to the employer. If the tenth calendar day falls on a date when the [division] department offices are closed, receipt on the first business day thereafter shall be timely.  
[7-15-98; 11.3.300.303 NMAC - Rn & A, 11 NMAC 3.300.303, 01-01-2003]

**11.3.300.304 LATE FILING OF CONTINUED CLAIMS:**

A. ~~[The division, for reasons found to constitute good cause for any individual's failure to file his or her continued claim (Form ES-408) at the time specified, may accept such claim certification effective as of the date regularly specified for its filing provided the continued claim certification is received by the State Claims office in Albuquerque no later than thirteen (13) calendar days following the week ending date of the last week of the certification form.]~~ If the department finds good cause for a claimant's failure to timely file his continued claim, the claimant may file a late continued claim provided the certification is filed not later than the thirteenth day following the last day of the week requiring the certification.

B. ~~[Certifications returned to claimants for completion shall be considered timely if they are received by the State Claims office in Albuquerque no later than ten (10) calendar days after the certification is mailed to the claimant for correction.]~~ A certification not processed due to a department request for additional information from the claimant shall be considered timely if the requested information is received by the state office claims no later than ten calendar days after the request for additional information is transmitted to the claimant.  
[7-15-98; 11.3.300.304 NMAC - Rn & A, 11 NMAC 3.300.304, 01-01-2003]

**11.3.300.305 [CLAIMS AND REGISTRATIONS FOR INDIVIDUALS IN ISOLATED AREAS:**

~~Notwithstanding Sections 301 through 304 of 11.3.300 NMAC, in order to claim benefits or waiting period credit, any individual located in an isolated area served only by a local adviser or itinerant service representative shall report in person to such local adviser or itinerant service representative as soon as such adviser or representative is available in the claimant's area. The claim may be back dated to the first week of unemployment as defined in 11.3.300.313 NMAC. Thereafter, in order to establish eligibility for benefits or for waiting period credit, the claimant shall continue to report to such local adviser or itinerant service representative as requested.]~~

**[RESERVED]**

[5-15-97; 11.3.300.305 NMAC - Rn, 11 NMAC 3.300.305, Repealed 01-01-2003]

**11.3.300.306 CLAIM REGISTRATION FORM:** ~~[Unless otherwise prescribed, claims for regular benefits shall be made, Form ES-400, giving all information required thereby. Claimants shall also separately register for work with the job service, but no claimant shall be denied benefits for inadvertent failure to register for work.]~~

Unless otherwise prescribed, claims for regular benefits shall be made on the claims application form, Form ES-400, giving all information required thereby. A claimant shall also separately register for work with the department within fourteen business days. If the claimant fails to register, his benefits may be temporarily withheld until he registers, and, after a further review, may be denied unless good cause for the failure to register is shown.  
[7-15-98; 11.3.300.306 NMAC - Rn & A, 11 NMAC 3.300.306, 01-01-2003]

**11.3.300.307 WAITING PERIOD CREDIT AND CONTINUED CLAIM FORM:** Unless otherwise prescribed, waiting-period credit or continued claims for benefits for unemployment shall be made ~~[on]~~ through IVR, Internet, on paper or as otherwise provided by the department from time to time, providing the information is in substantially the same form as that on the certification form, Form ES-408, setting forth that:

- A. The claimant continues his claim for benefits;
  - B. He is unemployed or partially unemployed;
  - C. He registers for work;
  - D. Since he last registered for work he has performed no services and earned no wages, except as indicated;
  - E. He is able to work, available for work and actively seeking work; and
  - F. Such other information as is required ~~[thereby]~~ by the department from time to time.
- [7-15-98; 11.3.300.307 NMAC - Rn & A, 11 NMAC 3.300.307, 01-01-2003]

**11.3.300.308 SEPARATION REPORTS AND EMPLOYER NOTICE OF CLAIM:**

A. NOTICE TO EMPLOYER OF FILING OF CLAIM: ~~[Whenever an individual files an initial claim for benefits or an additional claim, the Department shall immediately furnish to his last known employer, at the address provided by the claimant, a dated notice of the filing of the claim. If the individual voluntarily left his work or was discharged by the employer, the employer must provide the Department with full and complete information concerning that separation. The employer must respond in writing, in person, or by telephone directly to State Claims Office within ten (10) calendar days from the date of mailing of the notice of claim. Form ES 442. If the employer responds by telephone within the ten (10) calendar day period, he shall immediately submit a written statement to State Office Claims setting forth the details of the claimant's separation from employment.]~~ Whenever an individual files an initial claim for benefits or an additional claim, the department shall immediately transmit to his last known employer, at the address of the employer as registered with the department, if so registered, and, if not registered, to the address provided by the claimant, a dated notice of the filing of the claim. The employer shall provide the department with full and complete information in response to the inquiry. The employer shall transmit a response directly to state office claims within ten calendar days from the date of the transmittal of the notice of claim.

B. REQUEST FOR ADDITIONAL INFORMATION: ~~[Prior to issuance of a determination pursuant to Subsection C of 11.3.300.308 NMAC, the Department may request additional information from the employer, or the claimant by telephone, or in the form of a written report relative to the separation of the claimant from employment. Information obtained by telephone shall be fully documented by the Department's representative, and may be used as evidence in any determination or decision of such claim.]~~ Prior to issuance of a determination pursuant to Subsection C of 11.3.300.308 NMAC, the department may request additional information from the employer, the claimant or witnesses by telephone, fax, electronic mail or other written report relative to the separation of the claimant from employment. Information obtained by telephone shall be fully documented by the department's representative, and may be used as evidence in any determination or decision of such claim.

C. INITIAL DETERMINATION: When a ~~[separation]~~ non-monetary issue is not raised in an application for unemployment compensation benefits and ~~[an]~~ the employer's response is not received by the ~~[State Claims Office]~~ state office claims within ten calendar days after the ~~[mailing]~~ transmission of the notice of claim, a determination shall be ~~[deemed to be]~~ made based upon the information on the application. ~~[and]~~ Payment of benefits may be commenced without further notice.

(1) The ten-day period shall begin to run on the day after the notice of claim was ~~[mailed]~~ transmitted as indicated on the application ~~[by the ("claims taker")]~~. If the tenth calendar day shall fall on the weekend or on a holiday, the reply shall be timely if received at the ~~[State Claims Office]~~ state office claims on the following ~~[work]~~ business day.

(2) ~~[Failure on the part of the employer to notify the Department within the ten-day period of its challenge to the claim shall be deemed an irrevocable waiver of the employer's rights to be heard before a determination is made, and benefits charged to the employer's account as a result of the determination shall remain~~

~~so charged.]~~ The employer's failure to transmit a substantive response to the notice of claim within the ten-day period shall be an irrevocable waiver of the employer's right to be heard before a determination is made, and benefits charged to the employer's account as a result of the determination shall remain charged, unless reversed on appeal upon a showing of good cause. If the claimant is subsequently disqualified from the receipt of benefits, the employer will remain liable for any benefit charges incurred to date of disqualification in the absence of a showing of good cause by the employer.

(3) ~~[When an employer contests the notice of claim after the ten-day period has passed, the Department shall immediately notify the employer of the determination and the reason for it, and shall advise the employer of his right to appeal that determination pursuant to these regulations. A copy of that determination shall be issued to the claimant.]~~ After the ten-day period has passed, the department shall immediately transmit to the parties the determination and the reason for it, and shall advise the parties of the right to appeal that determination pursuant to these rules.

(4) ~~[When a separation issue is timely raised, a determination shall issue only after a deputy has adjudicated the claim.]~~ When a separation issue is timely raised, a determination shall be transmitted only after a department representative has adjudicated the claim.

D. REDETERMINATION: A redetermination of a non-monetary determination shall be made only by the department employee who made the initial determination. A redetermination may be issued only if all the following criteria are met:

(1) The adjudicator perceives the need for reconsideration either as a result of a protest by an interested party or on the adjudicator's own initiative due to new or additional information received. Examples of the type of errors which may prompt a redetermination are misapplication or misinterpretation of the law, mathematical miscalculation; an additional fact not available to the adjudicator at the time of the determination excluding those facts the employer and claimant had the opportunity to provide prior to the initial determination, a mailing of a notice to the wrong employer or address, an ES-442 discrepancy, a key punch or coding error. A "late protest" mean an untimely protest that is accepted based on good cause for the untimely presentation of the protest.

(2) All evidence and records must be re-examined.

(3) A written redetermination notice is issued to the claimant and any other interested party, and is documented in the department records.

(4) A redetermination can be issued no later than the twentieth calendar day from the original determination date or twenty days from the date of the first payment deriving from the original determination, whichever event occurs latest. The date of the first payment is deemed the original determination date when a late protest is received within twenty days of the first payment.

(5) All determinations must be approved by the assistant unemployment bureau chief for claims except in instances where the determination where payment has been made. In the event that the first payment date is deemed the original determination date, the adjudicator may issue a redetermination without the prior approval of the assistant unemployment bureau chief for claims, provided that the ES-442 was received with the statutory time limits and within less than twenty calendar days from the date of the first payment.

(6) If the claimant has begun collecting benefits and, as a result of redetermination, will be denied benefits, the claimant shall be advised of this fact prior to issuance of the redetermination.

E. STOPPING PAYMENT DUE TO ADMINISTRATIVE ERROR: Once an initial determination is made pursuant to this section and payment of benefits is begun, payments shall not be stopped without prior notice and an opportunity to be heard pursuant to Subsection A of 11.3.300.308 NMAC. When payments are made as a result of administrative error by the department and are clearly not authorized by law, rule or regulation or any determination made pursuant to Subsection C of 11.3.300.308 NMAC, [of this Regulation] such payment shall not be deemed to have been made pursuant to a determination of eligibility, and the department may stop such payments without prior notice and without an opportunity to be heard. For purpose of this section, "administrative error" refers solely to payments made as a result of handling or processing errors, mistakes or omissions by the department which are unrelated to or are inconsistent with specific eligibility determinations made in accordance with Subsection C of 11.3.300.308 NMAC of this [Regulation] rule.

F. EMPLOYER'S NOTICE OF A LABOR DISPUTE: When there is a strike, lock-out or other labor dispute, the employer shall file with the department after the commencement of such activity, and upon the demand of the department, a report of the existence and nature of the labor dispute, and the number of persons affected; and shall promptly provide the names, social security numbers and work classifications of all individuals unemployed due to the labor dispute, and whether and in what manner each [of said individuals] individual is participating in the dispute or has a direct interest in the outcome.

G. TERMINATION OF CONTINUED CLAIMS: Payment of continued benefits to any person who has been determined eligible to receive benefits on an initial claim in accordance with 11.3.300.308 NMAC shall not thereafter be terminated without notice and an opportunity for a fact-finding interview.

~~[(b)—A claimant in a continued claim series shall be given notice, Form ES-413, if the Department receives any information which might affect the claimant's continued eligibility for benefits. Such notice shall include a concise statement of the relevant information and the reason the information may adversely affect the claimant's continued eligibility, including the specific section of the law or regulation involved in the eligibility issue, and shall inform the claimant of the following rights:~~

~~\_\_\_\_\_ (i) That the claimant has the right to a fact finding interview at his area office with an ESD Field Representative;~~

~~\_\_\_\_\_ (ii) That the claimant has a right to be represented at such fact finding interview by an attorney or other personal representative of his choice;~~

~~\_\_\_\_\_ (iii) That the claimant may bring witnesses; documents, affidavits or other evidence the claimant considers relevant to his continued eligibility; and that the claimant may request production of relevant documents in the Department's possession through the appropriate area office;~~

~~\_\_\_\_\_ (iv) That the claimant has seven work days from the date the notice was mailed in which to request a fact finding interview or to otherwise respond. If the claimant fails to respond within this period, a determination on the claimant's eligibility to receive continued benefits will be made on the information in the Department's possession.~~

~~\_\_\_\_\_ F. The Department shall make all pertinent information or investigative reports in its possession available to the claimant and the claimant's representative at the time of the fact finding interview or as otherwise requested.~~

~~\_\_\_\_\_ G. The Department shall hold an interview within seven days after the claimant has responded in accordance with subparagraph i of 11.3.300.308.5.1.b of this Regulation. An extension of five days shall be granted only upon a showing of good cause by the claimant or the claimant's representative.~~

~~\_\_\_\_\_ H. The Department shall notify interested persons, including employers, who have first hand information concerning the claimant's continued eligibility of the time and place of such fact finding interview, and shall record in writing or by other means any statement of such party bearing on the claimant's continued eligibility.~~

~~\_\_\_\_\_ I. The Department shall conduct the fact finding interview in the area office at the time scheduled by the Department. The Department shall:~~

~~\_\_\_\_\_ (1) Provide the claimant and his representative with all the information in the possession of the Department which is related to the claimant's continued eligibility, and make such evidence part of the record of the case.~~

~~\_\_\_\_\_ (2) Take the claimant's statement and the statement of any witnesses and other interested persons as defined in Paragraph 308.8.~~

~~\_\_\_\_\_ (3) Accept all documents, affidavits, and written statements or evidence submitted by the claimant, witnesses or other parties.~~

~~\_\_\_\_\_ (4) Promptly transmit all information obtained at the fact finding interview to the State Claims Office Section for an eligibility determination by a Claims Examiner regarding continued eligibility.~~

~~\_\_\_\_\_ J. The Claims Examiner will promptly issue a determination with respect to the claimant's continued eligibility for benefits. All determinations will relate to issues noticed on Form ES-413. If an interview is held, the determination will be based on evidence adduced at the interview. If the Department receives notice from the claimant that no interview is requested or if the time for requesting an interview expires, the determination will be based on evidence in the possession of the Department at the time of notice.~~

~~\_\_\_\_\_ K. The claimant or an employer who has participated in the fact finding interview or determination and whose account is subject to charges for benefits paid to the claimant shall be entitled to appeal the determination of the Claims Examiner in accordance with NMSA 1978 Section 51-1-8 and related regulations of the Department governing administrative appeals. Any appeal taken in accordance with this Sub-section shall not stay the effect of the Claims Examiner's determination.~~

~~\_\_\_\_\_ L. The effective date of the termination of continued weekly benefit payments shall be as stated in the determination and liability for an overpayment of benefits, if any, shall be as provided in NMSA 1978 Section 51-1-38 (as amended).~~

~~\_\_\_\_\_ M. If the claimant cannot appear at an area office of the Department or for any reason, does not want to have a fact finding interview, the claimant may respond by mail to the Department's State Office in Albuquerque. The claimant should answer all questions attached to the notice of Unemployment Benefit Eligibility Inquiry and~~

may submit with such answers any documents, sworn statements or other evidence supporting his or her eligibility. The State Office Claims Examiner may obtain additional information or explanation on the issues noticed by means of teleconferencing with the claimant and if requested, the claimant's representative. The claimant's mailed response must be received at the State Office in Albuquerque on or before the seventh work day after the date of mailing shown on the Notice. If the claimant fails to respond timely, a determination on the claimant's eligibility to receive continued benefits will be made on the information in the possession of the Department relating to the issues on Form ES 413.

N. Notwithstanding any other provision of this Regulation, a weekly benefit payment can be denied to a claimant without an opportunity for a fact finding interview if the Department determines that:

(1) The claimant is not monetarily eligible for a weekly benefit amount or is not eligible for the same amount of payment in accordance with NMSA 1978 Section 51-1-4 V (as amended);

(2) The claimant is not eligible for benefits in accordance with the provisions of Paragraphs (1), (2), (4), and (5) of Subsection A, and Subsection B of NMSA 1978 Section 51-1-5 (as amended);

(3) The claimant has failed to affirmatively establish to the satisfaction of the Secretary that he or she meets the eligibility requirements for extended benefits pursuant to NMSA 1978 Section 51-1-48.1(A);

(4) The claimant submits a Form ES 408, or other Weekly Certification of Eligibility for Benefits, which expressly states that the claimant was not able to work, available to work, or was not making a search for work and also shows no search for work under employer contacts section of the certification; or

(5) Payments made solely as a result of administrative error as defined in Section 308.4.1 Paragraph

O. NOTICE OF UNEMPLOYMENT BENEFIT ELIGIBILITY INQUIRY  
READ THIS FORM CAREFULLY

\_\_\_\_\_  
Date Mailed \_\_\_\_\_  
\_\_\_\_\_  
SSA No.: \_\_\_\_\_  
\_\_\_\_\_  
BYE: \_\_\_\_\_  
\_\_\_\_\_  
Area Office: \_\_\_\_\_

The Department has received information which may make you ineligible for benefits:  
**YOU HAVE A RIGHT TO A FACT FINDING INTERVIEW BEFORE WE CHANGE OR STOP YOUR BENEFITS. BRING THIS NOTICE TO OR CALL YOUR AREA OFFICE within SEVEN (7) WORK DAYS FROM THE DATE THIS NOTICE WAS MAILED.** You may be represented by an attorney or other person of your choice at the Fact Finding Interview. You may bring witnesses; documents, sworn statements or other information supporting your eligibility. You may review the information regarding your claim at your area office. If you prefer to respond by mail please answer all of the attached questions in detail and send them to the address at the top of this Notice. You may attach any documents, sworn statements, or other information. **Return this notice with your response and include your Social Security number.**  
IF YOU DO NOT RESPOND, A DECISION WILL BE MADE ON OUR PRESENT INFORMATION AND YOU MAY HAVE TO REPAY BENEFITS.

SI NO COMPRENDE INGLES, PONGASE EN CONTACTO CON SU OFICINA DE EMPLEO PARA QUE LO ASISTA.]

[7-15-98; 11.3.300.308 NMAC - Rn & A, 11 NMAC 3.300.308, 01-01-2003]

**11.3.300.309 BENEFITS FOR PARTIAL UNEMPLOYMENT:**

A. PARTIALLY UNEMPLOYED INDIVIDUAL: An individual is partially unemployed in any week in which his usual full-time employment is reduced to less than the normal full-time hours customarily scheduled and prevailing in the establishment in which he is employed, and his wages fall below his weekly benefit amount, due to the employer having less than full-time work for him. For a partially unemployed individual whose wages are paid on a weekly basis, a week of partial unemployment shall consist of his pay period week, a calendar week or some other period designated by the [Commission] department

B. NOTICE OF REDUCED EMPLOYMENT: On the next payday after any week for which an employee's work has been reduced by the employer to less than four full days or the [equivalent] standard 32 hours hours, his employer shall notify him that he may file a claim [at the nearest employment office] by contacting the department for a week of partial unemployment. This notice, and similar notices required for weeks of reduced employment thereafter, [may be in such written form as the employer may select unless the Commission should

~~some time disapprove the same as being insufficient ] shall be posted prominently in the place of employment in a form as directed by the department.~~ The first notice and each subsequent notice should show the employee's ~~[total]~~ gross wages for the week in order to establish what, if any, benefits may be due him. On notice from the ~~[Commission]~~ department, the employer shall furnish, as may be directed, such other information as may be necessary in any case to insure the proper payment of benefits. If the employer fails to notify the employee of his rights under the law regarding reduced employment, the employee may file for benefits at any time. Once the employee has received notice from the employer, he be may denied benefits if he has earned five times the weekly benefit amount after notification.

~~[C. PERIOD FOR REGISTRATION AND FILING OF CLAIMS FOR PARTIAL UNEMPLOYMENT: A claim filed in person at any employment office of the State of New Mexico or with an authorized representative of the Commission on Form ES-400, "Initial Claim for Benefits", shall constitute the claimant's notice of unemployment registration for work and claim for benefits or waiting period credits, for the week of partial unemployment covered by the claim. Such claim shall not be valid if filed more than twenty-eight days after the individual has been furnished by his employer with a notice of reduced employment for such week as provided in Section 309.2.]~~

~~D. PERIOD FOR REGISTRATION AND FILING OF CLAIMS EXTENDED FOR GOOD CAUSE. Notwithstanding the provisions Paragraph 309.3 if the Commission finds that the failure of any individual to register and file a claim for partial unemployment benefits within the time prescribed Paragraph 309.3 was due to failure on the part of the employer to comply with any of the provisions of Paragraph 309.2 or to coercion or intimidation exercised by the employer to prevent the prompt filing of such claim, or to failure by the Commission to discharge its responsibilities promptly in connection with such partial unemployment, the Commission shall extend the period during which such claim may be filed to a date which shall not be less than one week after the individual has received adequate notice of his potential rights to benefits and his earnings for the period of such partial unemployment. Such period shall not be extended to a date which is more than thirteen weeks subsequent to the end of the benefit year during which the week of unemployment occurred.]~~

~~[E.] C. EMPLOYER RECORDS IN CONNECTION WITH PARTIAL UNEMPLOYMENT: In addition to the requirements set forth in 11.3.400.401 NMAC, each employer shall keep his payroll records in such form that it would be possible from an inspection thereof to determine for any employee who may be eligible for partial benefits;~~

- ~~(1) wages earned by weeks as described in Subsection A of 11.3.300.309 NMAC~~
- ~~(2) whether any week was in fact a week of less than full-time work; and~~
- ~~(3) time lost, if any, by each such worker due to his unavailability for work.~~

~~[7-15-98; 11.3.300.309 NMAC - Rn & A, 11 NMAC 3.300.309, 01-01-2003]~~

**11.3.300.310 INTERSTATE CLAIMS:** This ~~[regulation shall govern the division]~~ section governs the department in its administrative cooperation with other states adopting a similar rule or regulation for the payment of benefits to interstate claimants, any provision of any other rule to the contrary notwithstanding.

A. DEFINITIONS: As used in 11.3.300.310 NMAC, unless the context clearly requires otherwise:

- (1) "Agent state" means any state in which an individual files a claim for benefits from another state or states.
- (2) "Benefits" means the compensation payable to an individual with respect to his unemployment, under the unemployment insurance law of any state.
- (3) "Interstate benefit payment plan" means the plan approved by the Interstate Conference of Employment Security Agencies as approved by the United States Secretary of Labor under which benefits shall be payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.
- (4) "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the division finds that this exclusion would create undue hardship on such claimants in specified areas
- (5) "Liable state" means any state against which an individual files, through another state, a claim for benefits.
- (6) "State" ~~[Includes]~~ means the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.
- (7) "Week of unemployment" ~~[Includes]~~ means any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

B. REGISTRATION FOR WORK:

(1) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law, regulations, rules, policies and procedures of the agent state. [~~Such~~] The registration shall be accepted as meeting the registration requirements of the liable state.

(2) Each agent state shall [~~duly~~] report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

C. BENEFIT RIGHTS OF INTERSTATE CLAIMANTS:

(1) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(2) For purposes of this rule, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

D. CONTINUED CLAIMS FOR BENEFITS:

(1) [~~Claims for benefits or waiting period credit shall be filed by interstate claimants on uniform interstate claim forms in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.] Any claim for benefits or for waiting-period credit shall be filed by an interstate claimant on the IVR or Internet in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. The claim shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.~~

(2) [~~Claims shall be filed in accordance with the agent State's regulations for intrastate claims in local employment offices or at an itinerant service point or by mail] The claim shall be filed in accordance with the agent state's rules or regulations for intrastate claims.~~

(a) With respect to claims for weeks of unemployment in which an individual [~~as~~] is not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one week or one reporting period late. If a claimant files more than [~~one reporting period~~] two weeks late, an initial interstate claim must be used to begin a claim series, and no continued claim for a past period shall be accepted.

(b) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state.

E. DETERMINATIONS OF CLAIMS:

(1) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

F. APPELLATE PROCEDURES:

(1) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(2) With respect to the time limits imposed by the law of a liable state other than New Mexico, upon the filing of an appeal in connection with a disputed benefit claim, whether or not the appeal is timely shall be determined by the liable state by reference to that state's law, regulations, [~~or~~] rules, policies and procedures. In interstate appeals in which New Mexico is the liable state, whether or not the appeal is timely shall be determined by reference to relevant provisions of the New Mexico Unemployment Compensation Act and current [~~division regulations~~] department rules applicable to intrastate appeals.

G. EXTENSION OF INTERSTATE BENEFIT PAYMENTS TO INCLUDE CLAIMS TAKEN IN AND FOR CANADA: This rule shall apply in all its provisions to claims taken in and for Canada. [7-15-98; 11.3.300.310 NMAC - Rn & A, 11 NMAC 3.300.310, 01-01-2003]

**11.3.300.311 COMBINED-WAGE CLAIMS:** This [~~regulation shall govern the division~~] section governs the



department in its administrative cooperation with other states subscribing to the Interstate Arrangement Plan for Combining Employment and Wages as approved by the United States Secretary of Labor. All combined-wage claims shall be subject to the provisions of the Interstate Arrangement for Combining Employment and Wages, the Interstate Benefit Payment Plan, the regulations and guidelines prescribed by the United States Secretary of Labor, and the applicable provisions of the Unemployment Compensation Law and division regulations which apply to claims for and payment of regular unemployment compensation.

A. DEFINITIONS: As used in 11.3.300.311 NMAC,

(1) "Agent State" means any state in which an individual files a claim for benefits from another state or states.

(2) "Combined-Wage Claim" means a claim filed under this arrangement using wage credits from more than one state.

(3) "Combined-Wage Claimant" means a claimant who uses wages from more than one state to establish monetary entitlement to benefits and who has filed a claim under this arrangement.

(4) "Paying State" means the state against which the claimant is filing that actually issues the benefit ~~check(s)~~ check.

(5) "State" ~~includes~~ means the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

(6) "Transferring State" means a state in which the combined-wage claimant had covered employment and wages within the base period of the paying state which can be transferred to establish a claim. Wages from more than one transferring state can be used to establish a combined-wage claim.

(7) "Employment and Wages":

(a) ~~employment refers to~~ "Employment" means all services which are covered under the unemployment compensation law of a state, whether expressed in terms of weeks of work or otherwise.

(b) "Wages" ~~refers to~~ means all remuneration for such employment except as otherwise defined more fully in the statutes and clarified in these rules.

(8) "Base Period and Benefit Year" means the base period and benefit year applicable under the unemployment compensation law of the paying state.

B. FILING OF CLAIMS:

(1) The general rule: An unemployed individual who has covered employment and wages in more than one state has the right to combine such wages and employment in the base period of one state if the combination will provide benefits for which he could not otherwise qualify or will increase the benefits for which he qualifies in a single state. ~~Such individual~~ The claimant must file a combined-wage claim if he is eligible to do so rather than claim extended benefits. If he wishes, ~~he~~ the claimant has the right to reject a combined-wage and file against a state in which he is separately eligible or to cancel the combined-wage claim and file no claim.

(2) Restrictions on combined-wage claims:

(a) Any unemployed individual who has covered employment in two or more states may file a combined-wage claim unless:

(i) he has established a claim under any other state;

(ii) the benefit year has not ended; and

(iii) there are still unused benefit rights. A claimant will not be considered to have unused benefit rights on a prior claim if all benefits have been exhausted or benefits have been denied by a seasonal restriction or benefits have been postponed for an indefinite period or for the remainder of the benefit year.

(b) If an individual files a combined-wage claim, all wages and employment in all states in which he worked during the base period of the paying state must be included except employment and wages which are not transferable under the provisions of Subsection C of 11.3.300.311 NMAC of this ~~regulation~~ rule.

C. RESPONSIBILITIES OF NEW MEXICO WHEN TRANSFERRING WAGES:

(1) Wages earned in New Mexico in covered employment during the base period of the combined wage claim filed by a claimant will be promptly transferred to the paying state.

(2) Wages earned in New Mexico will not be transferred if the employment and wages have been

(a) transferred to another paying state and have not been returned unused, or which have been previously used by New Mexico as the basis for a monetary determination which establishes a benefit year, or

(b) cancelled or are otherwise unavailable to the claimant as a result of a monetary determination by New Mexico prior to its receipt of the request for transfer, if such determination has become final or is the subject of a pending appeal. If the appeal is finally decided in favor of the combined-wage claimant, any employment and wages deemed eligible for use as wages in establishing monetary eligibility will be transferred to

the paying state.

D. NON-MONETARY ELIGIBILITY DETERMINATION: When a combined-wage claim is filed, the law and eligibility requirements of the paying state apply even if an issue has been previously adjudicated by a transferring state.

E. CONDITIONS FOR WITHDRAWAL OF A COMBINED WAGE CLAIM: A combined-wage claimant may withdraw his or her combined-wage claim any time before the monetary determination of the paying state becomes final, provided that the combined-wage claimant:

(1) repays in full any benefits paid to him ~~or her~~, or

(2) authorizes the ~~state(s)~~ state against which he ~~or she~~ will claim benefits to withhold and forward to the former paying state a full repayment of benefits.

F. RECOVERY OF PRIOR OVERPAYMENTS: If there is an overpayment outstanding in the transferring state, including New Mexico, and such transferring state so requests, the overpayment shall be deducted from any benefits the paying state would otherwise pay to the combined-wage claimant on the combined-wage claim except to the extent prohibited by the law of the paying state. The paying state shall transmit the amount deducted to the transferring state or credit the transferring state's required reimbursement under the arrangement. This paragraph shall apply to overpayments only if the transferring state certifies to the paying state that the determination of overpayment was made within three years before the combined-wage claim was filed and that repayment is legally required and enforceable against the combined-wage claimant under the law of the transferring state.

G. NOTIFICATION AND APPEALS:

(1) A combined-wage claimant will receive a monetary determination notice from the paying state once the wage information from all states is received. The claimant has the right to appeal any aspect of his monetary entitlement. The appeal may be against either the paying state or the transferring state depending upon which agency issued the determination which the combined-wage claimant considers adverse to his ~~or her~~ interest. If the transferring state refused to transfer wages because the wage credits were cancelled under a disqualification or because the work was not covered, the combined-wage claimant will be sent an appealable determination by the transferring state.

(2) Except as provided in Subparagraph b of Paragraph 2 of Subsection G of 11.3.300.311 NMAC ~~of this section~~, where the claimant files his ~~or her~~ combined-wage claim in the paying state, any protest or appeal shall be in accordance with the law of such state.

(a) Where the combined-wage claimant files his ~~or her~~ combined-wage claim in a state other than the paying state or under the circumstances described in Subparagraph b of Paragraph 2 of Subsection G of 11.3.300.311 NMAC below, any protest or appeal shall be in accordance with the Interstate Benefit Payment Plan.

(b) To the extent that any protest or appeal involves a dispute as to the coverage of the employing unit or services in the transferring state or otherwise involves the amount of wages subject to transfer, the protest or appeal shall be decided by the transferring state in accordance with its law.

[7-15-98; 11.3.300.311 NMAC - Rn & A, 11 NMAC 3.300.311, 01-01-2003]

**11.3.300.312 ~~[A REGULATION PERTAINING TO] EXTENDED BENEFIT CLAIMS AND PAYMENT:~~**

A. APPLICATION OF OTHER ~~[REGULATIONS]~~ RULES: The pertinent provisions of the law and ~~[regulations]~~ rules that apply to regular claimants apply also to claimants for extended claims insofar as such ~~[regulations]~~ rules pertaining to regular claimants are not inconsistent with the provisions of this ~~[regulation]~~ rule.

B. FILING CLAIMS: ~~[Unless otherwise prescribed, an "exhaustee" as defined in NMSA 1978 Section 51-1-48(H), may claim extended benefits by reporting in person at a public employment office or claims center, registering for work and filing a claim for extended benefits. If such an individual resides in an area in which the Commission does not maintain a public employment office or claims center, his, claim for extended benefits may be filed by mail, if authorized by the Commission. Such claim shall become effective as of the Sunday of the week in which filed, provided that said claim may be back-dated to the Sunday of the week immediately following the week which exhausted benefit entitlement if the failure to file is determined to be with good cause.]~~

Unless otherwise prescribed, an "exhaustee" as defined in NMSA 1978 Section 51-1-48(H), may claim extended benefits by contacting a customer service representative, registering for work and filing a claim for extended benefits. The claim shall become effective as of the Sunday of the week in which filed, provided that the claim may be back-dated to the Sunday of the week immediately following the week which exhausted benefit entitlement if the failure to file is determined to be with good cause.

C. CLAIM DETERMINATION AND NOTICE: Upon receipt of a claim for extended benefits the ~~[Commission]~~ department will issue a determination on ~~[rights]~~ the right to extended benefits and ~~[deliver or mail]~~

~~transmit~~ a notice thereof to the claimant. ~~[Said]~~ The determination may be appealed in the manner prescribed for regular benefit determination appeals.

D. CONTINUED CLAIMS: Any individual, in order to claim weekly-extended benefits, shall ~~[mail the continued claim as directed and when instructed by the Commission representative shall report in person]~~ file the continued claim as directed and when instructed by the customer service representative when instructed to do so.

E. RELIEF FROM CERTAIN ELIGIBILITY REQUIREMENTS: An individual who claims extended benefits will not be required

(1) to be unemployed for a waiting-period of one week, or

(2) to perform services in employment as designated in NMSA 1978 Section 51-1-5(B), before extended benefits are paid.

F. REQUIREMENT FOR ADDITIONAL INITIAL CLAIMS: An individual whose benefit year expires within such an extended benefit period must file an initial claim for regular benefits at the end of his current benefit year and, if a new benefit year is not established, at the beginning of each calendar quarter during ~~[said period, if a new benefit year is not established,]~~ the period to determine if he has sufficient wage credits in covered employment to establish a new regular claim.

[7-15-98; 11.3.300.312 NMAC - Rn & A, 11 NMAC 3.300.312, 01-01-2003]

### 11.3.300.313 "WEEK" DEFINED:

A. WEEK OF UNEMPLOYMENT. Weeks of unemployment and claims ~~[therefore]~~ therefore shall be on a calendar week basis, except as prescribed in the case of partial unemployment, or as the ~~[Commission]~~ department may direct otherwise in any case where it appears some other "week" may better secure the full payment of benefits when due.

B. CONDITIONS FOR ESTABLISHMENT: The calendar week within which an individual becomes unemployed and in which he earns less than his weekly benefit amount shall be credited as a week of unemployment. ~~[in the following cases.~~

~~(1) for an individual in an area served by a public employment office, if he registers in person at the office within such week;~~

~~(2) for an individual in an area served only by a local adviser or the itinerant service out of a public employment office, if he registers in person with such local adviser or itinerant service, within such week or at the first opportunity thereafter;~~

~~(3) for an individual who fails to register as in either (i) or (ii) above, if the Commission finds that his failure was for good cause and he registers in person at an employment office within fourteen days after such week.]~~

C. "WEEK" IN MORE THAN ONE BENEFIT YEAR: A week of unemployment shall be deemed to be within that benefit year which includes the greater part of such week.

~~[D. WEEK OF PART TOTAL UNEMPLOYMENT: The term "part total unemployment" as used in NMSA 1978 Section 51-1-4(B)(2), is hereby defined to mean unemployment which is total except for the performance of odd jobs or subsidiary work for which, with respect to any week, as defined herein, the individual's earnings are in excess of twenty percent of, but less than his weekly benefit amount. Paragraph 313.1 and 313.2 shall apply to weeks of part total unemployment.]~~

~~[E] D.~~ WEEK OF DISQUALIFICATION: With respect to acts and periods of disqualification under NMSA 1978 Section 51-1-7, which occur or commence before the commencement of any week of unemployment as defined in this Section and Subsection A of 11.3.300.309 NMAC, "week" means the calendar week in which the disqualifying act or event occurs.

[7-15-98; 11.3.300.313 NMAC - Rn & A, 11 NMAC 3.300.313, 01-01-2003]

### 11.3.300.314 FRAUDULENT CLAIMS:

A. NMSA 1978 Section 51-1-38(D) of the Unemployment Compensation Law provides: "Notwithstanding any other provision of the Unemployment Compensation Law, including the provisions of NMSA 1978 Section 51-1-8(I), if any individual claiming benefits or waiting period credits shall, in connection with such claim, make any false statement or representation, in writing or otherwise, knowing it to be false or shall knowingly fail to disclose any material fact in order to obtain or increase the amount of a benefit payment, such claim shall not constitute a valid claim for benefits in any amount or for waiting period credits but shall be void and of no effect for all purposes. In addition to any other penalties provided herein, the entire amount of the benefits obtained by means of such claim shall be subject to recoupment by deduction from the claimant's future benefits or it may be recovered

as provided for the collection of past due contributions in accordance with NMSA 1978 Section 51-1-36(B).” The terms used in NMSA 1978 Section 51-1-38(D) mean:

- (1) “False” ~~[A statement or representation is false if it is]~~ means a statement contrary to fact.
- (2) “Knowingly” ~~[A statement or representation is made knowingly if the person making it is aware that it is untrue or that person has no reasonable basis for believing that it is true;]~~ means the person making the statement, at the time it was made, knew the statement to be false or should have known it to be false because he had no reasonable basis for believing it to be true.
- (3) ~~[A claimant knowingly fails to disclose a fact if he or she]~~ “Knowingly fails to disclose any material fact” means the claimant deliberately withholds information which he [or she] knows should be disclosed to the [division] department.
- (4) “Material fact” ~~[A fact is material if in some way it]~~ means the fact affects the eventual outcome of a transaction. A fact which, if known, would result in a determination adverse to the claimant is a material fact. A fact is not material if the failure to disclose it or the intentional misstatement of it would not cause injury. A fact which, if known, would not cause a denial or reduction of benefits or disqualification from receipt of benefits is not a material fact.
- (5) “With intent to obtain benefits” ~~[This statement refers to the claimant's purpose in knowingly making a false statement or representation or in knowingly failing to disclose a material fact.]~~ means the claimant intended the statement to assist the claimant to obtain benefits. In the absence of facts to indicate otherwise, when concealment of a material fact by willful misstatement or nondisclosure occurs in connection with a claim for benefits, it is assumed that the claimant's intent was to obtain or increase the amount of a benefit payment. When facts are established which indicate a different intent, the conclusions as to the claimant's intent shall be based on consideration of all the facts and not merely an assumption.

B. A claimant who inadvertently makes a mistake or omission or who does not understand his ~~[or her]~~ responsibility or the questions asked of him ~~[or her]~~, and, on the basis of information previously given him ~~[or her]~~ by the ~~[division] department~~, cannot reasonably be expected to understand his ~~[or her]~~ responsibility shall not be subject to the provisions of NMSA 1978 Section 51-1-38(D).

C. The ~~[division] department~~ shall impose an administrative penalty pursuant to NMSA 1978 Section 51-1-38(A) for each week that a claimant knowingly makes a false statement or representation or knowingly fails to disclose a material fact to obtain or increase the amount of a benefit payment. Administrative penalties shall be imposed as follows:

- (1) For each week of unreported or underreported earnings, the claimant shall forfeit all benefit rights for a period of four weeks, up to a maximum of fifty-two weeks;
- (2) For each false statement on separation, eligibility, refusal of work and other issues, the claimant shall forfeit all benefit rights for a period of four weeks, up to a maximum of fifty-two weeks; and
- (3) A claimant shall forfeit all benefit rights for fifty-two weeks from the date of the determination or the date he is next determined entitled to benefits, whichever comes latest in any case where he ~~[or she]~~ fraudulently obtained or increased benefits in two or more separate ~~[benefit years]~~ offenses.

D. ~~[The division shall demand immediate repayment of any overpayment established pursuant to NMSA 1978 Section 51-1-38(D). A warrant of levy and lien shall be filed in all cases where the overpayment is not repaid immediately unless the claimant executes a repayment agreement within thirty (30) days of the date of the initial overpayment determination. Recovery of the overpayment may also include the filing of a civil action.]~~ The department shall demand immediate repayment of any overpayment established pursuant to NMSA 1978 Section 51-1-38(D). A warrant of levy and lien shall be filed in all cases where the overpayment is not repaid immediately. Recovery of the overpayment may be by any means permitted by law. Recovery of fraudulent overpayments may include court awarded costs. The court costs awarded by the court shall be added to the overpayment and shall be collected in the same manner as the underlying overpayment.

E. Restitution of an amount overpaid to a claimant due to fraudulent misrepresentation or failure to disclose a material fact shall not preclude the ~~[division] department~~ from instituting criminal proceedings against such claimant.

[7-15-98; 11.3.300.314 NMAC - Rn & A, 11 NMAC 3.300.314, 01-01-2003]

### **11.3.300.315 RETIREMENT INCOME:**

A. Each eligible individual receiving a periodic retirement income financed in whole or in part by a base period employer shall have his weekly benefit amount reduced by the prorated amount of the base period employer's contribution to the periodic pension or retirement payment. The maximum benefit amount payable shall

also be reduced to an amount not more than twenty-six times the reduced weekly benefit amount. For purposes of this section, periodic retirement income is not deemed "received", if, under the time period allowed by the Internal Revenue Code, 26 U.S.C. Section 3405 and related provisions, that amount is placed in a non-taxable qualifying retirement account.

B. An individual's monthly pension or retirement payment shall be multiplied by 12, then divided by 52 to determine the amount of pension or retirement income attributed to a week.

C. A lump-sum pension or retirement payment shall be considered a periodic payment and the amount divided by 52 and allocated on a weekly basis beginning with the last week worked prior to retirement. [(Rev. 9/94)] [7-15-98; 11.3.300.315 NMAC - Rn & A, 11 NMAC 3.300.315, 01-01-2003]

**11.3.300.316** ~~[AVAILABILITY OF]~~ DETERMINATION OF ELIGIBILITY FULL-TIME STUDENTS:

A. The availability of full-time students, except for students in approved training in accordance with NMSA 1978 Section 51-1-5(E) and 11.3.100.103 NMAC, shall be determined in accordance with the provisions of NMSA 1978 Section 51-1-5(H) and the provisions of this ~~[regulation]~~ section.

B. ~~[General Rule]~~ The General Requirement: Any claimant enrolled in an educational or training institution or program in a course of study providing instruction of twelve or more hours per week, or the equivalent thereof, is denied from receiving benefits or waiting-period credit. The period of denial shall begin with the first week of instruction and shall include between terms that will resume in four weeks or less unless the claimant provides a written statement from the education or training institution or program that he has withdrawn from school or that he has not registered for next school term.

C. Full-Time Students To Whom Denial Does Not Apply: Time spent attending classes and doing homework are restrictions on availability for full-time, permanent work which must be overcome to establish eligibility for benefits. Any claimant enrolled in an educational or training institution or program on a full-time basis who can demonstrate by substantial and compelling evidence that he is unequivocally attached to the labor force and available for full-time, permanent work for which he is presently qualified without regard to the hours spent in attending classes or doing homework will not be subject to denial if all of the following requirements are met:

(1) While working full-time and attending school, he became unemployed for reasons not attributable to the schooling and the hours of school attendance have not changed substantially since becoming unemployed, or he began attending school after becoming unemployed and no rearrangement of his school hours would be required to accommodate his normal and customary working hours;

(2) For school terms commencing after the filing of the unemployment claim, the claimant ~~[has submitted]~~ is required to submit to the department a student questionnaire, a schedule of classes and, if required by the department, an authorization for release of school records prior to the commencement of each school term. For school terms commencing prior to the filing of the unemployment claim, a student questionnaire, a schedule of classes and an authorization for the release of school records shall be submitted ~~[at the Eligibility Benefit Rights Review Interview or at the State Office]~~ to the state office claims no later than ten calendar days after the date the claim is filed. The information on the student questionnaire and schedule of classes may be verified by the department prior to issuance of a determination that the claimant is available for full-time, permanent work for the school term covered on the student questionnaire notwithstanding his status as a full-time student.

D. A determination of eligibility made in accordance with Subsection C of 11.3.300.316 NMAC of this ~~[regulation]~~ rule shall apply only to the semester or period covered on the student questionnaire.

E. ~~[A claimant who receives a determination pursuant to Subsection C of 11.3.300.316 NMAC of this regulation shall promptly notify the department in writing, if he adds or changes any classes during the school term. If the claimant adds or changes any classes during the school term, his eligibility shall be subject to redetermination pursuant to Subsection C of 11.3.300.316 NMAC of this regulation and Subsection A of 11.3.300.308 NMAC.]~~ A claimant who receives a determination pursuant to Subsection C of 11.3.300.316 NMAC of this rule shall promptly transmit to the department any changes to class schedule during the school term. If the claimant adds or changes any classes his eligibility shall be subject to redetermination pursuant to Subsection C of 11.3.300.316 NMAC of this rule and Subsection A of 11.3.300.308 NMAC.

F. Definitions: As used in NMSA 1978 Section 51-1-5(H) and this ~~[regulation]~~ rule:

(1) "Full-time student" means any individual enrolled in twelve or more hours of instruction per week or the equivalent thereof;

(2) "Educational or training institution or program" means any primary school, secondary school or institution of higher education, public or private, which offers instruction, either for a fee or without charge, and which requires attendance at classroom instruction to receive the instruction, and

(3) "Instruction" means all teaching or opportunity for learning whether of a vocational or academic nature.  
[7-15-98; 11.3.300.316 NMAC - Rn & A, 11 NMAC 3.300.316, 01-01-2003]

**11.3.300.317 WAGES IN LIEU OF NOTICE, BACK PAY FOR LOSS OF EMPLOYMENT, OR VACATION PAY AND BENEFIT RIGHTS:** Except for payments through a court for time spent in jury service, all remuneration for services actually performed in any week for which benefits are claimed [~~except for payments through a court for time spent in jury service,~~] including wages in lieu of notice, back pay for loss of employment and vacation pay and wages as defined in NMSA 1978 Section 51-1-42(T) for any period for which the individual has a definite return-to-work date are deductible in accordance with NMSA 1978 Section 51-1-4(B)(2) from any benefits otherwise payable to a claimant for the week or weeks covered by such payments; a claimant who receives such payments cannot establish a waiting period credit or receive benefits for the week or weeks covered by such payments, if such payments equal or exceed the individual's weekly benefit amount. When a claimant leaves work voluntarily without good cause connected with work or is discharged for misconduct connected with work or fails without good cause to apply for or accept an offer of suitable work and receives remuneration for services actually performed in any week for which benefits are claimed, wages in lieu of notice, back pay for loss of employment or vacation pay for any period for which the individual has a definite return-to-work date covering a period of time subsequent to the week in which the separation from employment occurs or the offer of suitable work was made, such payments cannot be used to meet the requirement of remuneration in employment equal to or exceeding five times the weekly benefit amount of the claim to restore eligibility following a disqualification from benefits under the provisions of NMSA 1978 Sections 51-1-7(A), 51-1-7(B) or 51-1-7(C).  
[7-15-98; 11.3.300.317 NMAC - Rn & A, 11 NMAC 3.300.317, 01-01-2003]

**11.3.300.318 BENEFITS DUE DECEASED PERSONS:**

A. ~~[Benefits due and payable to a deceased claimant shall be paid to the executor, administrator or next of kin of the deceased if, prior to his or her death, the decedent had executed a weekly certification card (Form 408) for the benefits claimed. If there is an executor, or administrator payments must be made to said executor or administrator. If it is shown to the satisfaction of the secretary that there is no executor and no administrator has been appointed, and in all probability no administrator will be appointed, payment may be made to the next of kin with due regard being given to the following order of preference:]~~ If prior to his death, a claimant had filed a weekly certification, for benefits which were unpaid at the time of his death, the benefits shall be paid to the deceased claimant's court-appointed executor, administrator or personal representative. If the deceased claimant's next of kin demonstrates, to the secretary's satisfaction, that the court appointment of a fiduciary is impractical or legally unnecessary, then the benefits shall be paid to the next of kin. The order of priority for such payment shall be:

(1) ~~[surviving spouse]~~ one-half to the surviving spouse, if residing with the deceased claimant at the time of death, and one-half to the natural parent or physical custodian of any minor children or any dependent disabled adult children of the deceased claimant (if more than one, per capita by children and not per stirpes);

(2) ~~[children]~~ if no minor children and no dependent disabled adult children of the deceased claimant, all to the surviving spouse; if no surviving spouse, all equally

(3) ~~[parents]~~ to the surviving adult children; if no surviving adult children, all equally

(4) ~~[brothers and sisters]~~ to the surviving parents; if no surviving parents, all equally

(5) ~~[other relatives]~~ to the surviving brothers and sisters; if no surviving parents, all

(6) to the deceased claimant's heirs at law as provided in the New Mexico Probate Code, NMSA 1978 Sections 45-2-101 through 45-2-114.

B. ~~[The secretary, however, is not bound to follow such order of preference if the same shall appear inequitable.]~~ The secretary is not bound to follow such order of priority if to do so appears inequitable. Whenever there is more than one legal heir in any of the above classes, payment may be made to any one of such group as agent for the others upon submission of proper evidence of authority and identification.

C. Application for payment of benefits must be made in writing and on the prescribed form within six months of the death of the decedent and must be accompanied by a certified copy of the death certificate. The application form shall set forth that the individual died intestate, that no ~~[administrator or executor]~~ executor, administrator or personal representative has been appointed to administer ~~[said]~~ the deceased claimant's estate, and the relationship of the person to the deceased. Any [warrant or warrants] outstanding warrants representing benefits claimed must accompany the application for payment for re-issuance.

D. Unless, within the time prescribed herein a claim is made for benefits due a deceased claimant by

one of the parties herein authorized to make such claim, any warrants issued directly to the deceased claimant shall be canceled, and any additional benefit payments due to the deceased claimant for weeks of unemployment prior to his ~~or her~~ death shall be canceled, and all sums represented by benefits payable to the deceased claimant prior to his ~~or her~~ death shall remain a part of the unemployment compensation fund.  
[7-15-98; 11.3.300.318 NMAC - Rn & A, 11 NMAC 3.300.318, 01-01-2003]

**11.3.300.319 STANDARDS FOR WAGES ELIGIBLE TO PURGE BENEFIT DISQUALIFICATION; BONA FIDE EMPLOYMENT:** In determining whether a claimant has earned wages to requalify for benefits after imposition of a disqualification under the provisions of NMSA 1978 Section 51-1-7, the following shall apply:

A. Wages required to requalify will include both insured and noninsured wages, but will not include earnings from self-employment or earnings excluded under the provisions of 11.3.300.317.NMAC.

B. The wages must have been earned for work performed subsequent to the effective date of the disqualification.

C. The proof required to establish wages for requalification may consist of check stubs or other payment records, employer statement or W-2 form if the W-2 establishes that the wages were paid after the effective date of the disqualification. When employers' quarterly wage reports available in the division show the contended wage items, the department may accept the ~~report(s)~~ report as proof of wages. If necessary for a determination under Subsection B of 11.3.300.319 ~~above~~, the period during which the wages were earned shall be established by other proof.

D. Except for wages of which the division has knowledge through employers' quarterly wage reports, the burden of establishing requalifying wages shall rest on the claimant. The ~~division~~ department may, as it deems appropriate, assist the claimant in the verification of wages which the claimant states he or she has earned but of which he or she has no proof or insufficient proof, by contacting the ~~employer(s) either by telephone or in writing~~ employers.

E. The wages must have been earned in "bona fide" employment. The basic test to determine whether employment is "bona fide" to purge a disqualification is whether the total facts lead ~~reasonably to a conclusion~~ a reasonable person to conclude that the individual was in good faith genuinely attached to the labor market as opposed to bogus employment or the performance of some inconsequential service entirely unrelated to any valid job search. An individual is not engaged in bona fide employment when ~~the~~ the service is performed for the purpose of purging a disqualification. No fixed rule can govern when employment is "bona fide," but the following factors shall be considered by the ~~division~~ department:

(1) Whether a valid, arms-length employer-employee relationship exists; this excludes self-employment and incidental cash payments for services reportedly performed for relatives and friends;

(2) Whether the work is of the type of which the claimant would accept referral on a full-time basis or for repeated temporary durations;

(3) Whether the work bears any relation to the claimant's main occupational skills;

(4) Whether the work is of the type that employers generally offer in the job market;

(5) Whether the work is related to the particular employer's normal activity and customarily offered to the working public by this employer;

(6) Whether the employer is registered for employment purposes with appropriate taxing and licensing authorities;

(7) The nature of the work, concerning hours to be worked, where the work is performed, and rate of pay;

(8) Whether the employer can produce payroll records to substantiate the amount of payment and appropriate tax withholding information;

(9) Whether the wages for the employment were equivalent to the claimant's wages in his or her usual occupation or last preceding employment; and

(10) The manner in which the work was obtained, and the nature and extent of the claimant's search for work.

[7-15-98; 11.3.300.319 NMAC - Rn & A, 11 NMAC 3.300.319, 01-01-2003]

**11.3.300.320 WORK SEARCH REQUIREMENT:**

~~[WORK SEARCH PLAN: To meet the eligibility requirements for benefits, a claimant must be actively seeking permanent and substantially full-time work in accordance with the terms, conditions and hours common in the occupation or business in which the individual is seeking work. NMSA 1978 Section 51-1-5(A)(3). Claimants must~~

comply with all requirements stated on the UI Work Search Plan, ES 444, which he/she must complete when filing an initial, additional, or renewal claim for benefits. Work search requirements are determined, in part, by the claimant's residence; therefore, claimants should report to the local workforce development center to complete a new work search plan anytime they move to a new location in a different area of the state.]

A. WORK SEARCH CONTACTS: [~~In order to~~] To qualify for continued benefits, an intrastate [~~claimants~~] claimant must:

(1) Actively seek work by contacting a minimum number of different employers each week [~~as stated on the work search plan~~] as directed by department representatives. A claimant may contact the same employer more than one time during a given week, but it will be considered as only one of the minimum number of contacts required. [~~Claimants~~] A claimant may list the New Mexico Department of Labor workforce development centers, [~~and/or~~] the New Mexico State Personnel Office (SPO), America's Job Bank, Workforce Investment Act (WIA) partners and similar programs as approved from time to time by the department as valid work search contacts for each week of claim certification. [~~If the claimant is required to make only one or two contacts per week, these contacts may include the WDC and/or SPO contacts;~~

(2) ~~Seek work by the method prescribed on the work search plan. Methods of contact are in person, by telephone, and by letter. Resumes may be substituted for in person contacts if they are the customary means to secure employment in the claimant's profession. The work search plan should indicate the claimstaker's approval allowing the claimant's use of resumes as an acceptable method of seeking work;]~~

(2) Seek work on days within the week for which benefits are being claimed. Claimants must seek work with a minimum number of different employers each week but it is not mandatory that they seek work on different days of the week; or

(3) Be a member of a union with a hiring hall and meet the union requirements for job [~~referral/placement~~] referral or placement. A union with a hiring hall is one that actively seeks to place its members in employment.

(4) In order to qualify for continued benefits, interstate, if New Mexico is the liable state, claimants must:

(a) Seek work within the week for which benefits are being claimed; and

(b) Actively seek work by contacting a minimum of two different employers each week, or if a union member, actively seek work by contacting the union as required by the union in order to be eligible for job referral/placement. Interstate claimants are not required to sign a work search plan.

~~[(c) A claimant must indicate the name and address and/or telephone number of each employer contacted. The claimant must provide adequate information to allow verification of the contact. Failure to provide an adequate address and/or telephone number may delay benefits or result in a denial. A certification shall be returned to the claimant for this information, if incomplete. Certifications returned for completion shall be considered timely if received by the state claims office in Albuquerque no later than ten (10) calendar days after the certification is mailed to the claimant for correction or if it is returned with the claimant's next timely regular certification.]~~

(c) Claimants filing through the interactive telephone system (IVR) or Internet must keep a record of the name, address and [~~the~~] telephone number or electronic mail address of each employer contacted. This information must be provided to department representatives upon request. Failure to provide the required information may delay benefits or result in a denial. The claimant must provide adequate information to allow verification of the contact. If a denial is imposed, the effective period may include weeks for which the claimant has already been paid benefits. Such benefits would constitute an overpayment which would be recouped pursuant to NMSA 1978 Section 51-1-38.

(d) [~~Claimants filing through the interactive telephone system may be told their continued claims cannot be processed further until they talk with a State Office Claims representative about an eligibility issue. If a department representative is not available at the time of the claimant's initial telephone call, the claimant must contact a State Office Claims representative at the telephone number given within 5 work days in order to resolve the potential issue. Failure to contact the State Office Claims representative as instructed may delay benefits or result in a denial. In addition, the claimant will not be permitted to file continued claims by telephone until the issue is resolved.] A claimant filing through the interactive telephone system or Internet may be told his continued claim cannot be processed further until he talks with a department representative. If a department representative is not available at the time of the claimant's initial telephone call, the claimant must contact a department representative at the telephone number given within 5 work days in order to resolve the potential issue. Failure to contact the department representative as instructed may delay benefits or result in a denial. In addition, the claimant will not be~~



permitted to file continued claims by telephone until the issue is resolved.

~~C. WORK SEARCH WARNING. A claimant shall be warned in writing by the department regarding an inadequate or invalid work search prior to a denial of benefits, except where no work search is performed, a denial will be issued to the claimant. One warning notice will be allowed for each type of infraction. An infraction which occurs in two different weeks but on the same biweekly certification will be considered as one infraction. If the claimant fails to meet a work search requirement on a subsequent certification following a prior warning, a denial will be issued.]~~

B. WORK SEARCH WARNING. Prior to the denial of benefits, a documented warning shall be transmitted to the claimant whose work search is deemed inadequate or invalid. One warning shall be allowed for each type of infraction. An infraction, which occurs in two different weeks but on the same certification, will be considered as one infraction. If the claimant fails to meet a work search requirement on a subsequent certification following a prior documented warning, a denial will be issued. An "infraction" is a violation of the applicable rule.

C. WORK SEARCH WAIVER. NMSA 1978 Section 51-1-5(A)(3) requires that an unemployed individual shall be eligible to receive benefits in a particular week only if able and available for work and actively seeking permanent and substantially full-time work in accordance with the terms, conditions, and hours common in that occupation or business. The secretary may waive this requirement for individuals who are on temporary lay-off status from their regular full-time employment [with] upon receipt of an assurance from [their] the employer that the lay-off shall not exceed four weeks or [who have] upon receipt of an express offer in writing of substantially full-time work which will begin within a period not exceeding four weeks. A waiver made in accordance with this [regulation] rule shall apply only to the four-week period covered on the determination. [A claimant who receives a determination granting a waiver for the four-week period shall promptly report to his or her local workforce development center and report any change in his or her recall date or start date.] A claimant who receives a determination granting a waiver for the four-week period shall promptly transmit any change to his recall date or start date to state office claims. The claimant's eligibility shall then be subject to redetermination pursuant to Subsection A of 11.3.300.308 NMAC.

[5-15-97; 7-15-98; 11.3.300.320 NMAC - Rn & A, 11 NMAC 3.300.320, 01-01-2003]

**11.3.300.321 REEMPLOYMENT SERVICES:** Effective November 24, 1994, an unemployed individual shall be eligible to receive benefits with respect to any week only if he ~~[or she]~~ participates in reemployment services such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits, and needs reemployment services pursuant to a profiling system established by the ~~[division] department~~, unless the ~~[division] department~~ determines that:

- A. This individual has completed such services; or
- B. There is justifiable cause for the claimant's failure to participate in such services; and
- C. The claimant is able, available and actively seeking permanent, full-time work. ~~[(Rev. 9/94)]~~

[7-15-98; 11.3.300.321 NMAC - Rn & A, 11 NMAC 3.300.321, 01-01-2003]

**11.3.300.322 CLAIM CANCELLATIONS:**

A. An initial or amended monetary determination, Form ES-405, Notice of Initial Determination of Benefits, may be canceled by the claimant at any time even though final, provided that no disqualification has been issued nor any benefits paid on the claim. Requests for cancellation must be made ~~[in writing and] by the claimant or his authorized representative in the manner prescribed by the department and~~ signed by the claimant or the authorized representative of the claimant.

B. A request to change the date of a claim is deemed a request to cancel a claim and file a new claim. Subsection A of 11.3.300.322 NMAC applies to situations where a claimant desires to change the date of a claim.

(1) In some situations where claims are filed near the end of a quarter, the delay in the of filing a claim for a week or two may increase the claimant's weekly benefits. If this is the situation, the customer service representative will not suggest or accept a request for monetary reconsideration.

(2) Base periods will not be shifted to permit claimants to have 4 full quarters on which to base a claim. The claimant must either use the remaining 3 quarters or wait the additional week or two to file his claim so as to pick up the new base period.

(3) In situations where claimants might be benefited by a delayed filing, the customer service representative will advise the claimant that the claim determination will not show any wages for the first quarter and that this is not an error. If using the new base period will cause an increase in the weekly benefit amount, the customer service representative will make an effort to advise the claimant of his option to file a post-dated claim.

C. Notwithstanding the provisions of Subsection A of 11.3.300.322 NMAC [~~of this regulation~~], claimants who are eligible to file a combined wage claim may cancel such claim when New Mexico is the paying state if benefits have been paid on the combined wage claim. Cancellation will be authorized only if the claimant agrees [~~in writing~~] in the manner prescribed by the department to reimburse all benefits paid by cash or by authorizing any other state to deduct the amount due from any benefit payments to which the claimant is entitled. Requests for cancellation must be made [~~in writing and~~] in the manner prescribed by the department signed by the claimant or the authorized representative of the claimant. [~~(Rev. 9/94)~~]  
[7-15-98; 11.3.300.322 NMAC - Rn & A, 11 NMAC 3.300.322, 01-01-2003]

**11.3.300.323 VOLUNTARY WITHHOLDING OF FEDERAL INCOME TAX:**

A. The [~~division~~] department shall provide each individual filing a new claim for unemployment compensation on or after January 1, 1997, with the following information in documented form:

- (1) Unemployment compensation is subject to federal, state and local income tax;
- (2) Requirements exist under federal law pertaining to estimated tax payments;
- (3) The individual may elect to have federal income tax deducted and withheld from the individual's unemployment compensation payments [~~at the rate of 15 percent, as specified in Section 3402(p)(3) of the Internal Revenue Code of 1986, as amended and~~] at the amount specified in the federal Internal Revenue Code, 26 U.S.C. Section 3402(p)(2); and
- (4) The individual is permitted to change a previously elected withholding status one time during each benefit year.

B. Amounts deducted and withheld from unemployment compensation benefits shall remain in the unemployment compensation fund until transferred to the [~~federal~~] Internal Revenue Service as a payment of income tax.

C. The [~~division~~] department shall follow all procedures specified by the United States Department of Labor and the [~~federal~~] Internal Revenue Service pertaining to the deducting and withholding of federal income tax.

D. Amounts shall be deducted and withheld for the purpose of federal income tax payments only after amounts are deducted and withheld for any overpayments of unemployment compensation benefits, child support obligations and food stamp over-issuances required to be deducted and withheld under the Unemployment Compensation Law. [~~NMSA Sections 51-1-1 et seq.~~]  
[5-15-97; 7-15-98; 11.3.300.323 NMAC - Rn & A, 11 NMAC 3.300.323, 01-01-2003]

**11.3.300.324 OVERPAYMENTS :**

A. Uncollectible overpayments:

- (1) Stale overpayments: The department may, at its sole option, determine that is it not economically efficient to actively pursue collection of overpayments which are more than 10 years old or less than \$50 and more than 7 years old; however, to the extent required by law, these debts will remain on the department's books as debts owing the department.
- (2) Otherwise uncollectible debts: From time to time, the department may, at its discretion determine that is it not economically efficient to actively pursue collection of certain overpayments due to the claimant's situation or the department's resources. The overpayment remain an obligation owed by the claimant to the department. The department may cease or forbear active collection activities for either finite period or an indefinite period depending on the circumstances. The department's discretion in this matter is final.

B. "Double Affirmation" means a situation in which a claimant has received benefits through a decision which was subsequently affirmed by either the appeal tribunal or the board of review. If either the appeal tribunal or the board of review affirmed or approved the payment of benefits, even if such determination is later reversed, no action shall be taken to recover the benefits paid to the claimant. Double affirmation does not mean a situation in which the claimant appeals the initial determination denying benefits; the appeal tribunal approves benefits; the employer appeals; the board of review remands to the appeal tribunal where the employer then fails to appear.  
[11.3.300.324 NMAC - N, 01-01-2003]

**11.3.300.325 OVERPAYMENTS AND WAIVER OF OVERPAYMENTS PURSUANT TO THE TRADE ACTS:**

A. In accordance with the provisions of 20 CFR 617.55, as amended from time to time, the department authorizes the waiver of overpayments paid under the Trade Acts, the Trade Adjustment Assistance

(TAA) or Trade Readjustment Assistance (TRA), under the following circumstances:

(1) The individual seeking a waiver of an overpayment must apply in the form prescribed by the department within 14 calendar days after the issuance and transmission by the department of the overpayment determination.

(2) The application for waiver will be approved if the department determines that

(a) The application was made timely;

(b) Payment was made without the fault of the individual seeking the waiver; and

(c) Requiring repayment would be contrary to equity and good conscience.

(3) The department's affirmative finding of any one of the following factors of fault precludes a waiver:

(a) That the individual knowingly made a material misrepresentation, which misrepresentation resulted in the overpayment; or

(b) That the individual knowingly failed to disclose a material fact, which failure to disclose resulted in the overpayment; or

(c) That the individual knew or should have known that he was not entitled to the payment; or

(d) That the department has previously issued a determination of fraud in regards to the overpayment.

(4) The department shall consider the following factors in determining whether, in equity and good conscience, the department should require repayment:

(a) Whether the overpayment was the result of a decision on appeal;

(b) Whether the individual was given notice that repayment would be required in the event of reversal on appeal;

(c) Whether the recovery of the overpayment would cause an extraordinary and lasting financial hardship to the individual, resulting in the individual's inability to obtain minimal necessities of food, medicine and shelter for at least 30 days and period of financial hardship lasting at least 3 months, and

(d) Whether, if recoupment from other benefits is proposed, the length of time of extraordinary and lasting financial hardship shall be the longest potential period of benefit entitlement as seen at the time of the request for waiver of determination.

(5) In determining whether fraud has occurred, the department shall consider the following factors:

(a) Whether the individual knowingly made, or cause another to make, a false statement or representation of a material fact resulting in the overpayment.

(b) Whether the applicant knowingly failed, or caused another to fail, to disclose a material fact resulting in the overpayment.

B. If a determination of fraud is made, the individual shall be ineligible for any further TAA or TRA benefits and shall be ineligible for waiver of any overpayment.

C. A finding that the overpayment was not the result of a decision on appeal or that the recovery would not cause extraordinary and lasting financial hardship shall preclude a waiver.

D. If an individual fails, without good cause, to complete training, a job search or a relocation, any payment to such individual that is not properly and necessarily expended in attempting to complete the activity shall constitute an overpayment. Such overpayments shall be recovered or waived according to the standards of fault, equity and good conscience contained in this section.

E. In any event, no repayment shall be required or deduction made until a notice and an opportunity for fair hearing have been provided to the applicant, a determination has been issued by the department, and the determination has become final.

[11.3.300.325 NMAC - N, 01-01-2003]