

## NOTICE OF PROPOSED RULEMAKING

**NOTICE IS HEREBY GIVEN** that the New Mexico Higher Education Department (NMHED or department) will hold a public rulemaking hearing on November 16, 2018. The hearing will begin at 10:00 a.m. and will be held at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505. The purpose of the rulemaking hearing is to take public comment regarding proposed amendments to **5.100.5 NMAC, EXEMPTION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT.**

### **Amendments:**

5.100.5.3 NMAC, STATUTORY AUTHORITY

5.100.5.6 NMAC, OBJECTIVES AND GENERAL PRINCIPLES

5.100.5.7 NMAC, DEFINITIONS

5.100.5.8 NMAC, GENERAL STANDARD FOR OBTAINING EXEMPTION STATUS BY THE DEPARTMENT

### **Purpose:**

The purpose of the proposed rule change is to update the definition of physical presence and to provide a more comprehensive list of activities that trigger a postsecondary institution to have a physical presence under the Post-Secondary Educational Institution Act. The proposed amendment also provides a more comprehensive list of activities that do not trigger a physical presence in New Mexico. Definitions have been updated to provide additional clarity. Statutory and administrative code citation have been added within the text of the rule to provide more specificity. Grammatical and stylistic changes have been made throughout.

### **Summary of proposed changes:**

Amendment to Section 5.100.5.3 NMAC adds additional statutory authority for the rule.

Amendments to Section 5.100.5.6 NMAC include a non-substantive change to comply with the Legislative Style Manual and the addition of listed activities that trigger a post-secondary institution to have a physical presence under the Post-Secondary Educational Institution Act. The proposed amendment also provides a list of activities that do not trigger a physical presence in New Mexico. The amendments include stylistic changes.

Amendments to Section 5.100.5.7 NMAC update various definitions including the definition of “Physical Presence” in relation to the proposed new language regarding physical presence in Section 5.100.5.6 NMAC. Definition of “Registration” or “Registered” is modified for grammatical clarity. Language in the definition of “State Authorization” is updated to further clarify State Authorization is not an endorsement by NMHED and to include stylistic changes. The definition of “Post-secondary educational institution” adds the alternate terms “institution” or “post-secondary institution”, all of which have the same meaning. The definition of “Exemption” adds the alternate term “Exempt”, which has the same meaning.

Amendments to Section 5.100.5.8 NMAC adds additional statutory and administrative code citations.

**Details for Obtaining a Copy, Public Hearing and Comments:** The proposed rule is available at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-2100. The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the “Events” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us) or (505) 476-8411.

A public hearing will be held from 10:00 a.m. until 10:30 a.m. at NMHED on November 16, 2018. Any person who is or may be affected by this proposed rule may appear and testify. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us). Written comments must be received no later than 4:00 p.m. on November 15, 2018.** Please note that any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line

the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23-1 et seq. NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email [HigherEd.Info@state.nm.us](mailto:HigherEd.Info@state.nm.us) ten (10) business days prior to the hearing.