

Updated Draft Regulations for AB 1499 - Incorporates input received from the Network of California Fairs at the Workshop held on June 12, 2019 in Sacramento

TITLE 3. Food and Agriculture

Division 7. Fairs and Expositions

Chapter 3. Allocation of AB 1499 Revenue Funds

Article 1. Allocation of AB 1499 Revenue to State Designated Fairs

Sections 7020.1–7023.6

§ 7020.1. Definitions.

For purposes of Chapter 3, the definitions herein govern the construction of these rules.

- (a) “Department” means the California Department of Food and Agriculture.
- (b) “Branch” means the Fairs and Expositions Branch of the Department.
- (c) “State designated fairs,” which may be referred to in this section as fairs, means district agricultural associations (Districts), county fairs, citrus fruit fairs, and California Exposition and State Fair (CalExpo).
- (d) “Board” means the Board of Directors that governs a state designated fair.
- (e) “AB 1499 allocation” means the funding from sales and use tax generated at the real property of a state-designated fair and which is appropriated to the Department for allocation to state-designated fairs.
- (f) “Qualified fair” means a state-designated fair that has received written certification from the Department that it has met the eligibility requirements to apply for an AB 1499 allocation.
- (g) “Required work conditions” means those conditions required to be provided to non-management employees of a fair or lessee in order to receive an AB 1499 allocation.
- (h) “Non-management employee” means any employee of a fair or lessee who is not in a supervisory role or has management decision making authority.
- (i) “Lessee” means a non-governmental entity that employs at the lease site more than fifty employees of a fulltime status as determined by the Internal Revenue Service’s definition, such as the Monthly Measurement Method, and that operates on the real property of a state designated fair under a lease. The number of fulltime employees is calculated by using the highest number concurrently working at the fair at any given time as opposed to aggregating all staff that work at the fair during the calendar year.
- (j) “Lease” means a written agreement granting a lessee the right of exclusive use and occupancy of real property owned by a state designated fair for a duration of one year or longer.
- (k) “Fulltime carnival ride operator” means an employee of a travelling carnival employed on a fulltime basis while operating rides at a state designated fair.

Note: Authority cited: Section 407, Food and Agricultural Code; Sections 19620, and 19622.1–19622.3, Business and Professions Code. Reference: Sections 19418–19418.3 and 19620.15, Business and Professions Code.

§ 7021.1. Qualified Fair Application Requirements.

- (a) With a status as a qualified fair, a fair is then eligible to apply for an AB 1499 allocation.
- (b) A state-designated fair may become a qualified fair at any time by submitting to the Branch the fair's Board meeting minutes that memorialize:
 - (1) Board's approval to provide required work conditions to all non-management employees and to require that lessees provide required work conditions to all non-management employees.
 - (2) Board's adoption of a policy that outlines the required work conditions for all non-management employees of the fair and lessees. The policy shall be attached as an exhibit to all leases.
- (c) For all District fairs and Cal Expo, the fair shall submit written acceptance of all bargaining units for these work conditions for their non-management employees. All of the bargaining units that cover the District fair's or Cal Expo's non-management employees must agree in writing to these work conditions in order for the District fair to be a qualified fair.
- (d) For all state-designated fairs other than District fairs and Cal Expo, the fair shall submit written acceptance of all of the labor unions or the appropriate labor organizations that would hear a non-management employee's labor grievance based on the required working conditions.
- (d) A fair is not eligible to apply for AB 1499 allocations until the Department has confirmed in writing that all the requirements for eligibility are met.
- (e) Any denial of a fair's application for qualified fair status shall be in writing and is appealable pursuant to sections 7023.3–7023.4 of this Chapter.

Note: Authority cited: Section 407, Food and Agricultural Code; Sections 19620, and 19622.1–19622.3, Business and Professions Code. Reference: Section 19620.15, Business and Professions Code.

§ 7021.2. Conditions of Eligibility.

In order to be eligible for state tax allocations, the conditions herein shall apply to a qualified fair.

- (a) Required Work Conditions. The following required work conditions shall be provided to non-management employees by the fair and its lessees without interruption:
 - (1) The employee receives a meal period of not less than 30 minutes for a work period of more than five hours per day, unless the work period per day of the employee is less than six hours and the meal period is waived by mutual consent of both the employer and the employee.
 - (2) The employee receives a second meal period of not less than 30 minutes for a work period of more than 10 hours per day, unless the work period per day of the employee is less than 12 hours, the second meal period is waived by mutual consent of both the employer and the employee, and the first meal period was not waived.

- (3) Any work in excess of eight hours in one workday, any work in excess of 40 hours in any one workweek, and the first eight hours worked on the seventh day of work in any one workweek is compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.
 - (4) Any work in excess of 12 hours in one day is compensated at the rate of no less than twice the regular rate of pay for an employee.
 - (5) Any work in excess of eight hours on any seventh day of a workweek is compensated at the rate of no less than twice the regular rate of pay for an employee.
- (b) These required work conditions shall not apply to full-time carnival ride operators employed by a carnival company. When determining whether a carnival company is a lessee pursuant to the definition of lessee in Section 7020.1(i) of these regulations, the number of fulltime carnival ride operators as defined in Section 7020.1(k) shall be deducted from the total number of fulltime employees when determining if the total number of employees meets the over fifty employee threshold.
- (c) Leases. Board contracting policy and procedures must state that all lessees are required to provide to non-management employees the required work conditions and that leases shall include the following contract provisions:
- (1) “[Lessee] shall provide to all non-management employees the working conditions outlined in “[Required Working Conditions Policy],” attached as Exhibit [X]. ”
 - (2) “Upon request, Lessee shall make available to the [Qualified Fair] documents that confirm its compliance with the working conditions outlined in Exhibit [X], which includes but is not limited to, payroll and time keeping records and notice to the non-management employees of these working conditions.”
 - (3) “Lessee shall notify [Qualified Fair] within 10 business days of receiving notice of any grievance made by a non-management employee based on the working conditions outlined in Exhibit [X].”

If a lease already exists prior to the fair becoming a qualified fair, the existing lease must be amended to include the items 1-3 in Section 7021.2(a) before the fair can become a qualified fair. The amendment must be signed by both parties.

Note: Authority cited: Section 407, Food and Agricultural Code; Sections 19620, and 19622.1–19622.3, Business and Professions Code. Reference: Section 19620.15, Business and Professions Code.

§ 7022. AB 1499 Allocations.

AB 1499 allocations are awarded within the discretion of the Department, but in accordance with the standards set forth in this chapter and subject to the amount apportioned by the legislature to the Department.

- (a) AB 1499 allocation shall only be granted to qualified fairs for general operational support or for the following project categories:
- (1) Capital outlay involving public health and safety
 - (2) Projects required by physical changes to the fair site

- (3) Major and deferred maintenance,
 - (4) Projects necessary due to any emergency,
 - (5) Projects required to protect the fair property or installation, such as fencing and flood protection,
 - (6) Acquisition or improvement of any property or facility that will serve to enhance the operation of the fair
- (b) Should the Department determine that AB 1499 allocations will be granted to qualified fairs for projects, the Department shall issue grant guidelines, including information on the request for project proposals, submission deadlines, timing of the AB 1499 allocations, and other requirements.
- (c) For the purpose of identifying and prioritizing projects to receive an AB 1499 allocation, the Department may include the following in its grant guidelines:
- (1) Release an annual list identifying project categories that the Department will prioritize in determining AB 1499 allocations.
 - (2) Apportion the amount of AB 1499 allocations available to qualified fairs for each project category relative to the Department's priorities.
 - (3) Set timelines for qualified fairs to provide input regarding project needs prior to the release of a request for project proposals.
- (d) AB 1499 allocations may be allocated to qualified fairs for general operational support. It is the intent of the Legislature that AB 1499 allocations be granted to those qualified fairs whose sources of revenue may be limited for the purposes specified in this section.
- (e) Qualified fairs receiving an AB 1499 allocation shall provide the required work conditions and require lessees to provide the required work conditions through the duration of the grant agreement for a project or through the fiscal year in which it receives the operational support.
- (f) Expenses incurred such as contributions to insurance pools and property pool, or other shared funds. Allocations for these purposes shall only be used to offset qualified fair portions of the expense.
- (g) A denial of a fair's application for an AB 1499 allocation shall be in writing and is appealable pursuant to sections 7023.3–7023.4 of this Chapter.

Note: Authority cited: Section 407, Food and Agricultural Code; Sections 19620, and 19622.1–19622.3, Business and Professions Code. Reference: Sections 19620.15 and 19620.2, Business and Professions Code.

§ 7023.1. Termination By Qualified Fair.

- (a) To terminate its status as a qualified fair, the fair must submit approved Board meeting minutes that memorialize the decision.
- (b) However, the Board shall continue to provide the required work conditions until:
 - (1) the Department confirms the termination in writing, and until the date designated by the Department in the AB 1499 allocation grant agreement;

(2) or until a date otherwise designated in writing by the Department.

Note: Authority cited: Section 407, Food and Agricultural Code; Sections 19620, and 19622.1–19622.3, Business and Professions Code. Reference: Section 19620.15, Business and Professions Code.

§ 7023.2. Enforcement.

(a) The Department may perform regular audits of qualified fairs receiving AB 1499 allocations to confirm compliance with the use of funds pursuant to the grant agreement, including provision of required work conditions to non-management employees and the contract requirements for leases.

(b) A qualified fair receiving an AB 1499 allocation shall make available all documents necessary to conduct an audit. As part of an audit, the qualified fair shall request documents from a lessee pursuant to the lease provision.

(c) A qualified fair shall inform the Department in writing within 15 business days of receiving notice of either of the following:

(1) Any grievance based on required working conditions filed by a non-management employee of the qualified fair; or

(2) Failure of a lessee to provide required work conditions to a non-management employee.

(d) A finding of a violation of the required work conditions is determined by:

(1) A final administrative ruling issued by a relevant labor or personnel authority or an audit finding by the Department that determines a qualified fair did not provide the required work conditions or require its lessees to provide the required work conditions.

(2) A final ruling issued by a relevant labor or personnel authority or the lessee's grievance process that determines a lessee did not provide its non-management employees the required work conditions.

(e) Upon finding a violation of the required work conditions, the following procedure shall apply:

(1) The Department shall provide written notice of the violation to the fair and that it intends to terminate its status as a qualified fair.

(2) For the first and second verified violation within the previous three State fiscal years: The fair shall respond to the Department within 30 days of the notice. The Department may not terminate a qualified fair status if written confirmation of resolution is provided by the fair before the deadline as indicated in the written notice and the resolution is accepted by the Department. If the fair either fails to respond or refuses to correct the violation, the Department shall terminate the qualified fair status until the fair applies to be a qualified fair and has proven compliance for the duration of a State fiscal year.

(3) For the third verified violation within the previous three State fiscal years: The Department shall terminate the fair's qualified fair status for the next State fiscal year.

If the fair either fails to respond or refuses to correct the violation, the Department shall terminate the qualified fair status for the next two State fiscal years, and until the fair applies to be a qualified fair and has proven compliance for the duration of a State fiscal year.

Note: Authority cited: Section 407, Food and Agricultural Code; Sections 19620, 19620.1, 19622, and 19622.1–19622.3, Business and Professions Code. Reference: Section 19620.15, Business and Professions Code.

§ 7023.3. Appeals Filing Deadlines and Procedures.

(a) A fair may contest a notice of a denial of qualified fair status under section 7021.1, a denial of an AB 1499 allocation under section 7022, or termination of qualified fair status for any violation specified in section 7023.2 and may request an informal hearing by written correspondence to the California Department of Food and Agriculture, Legal Office of Hearings and Appeals, 1220 “N” Street, Suite 315, Sacramento, California 95814.

(b) The fair must submit a request for an informal hearing to the Department's Legal Office of Hearings and Appeals in writing, within 30 days from the date of the notice of the denial or termination.

(c) Any requests for an informal hearing shall include a copy of the notice of denial or termination and may state the grounds for the appeal.

(d) Any objection to the Department's selection of the informal hearing procedure shall be made in writing to the Legal Office of Hearings and Appeals and shall be resolved by the Hearing Officer prior to the hearing pursuant to Government Code section 11445.30.

(e) Failure to present submit a timely request for a hearing constitutes a waiver of the fair's right to contest the notice of a denial of termination. Untimely requests for a hearing shall be denied by the Department.

Note: Authority cited: Section 407, Food and Agricultural Code; Sections 19620, 19622, and 19622.1–19622.3, Business and Professions Code; Sections 19620, and Section 11400.20, Government Code. Reference: Article 10 (commencing with section 11445.10), Chapter 4.5 and Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2, Government Code.

§ 7023.4. Informal Hearing Schedule and Notification.

(a) The Department shall schedule an informal hearing within 30 days from the receipt of the request from the fair.

(b) At least 10 business days prior to the informal hearing, The Department shall provide a notice of the informal hearing to the fair containing all of the following information:

- (1) Date, location, and time of the informal hearing;
- (2) Departmental contact information including applicable telephone and facsimile numbers; and
- (3) Subject matter of the notice of denial or termination.

(c) The notice of an informal hearing may be sent to the address of the person charged as provided by any license, registration, or certificate issued by the Department.

(d) A notice that is sent pursuant to subsection (c) shall be considered effective even if delivery is refused or if the notice is not accepted at that address.

(e) Any documents to be considered by the hearing officer shall be received at least three business days prior to the scheduled informal hearing at the Legal Office of Hearings and Appeals. Any documents not timely submitted may be considered at the discretion of the Hearing Officer.

Note: Authority cited: Section 407, Food and Agricultural Code; Sections 19620, 19622, and 19622.1–19622.3, Business and Professions Code; and Section 11400.20, Government Code. Reference: Article 10 (commencing with section 11445.10), Chapter 4.5 and Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2, Government Code.

§ 7023.5. Conduct of Informal Hearings.

(a) The informal hearing shall be presided over and conducted by a hearing officer designated by the Department Secretary.

(b) The standard of proof to be applied by the hearing officer shall be preponderance of the evidence unless statutes or regulations applicable to the determination provide a higher standard.

(c) Hearings may be conducted by telephone at the discretion of the hearing officer subject to Government Code section 11440.30 A teleconference line shall be made available at every hearing.

(d) Hearings shall be recorded by the Department. A transcript of the recording or an electronic copy of the recording shall be provided to any interested party upon written request.

(e) The decision of the hearing officer shall be in writing, issued within 30 days after the conclusion of the hearing and shall be effective immediately.

(f) The fair may appeal the hearing officer's decision and order by filing a petition for a writ of administrative mandamus in accordance with the Code of Civil Procedure section 1094.5.

Note: Authority cited: Section 407, Food and Agricultural Code; Sections 19620, 19622, and 19622.1–19622.3, Business and Professions Code; and Section 11400.20, Government Code. Reference: Article 10 (commencing with section 11445.10), Chapter 4.5 and Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2, Government Code.

§ 7023.6. Formal Hearings.

Formal hearings shall be scheduled and conducted by the Department consistent with the provisions of Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2 of the Government Code, and any applicable regulations enacted pursuant to those provisions.

Note: Authority cited: Section 407, Food and Agricultural Code; Sections 19620, 19622, and 19622.1–19622.3, Business and Professions Code; and Section 11400.20, Government Code. Reference: Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2, Government Code.