

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE**  
**Allocation Procedures**  
**Revenue Generated from Sales and Use Tax at State-Designated Fairs**  
**Proposed Adoption of CCR**  
**Title 3, Division 7, Chapter 3, Article 1, §§ 7020.1–7023.6**

November 19, 2019

**INITIAL STATEMENT OF REASONS**

**BACKGROUND**

“State-designated fairs,” also referred to as the California Network of Fairs (Network), consists of 52 district agricultural associations (DAAs), 22 county fairs, two citrus fruit fairs, and the California Exposition and State Fair (Cal Expo). DAAs are state fairgrounds, each governed by a nine-member Board of Directors appointed by the Governor. County fairgrounds are operated by county government or non-profit organizations, and citrus fruit fairs are non-profit organizations. Cal Expo is a state agency. In general, the state-designated fairs in the Network hold annual fairs, serve as a venue for year-round exhibits and expositions that highlight products from agriculture and other industries, and operate cultural and recreational facilities for the public.

The California Department of Food and Agriculture (Department) is charged with the fiscal and administrative oversight of the Network and the Fair and Exposition fund, pursuant to section 19620 of the Business and Professions Code. Responsibilities include ensuring the integrity and solvency of the Network and fund, and administering allocations from the fund to the Network. Activities to carry out this oversight include: Establishing criteria for state allocations, including fiscal and administrative standards; providing an administrative framework for fairs while allowing for maximum autonomy and local decision-making authority and conducting fiscal and compliance audits.

District agricultural associations, county fairs, citrus fruit fairs, and the Cal Expo are required to meet all fiscal or administrative standards prescribed by the Department, and the Department may withhold and restrict allocations if these standards are not met, pursuant to sections 19622–19622.3 of the Business and Professions Code.

As of July of 2011, the fairs in the Network lost significant funding for operations due to the state’s fiscal problems and are required to be financially self-sustaining. Fairgrounds have continued to deteriorate and create public safety issues. This is especially troubling as fairgrounds are not only open to the public for the fair and events, but are frequently utilized by the California Office of Emergency Services (Cal OES), the California Department of Forestry and Fire Protection (CAL FIRE), and others as an evacuation center and public safety command center during catastrophic wildfires and other emergencies.

## **PROBLEM STATEMENT**

The Network generates huge sales tax revenue for California. Effective 2018, Section 19620.15 was added to the Business and Professions Code<sup>1</sup> to require that an amount equal to a small percentage (3/4 of 1%) of the total amount of gross receipts on fairgrounds be appropriated to the Department's Fair and Exposition fund for allocation to fairs in the Network ("Funding").

Funding may be distributed in accordance with Section 19620.2, for fair projects: involving public health and safety; involving major and deferred maintenance; necessary due to any emergency; required by physical changes to the fair site; and required to protect the fair property or installation, such as fencing and flood protection. Funding may also be used for the acquisition or improvement of any property or facility that will serve to enhance the operation of the fair. Finally, a portion of the funds may be allocated for general operational support.

Any DAA, county fair, citrus fruit fair or the Cal Expo may be eligible to receive Funding so long as certain work conditions are provided to the fair's non-management employees. In addition, non-management employees of a lessee at the fairgrounds must also be provided with the work conditions. These work conditions are enumerated in Section 19620.15 and include meal periods and overtime pay. Federal and state law ordinarily exempt fairs from providing these work conditions to their non-civil service employees who are temporarily hired for short-term needs, such as the annual fair, large interim events or when the fairgrounds are activated during emergency response.

If a fair chooses to become eligible for Funding, the fair must demonstrate to the Department that they are providing the work conditions greater than what is required by law, and requiring their lessees do the same through contracts. Section 19620.15 does not mandate a process by which the Department ensures fairs and their lessees are complying with the required work conditions, and therefore eligible to receive Funding. Further, Section 19620.15 does not specify what constitutes a lease.

The proposed regulations are necessary to implement Section 19620.15, as they would apply generally to the Network of state, county and nonprofit fairs, and make specific the processes by which fairs may elect to become eligible for Funding, and how the Department ensures the fairs and their lessees' compliance with the required work conditions. In addition, the proposed regulations will establish the Department's appeal process for fairs which are denied Funding, pursuant to section 19622 of the Business and Professions Code. The proposed regulations are not exempt from the Administrative Procedures Act process.

## **LEGISLATIVE AND REGULATORY HISTORY**

Assembly Bill No. 1499, an act to add Section 19620.15 to the Business and Professions Code, was approved by the Governor October 14, 2017 and became effective January 1, 2018.

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<sup>1</sup> All section references are to the Business and Professions Code unless otherwise indicated.

Assembly Bill No. 635, an act to amend Section 19620.15 in the Business and Professions Code, was approved by the Governor September 27, 2019 and became effective immediately. Section 19620.15 was amended to exempt from the required work conditions those employees covered by a valid collective bargaining agreement if the agreement expressly provides for certain work conditions of an employee.

The proposed regulations will be the first to specify the implementation of Section 19620.15.

### **BENEFITS OF THE REGULATIONS**

The proposed regulations will make the allocation process uniform and administratively efficient by specifying how a fair may evidence its eligibility to receive Funding and how the Department may ensure a fair and its lessees are in compliance with the required work conditions. In addition, the regulations also specify the appeal procedures for fairs that have been denied the allocation of Funding. By specifying the procedures, Funding may be efficiently allocated so that the Network's fairgrounds may be improved for operational, health and safety, and emergency purposes.

### **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

State-designated fairs vary by fair size, region, and number of employees. The economic impact to a particular fair and community would be based upon these factors. Remotely located fairs tend to be the center of economic activity in their respective locality, especially during fair season.

The economic impacts to fairs, especially in remote regions with limited resources, would also provide benefits in the form of stronger infrastructure necessary for health and safety and emergency response.

Sections 19620.15 and 19620.2 provide that Funding may be used for public health and safety, major and deferred maintenance fairs may need due to any emergency, to address fair needs required by physical changes to the fair site, or due to a fair needing to protect its property or installations; finally, the funds can also be used for the acquisition or improvement of any property or facility that will serve to enhance the operation of the fair.

Most of the fairground facilities currently in use were built in the 1930s and 1940s utilizing materials that currently make updating the existing infrastructure technically challenging and onerous. In 2019, CDFA contracted with the California Fairs Services Authority, a joint powers authority, to perform a deferred maintenance survey of all active fairs. Sixty-five fairs participated in the survey and their cursory input quantified the more immediate deferred maintenance needs at the fairgrounds at an estimated cost of \$138 million dollars. Beyond the difficulties that antiquated facilities pose, in some instances, deterioration levels are such that they have been deemed fire, life and safety hazards by the State Fire Marshall or local fire protection agencies. In order to guarantee the physical safety of the public and fair staff, the more seriously affected fairs have had to limit use of certain buildings/areas of the fairground, which in turn limits their ability to generate revenue, and more importantly, serve the community.

Generally, smaller fairs have less flexibility to address infrastructure needs; these also tend to be the fairs located in remote areas of the state where the population is the most vulnerable in the event of catastrophic events/natural disasters.

The allocation of Funding pursuant to Section 19620.15 will provide a minor economic lift to the local economies that rely heavily on the annual fair event for an economic boost for the area. Communities with qualified fairs that receive Funding will, in addition to the increases in tourism revenue they experience during fair season (due to increased hotel occupancy and sales at restaurants, boutiques, and other small businesses), be able to realize benefits resulting from additional economic activity associated with construction and ancillary activities at the fair.

The proposed regulations will allow the Department to efficiently issue allocations to fairs that have very limited resources to devote to repairs, ongoing maintenance or new activities. The implementation of the proposed regulations will also facilitate the establishment of higher compensation rates for those eligible pursuant to Section 19620.15 which is very likely to result in a modest increase to local spending.

The Department believes that the proposed regulations are economic-efficient, and will therefore, tend to maximize a net positive impact on fair attendees, the communities where the fairs are located, and the public in general.

## **SPECIFIC PURPOSE OF EACH SECTION**

**Section 7020.1 – Definitions** specifies the terms used throughout the proposed regulations.

**Section 7021.2 – Qualified Fair Application Requirements** delineates the process by which a fair may apply to be deemed “qualified” for funding, including the required documentation submissions needed to the Department at the time of the application.

**Section 7021.2 – Conditions of Eligibility** specifies the conditions that must be met and maintained by a fair to become and remain eligible to receive funding.

**Section 7022 – Allocations and Use of Funds** identifies the allowable use of funds for projects and general operational support, enumerates the qualifying fair projects, and sets parameters for the Department in identifying and prioritizing projects.

**Section 7023.1 – Termination by Qualified Fair** defines the procedure by which a fair may terminate their eligibility to receive funding.

**Section 7023.2 – Compliance** specifies the procedures by which the Department ensures the fair and its lessees are in compliance with the required work conditions and by which the fair is to remedy any violations.

**Section 7023.3 – Appeals, Filing Deadlines, and Procedures** provides the procedure to appeal the Department’s denial of a fair’s application for qualified fair status or funding or termination of a fair’s qualified status.

**Section 7023.4 – Informal Hearing Schedule and Notification** provides the procedure to appeal the Department’s denial of a fair’s application for qualified fair status or funding or termination of a fair’s qualified status.

**Section 7023.5 – Conduct of Informal Hearings** provides the mechanics for Informal Hearings, including the standard of proof to be applied and the timeframe for the issuance of decisions and for decisions to become operative.

### **ALTERNATIVES TO THE REGULATIONS CONSIDERED BY THE AGENCY AND THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES**

As part of the process to develop the regulation materials, the Department conducted three workshops for the fair industry and the public in general to review the proposed regulations in draft form and provide input for modifications. The workshops were conducted on June 12, July 11 and August 28 in Sacramento. Participants were able to attend in person or to interact live via webinar. Participation was robust with an average of 47 participants per workshop.

Additionally, the Department will accept statements or arguments with respect to alternatives to the proposed regulations during both the written comment period and at the hearing that will be held as part of the regulatory process. The hearing will be held January 15, 2020 at 9:30 a.m. in the Auditorium of the California Department of Food and Agriculture, located at 1220 N Street, Sacramento, CA 95814; comments will be received beginning November 29, 2019 and ending at 11:59 p.m. on January 15, 2020.

### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY IMPACT ON SMALL BUSINESS**

Section 19620.15 specifies employee overtime and meal period requirements for a business operating under a lease at the real property of a state-designated fair. The vast majority of the businesses that conduct activities at the fairs are very small and enter agreements with the fairs for use of space on the fairgrounds for a few days; that kind of arrangement is exempted under the regulation. Based on the short-term nature of these agreements the Department does not anticipate a measurable impact on small businesses or the need to identify alternatives to mitigate impact.

### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS**

The proposed regulations do not add to or change the required work conditions applicable to businesses operating under a lease on the real property of a fair.

### **DUPLICATION OR CONFLICT WITH REGULATIONS**

The proposed regulations do not duplicate or conflict with other regulations or federal regulations.

## REPORTS OR DOCUMENTS RELIED UPON

California Assembly and Senate Bill Analysis, April 26, 2017–September 13, 2017  
AB-1499 Horse racing: State-designated fairs: Allocation of revenues: Gross receipts for sales and use tax

[https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201720180AB1499](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB1499)

California Assembly and Senate Bill Analysis, March 27, 2019 – August 29, 2019  
AB-635 Horse racing: State-designated fairs: Employees

[https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201920200AB635](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB635)

California Department of Tax and Fee Administration – Tax Guide for Reporting Requirements for Sales on State-Designated Fairgrounds

<https://www.cdtfa.ca.gov/industry/state-fairgrounds.htm>

Internal Revenue Service’s Monthly Measurement Method:

<https://www.irs.gov/affordable-care-act/employers/identifying-full-time-employees>

US Small Business Administration Size Standards Tool

<https://www.sba.gov/size-standards/>