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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 3@ Employment Services Programs

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Part 1@ Employment and Employability Services

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Chapter 1.5@ Employment Training Panel

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Article 2@ Proposal Process

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Section 4416@ Out-of-State Competition

## 4416 Out-of-State Competition

**(a)** Funding Requirement. The Panel will not fund any retraining project, with the exception of Special Employment Training under Unemployment Insurance Code Section 10214.5, unless it first determines that the trainee jobs are threatened by out-of-state competition.

### **(b)**

Determination. The Panel will make its Determination regarding out-of-state competition on a case-by-case basis and at its sole discretion, based on the factors outlined in subsections (d)-(h). The only exception is for employers classified under the North American Industrial Classification System (NAICS) as set forth in subsection (i).

### **(c)**

Employer. As used in regard to a Determination under subsections (d)-(h), Employer means the employer's individual facility, functional group or unit that is or will be employing the trainees whose jobs are threatened by out-of-state competition.

### **(d)**

Threshold Analysis. As a threshold analysis, the Panel will consider whether the Employer:(1) manufactures a product sold out-of-state; or (2) manufactures a product sold in-state that competes with products manufactured out-of-state;

and/or (3) provides a service in California that regularly competes with service providers located out-of-state; and/or (4) provides a service directly to out-of-state customers where revenues derived directly from this service comprise at least 25 percent of gross annual revenue.

**(1)**

manufactures a product sold out-of-state; or

**(2)**

manufactures a product sold in-state that competes with products manufactured out-of-state; and/or

**(3)**

provides a service in California that regularly competes with service providers located out-of-state; and/or

**(4)**

provides a service directly to out-of-state customers where revenues derived directly from this service comprise at least 25 percent of gross annual revenue.

**(e)**

Significant Business Presence. If the threshold analysis is not sufficient to make a Determination, the Panel will also consider whether the Employer has a significant business presence outside California. This is a two-part analysis using the criteria set forth in both (1) and (2) below: (1) The Employer, as defined in Section 4416(c) above, or its corporate headquarters, must provide internal support services to one or more offices, divisions, branches, stores, or franchises located out-of-state; and, (2) The Employer must establish one of the following: (A) at least 25 percent of the Employer's gross annual revenue is derived directly from its operations out-of-state, or (B) at least 25 percent of the Employer's permanent offices, divisions, branches, stores or franchises are located

out-of-state, or (C) at least 25 percent of the Employer's permanent full-time employees work at locations out-of-state.

**(1)**

The Employer, as defined in Section 4416(c) above, or its corporate headquarters, must provide internal support services to one or more offices, divisions, branches, stores, or franchises located out-of-state; and,

**(2)**

The Employer must establish one of the following: (A) at least 25 percent of the Employer's gross annual revenue is derived directly from its operations out-of-state, or (B) at least 25 percent of the Employer's permanent offices, divisions, branches, stores or franchises are located out-of-state, or (C) at least 25 percent of the Employer's permanent full-time employees work at locations out-of-state.

**(A)**

at least 25 percent of the Employer's gross annual revenue is derived directly from its operations out-of-state, or

**(B)**

at least 25 percent of the Employer's permanent offices, divisions, branches, stores or franchises are located out-of-state, or

**(C)**

at least 25 percent of the Employer's permanent full-time employees work at locations out-of-state.

**(f)**

Mortgage Banking. If the Threshold Analysis is not sufficient to make a Determination, the Panel will also consider whether the Employer is a mortgage banking institution. This is a three-part analysis using the criteria set forth in (1) through (3) below: (1) The institution must be a mortgage lender, a business that

services mortgage loans or a business that packages/sells mortgage loans; and

(2) The institution must conduct its business or support services in California; and

(3) All trainees must hold positions that are directly related to the lending, servicing, packaging/selling function.

**(1)**

The institution must be a mortgage lender, a business that services mortgage loans or a business that packages/sells mortgage loans; and

**(2)**

The institution must conduct its business or support services in California; and

**(3)**

All trainees must hold positions that are directly related to the lending, servicing, packaging/selling function.

**(g)**

Destinations. If the Threshold Analysis is not sufficient to make a Determination, the Panel will also consider whether the Employer qualifies as a destination resort, a convention/conference hotel or a convention/conference center under the parameters set forth in (1) through (4) below: (1) A destination resort must be a place people travel to in pursuit of recreation, where the destination is the resort itself and not the city or geographic region of its locale. In the alternative, a hotel may qualify as a destination resort if it operates in conjunction with or in proximity to a recreational attraction, where the hotel directly derives at least 25 percent of its gross annual revenue from out-of-state visitors. (2) A convention/conference hotel must directly derive at least 25 percent of its gross annual revenue from transient lodging or related services provided to out-of-state visitors to a convention, conference or trade show. (3) A convention/conference center must primarily provide for the meeting and exhibiting needs of out-of-state visitors to a

convention, conference or trade show. (4) To qualify as a destination resort, a convention/conference hotel, or a convention/conference center the Employer must also meet at least three of the following six criteria: (A) Routinely advertises in the same media as its out-of-state competitors; or (B) Routinely makes special sales efforts designed to attract out-of-state customers; or (C) Participates in sales missions or trade shows conducted out-of-state; or (D) Contributes financially to joint, community-based sales efforts conducted out-of-state; or (E) Markets directly to out-of-state customers by mailing, telephone soliciting, internet advertising or other broad-based means; or (F) Otherwise demonstrates that it is competing with similar resorts, hotels or centers located out-of-state.

**(1)**

A destination resort must be a place people travel to in pursuit of recreation, where the destination is the resort itself and not the city or geographic region of its locale. In the alternative, a hotel may qualify as a destination resort if it operates in conjunction with or in proximity to a recreational attraction, where the hotel directly derives at least 25 percent of its gross annual revenue from out-of-state visitors.

**(2)**

A convention/conference hotel must directly derive at least 25 percent of its gross annual revenue from transient lodging or related services provided to out-of-state visitors to a convention, conference or trade show.

**(3)**

A convention/conference center must primarily provide for the meeting and exhibiting needs of out-of-state visitors to a convention, conference or trade show.

**(4)**

To qualify as a destination resort, a convention/conference hotel, or a convention/conference center the Employer must also meet at least three of the

following six criteria: (A) Routinely advertises in the same media as its out-of-state competitors; or (B) Routinely makes special sales efforts designed to attract out-of-state customers; or (C) Participates in sales missions or trade shows conducted out-of-state; or (D) Contributes financially to joint, community-based sales efforts conducted out-of-state; or (E) Markets directly to out-of-state customers by mailing, telephone soliciting, internet advertising or other broad-based means; or (F) Otherwise demonstrates that it is competing with similar resorts, hotels or centers located out-of-state.

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Routinely advertises in the same media as its out-of-state competitors; or

**(B)**

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**(C)**

Participates in sales missions or trade shows conducted out-of-state; or

**(D)**

Contributes financially to joint, community-based sales efforts conducted out-of-state; or

**(E)**

Markets directly to out-of-state customers by mailing, telephone soliciting, internet advertising or other broad-based means; or

**(F)**

Otherwise demonstrates that it is competing with similar resorts, hotels or centers located out-of-state.

**(h)**

Call Center. If the Employer is a call center, the Panel will dispense with the Threshold Analysis at subsection (d). Neither will the NAICS classifications at subsection (i) apply, for the purpose of meeting the out-of-state competition

requirement. Instead, the Panel will base its Determination on the criteria set forth in (1) through (5) below: (1) At least 25 percent of annual call volume must originate from outside California; and, (2) The center must be an internal operation; and, (3) The center must be primarily engaged in taking customer orders or providing customer service by telephone; and, (4) The customer must initiate contact by a call or other inquiry; and, (5) The center must not be engaged in telemarketing. As used herein "telemarketing" means a plan, program or campaign designated to sell goods or services by telephone solicitation, where the customer does not initiate contact.

**(1)**

At least 25 percent of annual call volume must originate from outside California; and,

**(2)**

The center must be an internal operation; and,

**(3)**

The center must be primarily engaged in taking customer orders or providing customer service by telephone; and,

**(4)**

The customer must initiate contact by a call or other inquiry; and,

**(5)**

The center must not be engaged in telemarketing. As used herein "telemarketing" means a plan, program or campaign designated to sell goods or services by telephone solicitation, where the customer does not initiate contact.

**(i)**

NAICS Industries. As an exception to the discretionary Determination process at subsections (d)-(h), any employer that finances liability for unemployment insurance benefits will be deemed to meet the out-of-state competition

requirement based on industry classifications. The pertinent industries are classified into Sectors by the federal Office of Management and Budget under the 2022 North American Industrial Classification System (NAICS), hereby incorporated by reference. The Employment Development Department (EDD) routinely assigns NAICS classifications to all businesses in California. For the purpose of meeting the out-of-state competition requirement, the Panel will accept the EDD assignment of NAICS classifications for the Sectors identified in both (1) and (2) below: (1) Any NAICS classification in: Sectors 31-33. Manufacturing Industry (2) Designated NAICS classifications in: Sector 11. Agriculture, Forestry, Fishing & Hunting Industry Sector 21. Mining Industry Sector 51. Information Industry Sector 54. Professional, Scientific & Technical Services Industry (3) A detailed definition of each industry classification is set forth in the "NAICS Manual" published by the U.S. Census Bureau under the Office of Management and Budget. All of these classifications may be viewed online free of charge at [www.census.gov](http://www.census.gov). The particular classifications designated by the Panel in Sectors 11, 21, 51 and 54 are shown in the following chart:

**NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM**

Sector 11. Agriculture, Forestry, Fishing & Hunting Industry 111 Crop Production 112 Animal Production 113 Forestry and Logging 114 Fishing, Hunting & Trapping

Sector 21. Mining 211 Oil & Gas Extraction 212 Mining

Section 51. Information 51211 Motion Picture and Video Production 512191 Teleproduction and Other Postproduction Services 513 Publishing Industries

Sector 54. Professional, Scientific and Technical Services 541330 Engineering Services 54138 Testing Laboratories 541511 Custom Computer Programming Services 541512 Computer System Design Services 54171 Research & Development in the Physical, Engineering and Life Sciences

**(1)**



Any NAICS classification in: Sectors 31-33. Manufacturing Industry

**(2)**

Designated NAICS classifications in: Sector 11. Agriculture, Forestry, Fishing & Hunting Industry Sector 21. Mining Industry Sector 51. Information Industry Sector 54. Professional, Scientific & Technical Services Industry

**(3)**

A detailed definition of each industry classification is set forth in the "NAICS Manual" published by the U.S. Census Bureau under the Office of Management and Budget. All of these classifications may be viewed online free of charge at [www.census.gov](http://www.census.gov). The particular classifications designated by the Panel in Sectors 11, 21, 51 and 54 are shown in the following chart:

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