

**California Department of Food and Agriculture
NOTICE OF PROPOSED RULEMAKING**

**TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE
Division 7. Fairs and Expositions
Proposed Regulations to Adopt
Chapter 3. Revenue Generated from Sales and Use Tax at State-Designated Fairs
Article 1. Allocation Procedures**

Notice is hereby given that the California Department of Food and Agriculture (Department) proposes to adopt regulations in the California Code of Regulations (CCR) after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

A public hearing about this proposal 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. The hearing will allow any interested person, or his or her duly authorized representative, to submit verbal or written statements or arguments relevant to the action proposed.

Following the public hearing, the Department may adopt the proposed regulations substantially as described below or may modify them if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 calendar days, prior to its adoption, from this notice's designated contact person. The modified proposal will also be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed action to this notice's designated contact persons indicated below, by mail or e-mail, with "Fair Allocation Rulemaking" in the subject line, beginning November 29, 2019 and ending at 11:59 p.m. on January 15, 2020. The written comment period closes at 11:59 p.m. on January 15, 2020. The Department will only consider comments received by 11:59 p.m. on January 15, 2020. Comments may be submitted by mail or e-mail to:

John Quiroz, Fairs and Expositions Branch Chief
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
john.quiroz@cdfa.ca.gov
Phone: (916) 900-5025

Alternative contact person to submit comments by mail or e-mail:

Kathy Diaz-Cretu
Special Assistant – Marketing Services Division
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AUTHORITY AND REFERENCE

The Department is charged with the fiscal and administrative oversight of the Network of California Fairs and allocations from the Fair and Exposition fund, including establishing the criteria for state allocations, pursuant to section 19620 of the Business and Professions Code¹. The Department is granted authority to set administrative and fiscal standards for the Network of California Fairs by sections 19622–19622.3. Section 19620.15, which the proposed regulations would implement, requires that a certain portion of the sales tax revenue generated on the real property of fairs be continuously appropriated to the Fair and Exposition Fund to be allocated to fairs, subject to certain conditions, for capital outlay projects and general operational support in accordance with section 19620.2.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Network of California Fairs (Network) consists of 52 District Agricultural Associations, which are state entities; 22 county fairs which are county government or not-for-profit organizations; two Citrus Fruit Fairs which are not-for-profit organizations; and the California Exposition and State Fair (Cal Expo), which is a state agency. These entities make up the 77 active fairs in the Network and are referred to as “state-designated” fairs. Each fair plays a vital cultural and economic role in its community. Fairs generate millions of dollars in state and local revenues by providing agricultural education through their annual fair and other events and operating cultural and recreational venues for use by the public. They also serve as emergency response facilities.

The Department is charged with the fiscal and administrative oversight of the Network and the Fair and Exposition fund, pursuant to section 19620. Responsibilities include ensuring the integrity and solvency of the Network and the 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.

Section 19620.15, effective July 1, 2018, establishes that, beginning 2018-2019 FY, the gross receipts for sales and use tax purposes would be segregated when the sale occurs on the real property of a state-designated fair. Every year and upon enactment of the annual Budget Act, three-quarters of 1 percent of the total amount of those gross receipts (“Funding”) will be transferred by the Controller to the Department’s Fair and Exposition Fund for allocations to the Network.

¹ All section references are to the Business and Professions Code unless otherwise indicated.

Section 19620.2 provides that funds may be allocated from the Fair and Exposition fund to the Network for:

- projects involving any of the following: public health and safety, major and deferred maintenance, fair needs due to any emergency, fair needs required by physical changes to the fair site, the need for a fair to protect the fair property or installation (such as fencing and flood protection);
- the acquisition or improvement of any property or facility that will serve to enhance the operation of the fair; and
- a portion of the funds may be allocated for general operational support.

To be eligible to receive Funding, Section 19620.15, requires that fairs and their lessees shall provide the following work conditions to their non-management staff:

- 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.
- 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.
- 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.
- 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.
- 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.

Fairs are generally exempt under federal and state labor law from providing to certain temporary non-management employees the work conditions required to receive Funding.

Section 19620.15 exempts from these required work conditions full-time carnival ride operators employed by a traveling carnival. In addition, fairs and their lessees are exempt from providing these required work conditions if non-management employees are covered by a valid collective bargaining agreement if it expressly provides for the following:

- Wages, hours of work, and working conditions of the employees.
- Meal periods for the employees, including final and binding arbitration of disputes concerning application of its meal period provisions.
- Premium wage rates for all overtime hours worked, and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage.

The Department has determined that the adoption of the proposed regulations is necessary because:

1. Providing the work conditions required to receive Funding is voluntary. For those fairs that do elect to qualify for Funding, Section 19620.15 is silent on how fairs may apply.
2. Section 19620.15 is silent on how fairs are to require their lessees to provide the work conditions required to receive Funding.
3. Section 19620.15 is silent on how the Department is to ensure the fairs and their lessees are compliant with the required work conditions.
4. Section 19620.15 is silent on remedial procedures upon a fair's or its lessee's failure to provide the required work conditions.
5. Section 19622 mandates that the Department shall establish an appeal process for fairs regarding funds that are withheld or restricted.

The proposed regulations would allow the Department to implement Section 19620.15 in a uniform and efficient manner, because they make specific the procedures by which fairs may apply to become eligible for Funding and how the Department is to ensure compliance with work conditions by the fairs and their lessees.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The objective of the proposed regulations is to specify the procedures for fairs to qualify, apply, and ensure eligibility for Funding. They will also specify the procedures for the Department to ensure compliance with the Funding requirements. The priorities of the Department are to distribute allocations to qualified fairs for deferred maintenance and public health and safety projects as well as for operational support, as authorized by Sections 19620.15 and 19620.2.

As of July 2011, the Network lost significant funding for operations due to the state's fiscal problems and fairs were required to become financially self-sustaining. Fairgrounds have continued to deteriorate and create public safety issues. Most fairgrounds' facilities were built in the 1930s and 1940s utilizing materials that make maintaining and updating the infrastructure expensive and technically challenging. This limits the fairs' ability to derive the greatest use and benefit from its property. Further,

the much-needed maintenance is especially troubling as fairgrounds are not only open to the public as recreational and cultural venues, but frequently utilized by Cal OES, CAL FIRE, and others as an evacuation center and public safety command center during emergencies.

The proposed regulations establish clear and uniform procedures by which the Department and fairs meet the requirements of Section 19620.15, creating administrative efficiency. When receiving Funding, a fair will need to demonstrate it is providing its non-management employees with the required work conditions and requiring its lessees to do the same. The Department, charged with administering the Funding and the oversight of the Fair and Exposition fund, may also ensure the requirements are met. The proposed regulations will facilitate the appropriation of Funding from the Department to the Network, so that fairgrounds may receive much needed deferred maintenance and continue to serve their communities as safe and accessible recreational and cultural venues and emergency response centers.

California fairs, especially in remote regions with limited resources, also provide benefits to their local communities in the form of economic activity, agricultural education to the public and an affordable annual community event that highlights agriculture. All these benefits are discussed below in the “Results of Economic Impact Assessment/Analysis” section of this document and further discussed in detail in the Initial Statement of Reasons document.

The proposed regulations provide a mechanism for the Department to address contemporary and future needs through projects involving major and deferred maintenance; fair projects necessary due to an emergency; projects that are required by physical changes to the fair site; projects that are required to protect the fair property or installation, as well as for the acquisition or improvement of any property or facility that will serve to enhance the operation of the fair.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

The Department has determined that the proposed regulations are consistent and compatible with existing State regulations. The Department is the only state agency charged with the oversight of the Network and Fair and Exposition fund. There are no regulations governing the distribution of allocations from the Fair and Exposition fund to the Network or regulations pertaining to Section 19620.15.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department makes the following initial determinations:

- 1) Mandate on local agencies and school districts: None
- 2) Fiscal impact on public agencies, including costs/savings to state agencies or costs/savings in federal funding to the state:

The proposed regulations will increase administrative cost to the Department and to those fairs that chose to qualify for Funding. Department staff time and resources will be needed to process applications for Funding, administer grants for those projects authorized to receive Funding, conduct compliance audits, and to implement remedial action when a fair or its lessee fails to comply with the work conditions required by Section 19620.15. In addition, fairs may also see additional administrative cost in applying for Funding, managing grants for projects, and responding to the Department during an audit or remedial action. However, administrative costs are unavoidable as they are necessary to ensure the Department and the Network are meeting the requirements established by Section 19620.15. The Department estimates its annual costs will increase by \$1,098,000 during the first three fiscal years (2020-21, 2021-22, and 2022-23) and that the ongoing cost will be \$776,000 thereafter.

For fairs that elect to become eligible to receive Funding, the work conditions required by Section 19620.15 for Funding will result in additional costs of doing business. Since it is within a fair's discretion whether it elects to become eligible for Funding, a fair would need to balance the cost of providing the required work conditions and the benefits of receiving allocations for much needed deferred maintenance and improvements as well as general operational support.

- 3) Cost to any local agency or school district which must be reimbursed in accordance Government Code sections 17500 through 17630: None.
- 4) Other nondiscretionary costs or savings imposed on local agencies: None
- 5) Cost or savings in federal funding to the state: None
- 6) Cost impacts on a representative private person or business:

As established in Section 19620.15, to qualify for Funding, a fair must require their lessees provide their non-management employees with certain work conditions, unless their non-management employees meet the express exemptions. Some lessees may already be required by federal and state law to provide the work conditions in Section 19620.15, such as meal breaks and premium pay for overtime, and their employees would not be affected by a fair's election to receive Funding.

Providing the work conditions required by Section 19620.15 may increase the cost of doing business for those private individuals or businesses that fall within the regulations' definition of "lessee" and which do not already provide the required work conditions to non-management employees. In addition, if a fair receives Funding, their lessees may see additional administrative cost in responding to the Department during an audit or during remedial action.

The cost will vary on a case-by-case basis and therefore, it is infeasible to quantify at this time. The Department anticipates that the impact of the regulations will be localized and minor and will, therefore, not have a significant adverse economic impact on California businesses, including the ability of California businesses to compete with businesses in other states.

7) Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Department initially concludes that the proposed regulations, by facilitating Funding to the Network in accordance with statutory requirements:

- (1) is unlikely to eliminate jobs in California
- (2) is unlikely to create a measurable number of new jobs in California
- (3) is unlikely to eliminate existing businesses in California
- (4) is unlikely to create a measurable number of new businesses in California
- (5) is unlikely to positively affect the expansion of businesses in California in a measurable way
- (6) is likely to boost local economies through: increased local demand for construction services; enhanced fairgrounds facilities to host exhibitions, expositions, and cultural and recreational events; and increased local spending power due to enhanced salary and work conditions for non-management employees.
- (7) is likely to support and improve the delivery of public services statewide, particularly during emergencies, through safety and accessibility improvements to fairground facilities; and
- (8) is likely to benefit the public good and disadvantaged populations at the local and state-level through increased improvements to the fairgrounds' cultural and recreational venues.

ECONOMIC IMPACT OF ADDED COSTS TO FAIRS AND THEIR LESSEES

Section 19620.15 requires certain work conditions be provided to non-management employees of a fair and its lessees for a fair to be eligible for Funding. The Department anticipates that as a result of this rulemaking to implement the requirements of Section 19620.15, there may be added costs to fairs that choose to apply for Funding, as well as the fairs' lessees. However, given that the decision to become eligible is voluntary, it can be expected that fairs will perform cost-benefit analyses to determine whether the additional cost of providing the work conditions is outweighed by the benefits of receiving allocations.

ECONOMIC IMPACT OF THE REGULATIONS ON THE DEPARTMENT'S ABILITY TO ALLOCATE FUNDING FOR THE DELIVERY OF PUBLIC HEALTH AND SAFETY SERVICES

The proposed regulations themselves are not anticipated to have an economic impact, as the Funding and requirements for eligibility are established by legislation codified at Section 19620.15. The proposed regulations establish procedures which will facilitate the allocations from the Fair and Exposition fund to the Network in accordance with Section 19620.15 requirements.

The California Department of Tax and Fee Administration (CDTFA) is charged with the responsibility of estimating the gross receipts for sales generated at state-designated fairs. According to the CDTFA's initial estimate, gross receipts for state-designated fairs for FY 2019-20 will be \$2,484,961,513. Depending on the State of California's budget process, this means that in November 2019 a total of \$18,637,211.35 may be available for distribution to eligible state-designated fairs².

Amount of Funding appropriated to the Fair and Exposition fund for allocation to the Network will depend on the aggregated sales and use tax generated statewide from sales on the real property of state-designated fairs, and the actual amount made available on the state's budget to the Department for this purpose.

Amount and availability of Funding for allocation to individual fairs will depend on the number of fairs eligible to receive Funding, and the cost, project, and level of urgency of eligible fairs' needs.

The urgent needs of the Network are deferred maintenance projects as most fairgrounds' facilities were built in the 1930s and 1940s utilizing materials that currently make maintaining and updating the existing infrastructure technically challenging and onerous. The highest deferred maintenance priority of the Department and Network is to provide safe and accessible facilities for use by the general public during annual fairs, events, and in response to emergencies.

In 2019, CDFA contracted with the California Fairs Services Authority, a joint powers authority, to perform a deferred maintenance survey of all active fairs. The survey requested general information on priority needs. 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 maintenance challenges 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 has limited their ability to generate revenue through facility rentals and serve the community.

² This figure is an annualized calculation based on the CDTFA's statewide revenue estimate for the 3rd quarter of 2018; it assumes a 3.2% increase based on the CIP index for the LA area.

Funding will be distributed statewide among the fairs for a multitude of projects, The Department anticipates that the regulations will facilitate allocations to fairs regardless of their size or geographical location and will allow the Department to ensure compliance with the requirements of Sections 19620.15 and 19620.2.

SMALL BUSINESS DETERMINATION

The Department has determined that the proposed regulations will not affect or have a material economic impact on small business that typically operate on fairgrounds because they exclude business with less than 50 employees and require that tenancy be exclusive and continuous for a period of one year or longer. The majority of businesses that operate on fairgrounds consist of mobile vendors, such as food and beverage concessions and novelty retailers, as well as traveling carnivals that rent space for the duration of the annual fair or other short-term events. These small businesses will not be impacted by the work conditions required by Section 19620.15.

CONSIDERATION OF ALTERNATIVES

In accordance with subdivision (a)(13) of Government Code Section 11346.5, the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention to the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

While drafting the proposed regulations, the Department conducted three workshops for the Network to provide comment. The workshops were conducted on June 12, July 11 and August 28 in Sacramento. Participants attended in person or interacted 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 a hearing that will be held January 15, 2020 at 9:30 a.m. in the Auditorium of the California Department of Food and Agriculture.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

John Quiroz, Fairs and Expositions Branch Chief
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
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Phone: (916) 900-5025

Alternative contact person for these inquiries:

Kathy Diaz-Cretu
Special Assistant – Marketing Services Division
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Kathy.diaz@cdfa.ca.gov
916-900-5175

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above office address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the Initial Statement of Reasons, and all the information upon which this proposal is based.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which differ, but are sufficiently related to the originally proposed text, it will make the full text of the modified regulations, with the changes clearly indicated, available to the public for at least 15 days prior to the date on which the agency adopts the resulting regulations. Please send requests for copies of any modified regulations to the attention of John Quiroz or Kathy Diaz-Cretu at the address, email, or phone number provided in the “Contact Persons” section above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting those listed in the “Contact Persons” section above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Electronic copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the proposed text of the regulation, with modifications in underline and strikeout, will be posted at <https://www.cdfa.ca.gov/mkt/regulations.html> by the Division of Marketing Services.