




Assembly Bill 1499 Workshop #2

California Department of Food and Agriculture

July 11, 2019



Welcome


- ▶ Introduction of California Department of Food and Agriculture staff
 - ▶ Webinar and Phone Conferencing Information
 - ▶ Purpose / Overview of Workshop
- 



Regulation Development

Estimated Timeline


- ▶ Workshops – June 12 / July 11 / August (date to be determined)
- ▶ Submission of Regulatory Package to Office of Administrative Law (OAL) – September 2019
- ▶ 45 day public comment period; CDFA receives input
- ▶ Public input will dictate if another public comment period is needed
- ▶ Department of Finance will review due to fiscal appropriation
- ▶ OAL makes a final determination/regulations adopted
- ▶ Regulation Development process is anticipated to take 6-8 months once Package is submitted to OAL



Assembly Bill 1499 – Chapter 798


Synopsis


- ▶ $\frac{3}{4}$ of 1% of the total amount of gross receipts when the place of sale is on or within the real property of a state-designated fair or any real property of a state designated fair that is leased to another party.
- ▶ State designated fair as defined in Food and Ag Code
- ▶ Specific uses of the monies generated by AB1499 as defined in Business & Profession Code 19620.2
- ▶ Fairs must comply with specific working conditions for fair non-management employees, or non-management employees of a business (i.e., leasee) who leases land/property at the fairgrounds. **Note: this provision could change due to AB635.**
- ▶ Exception: Does not apply to full-time carnival operators employed by a traveling carnival



Assembly Bill 1499 – Chapter 798

Role of CA Department of Tax and Fee Administration (CDTFA)

- ▶ Tracks gross receipts of sales and use tax
 - ▶ Modified sales and use tax reporting forms
 - ▶ Created educational programs to inform vendors/business
 - ▶ Reports gross receipts to Department of Finance (Finance)
- 



Assembly Bill 1499 – Chapter 798

Budget Process - Timeline

- ▶ CDTFA - First year estimate (July 2019-June 2020) based upon third quarter of 2018 (July – September 2018)
- ▶ CDTFA reported \$18.637M – added to Governor's FY1920 Budget May Revise
- ▶ CDTFA to adjust first year estimate; report to Finance on November 1, 2019
- ▶ CDFA anticipates receiving final adjusted amount in late 2019
- ▶ Monies deposited into the Fairs & Expo Fund (Continuously Appropriated)



What has occurred since the last workshop?

- ▶ Subject to Legal Office Review.....
- ▶ Changed terminology:
 - ▶ Sales tax allocation is now “AB1499 allocation”
 - ▶ Enhanced working conditions is now “required working conditions”
- ▶ Using term carnival ride operator to mean a person who works for a carnival company
- ▶ Changed definition of leasee regarding number of employees
- ▶ Added the need to amend existing leases to contain required working conditions in order for the fair to qualify
- ▶ Had internal discussions that confirmed that the statutory authority to spend is broad; no need to specify in the regulations the types of operational expenses that can be covered.

What has occurred since the last workshop?


- ▶ CDFA Legal is researching items raised at the June 12th workshop, including:
 - ▶ Reviewing information submitted on revenue-generating agreements
 - ▶ Does the term 'carnival ride operator' refer to an individual (that operates a ride) or an entity/company?
 - ▶ If a 'no land' fair chooses not to pursue allocations under AB1499, but leases space from another fair that has land, does this prevent the fair that has land from receiving AB1499 monies?
 - ▶ Reviewing Section 7023.2 (Enforcement Section) regarding violations/audit findings
 - ▶ If a fair needs to terminate a lease due to non-compliance with AB1499 provisions, some leases stipulate the fair to reimburse the leasee for material and infrastructure improvements. Are there other options other than termination; can this issue be dealt with contractually?
 - ▶ Apprehension of leasee to share payroll information. Are there other options?

What has occurred since the last workshop?

- ▶ Assembly Bill 635 was amended June 25/July 8 and adds language to exempt employees covered by a bargaining agreement as well as an urgency clause. AB635 has not been signed into law. Specifically, AB635 states:
 - ▶ *For purposes of this subdivision, an employee shall not include an employee covered by a valid collective bargaining agreement if that agreement expressly provides for all of 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 July 11th version of the regulations has not been modified to reflect AB635.
 - ▶ CDFA may need to add the definition “valid collective bargaining agreement”.



What has occurred since the last workshop?

- ▶ Received additional input from stakeholders on various components of the regulation.
- 



Assembly Bill 1499 – Chapter 798

Non-management employees – Required working conditions

- ▶ To receive AB1499 funding, all Fairs must comply with specific required working conditions for fair non-management employees, or non-management employees of a business (i.e., leasee) who leases property at the fairground.
- ▶ For District Agricultural Associations (DAAs), state employees and 125-day employees must be provided the required working conditions.
- ▶ For DAAs, many of the non-management employees are represented by a Union. AB635, if passed, negates the need for the required working conditions to be negotiated with the Union.
- ▶ For non-DAAs, if AB635 is passed, the fair shall submit a copy of the valid collective bargaining agreement with specific terms outlined with the respective labor union or appropriate labor organization.
- ▶ Fair contracting policy and procedures must state that all leases are required to provide the required working conditions to eligible employees.
- ▶ Exception: Does not apply to full-time carnival operators employed by a traveling carnival.



Regulation Review

Provide clarity to AB1499

- ▶ Regulations require certain formatting so OAL will approve inclusion into the California Code of Regulations (CCR)
- ▶ Keep in mind the requirements/provisions of AB1499, as well as other applicable laws, etc.
- ▶ Reasonable, understandable, clear, fair.
- ▶ Review process – one section at a time. CDFA staff will provide brief overview; then provide opportunity for input, questions, comments, etc.
- ▶ July 11th version does not incorporate changes outlined in AB635.



Regulation Review

Current Thinking on Approach – AB1499

- ▶ AB1499 outlines specific usage of the monies (per Business and Professions Code 19620.2). Monies to be allocated via a grant or contract process.
 - ▶ Projects - Public health and safety; deferred maintenance; emergency related; physical changes to fair property; protect fair property; acquisition or improvement of property or fair facility to enhance the operations of the fair.
 - ▶ Portion of funds may be allocated to fairs for general operational support (for those fairs whose sources of revenue may be limited).
 - ▶ CDFA costs to implement provisions of AB1499.



Regulation Review

7020.1 Definitions

- ▶ Definitions provided so that all parties understand the terminology used throughout the Regulation
 - ▶ Are there any other terms that need defining?
 - ▶ Are the existing definitions clear?
 - ▶ May need to incorporate additional definitions related to AB635.



Regulation Review

7021.1 Qualified Fair Application Requirements

- ▶ ***This section has not been updated to reflect AB635 provisions.***
- ▶ With status as a qualified fair, a fair is then eligible to apply for allocation.
- ▶ Fair Board approval to provide required working conditions and to require leases provide conditions to all non-management employees. Develop a policy.
- ▶ For all state-designated fairs other than DAAs, if AB635 is passed, the fair shall submit a copy of the valid collective bargaining agreement with specific terms outlined with the respective labor union or appropriate labor organization
- ▶ CDFA must approve eligibility. Appeal process.



Regulation Review

7021.2 Conditions of Eligibility

- ▶ ***This section has not been updated to reflect AB635 provisions.***
- ▶ Required working conditions for non-management employees. Verbatim of what is identified in AB1499.
- ▶ For DAAs, state employees and 125-day employees must be provided the required working conditions; subject to union negotiations **(AB635 negates the need to negotiate with the unions)** .
- ▶ For non-DAAs, the fair should review all classifications that work on the fairgrounds to identify non-management staff and determine course of action to ensure those staff receive the required benefits. If AB635 is passed, will need to submit valid collective bargaining agreement of labor union or appropriate labor organizations acceptance of required working conditions.
- ▶ Does not apply to full-time carnival ride operators employed by a traveling carnival.
- ▶ Fair contracting policy and procedures – specific contract provisions.



Regulation Review

7022 AB1499 Allocations

- ▶ AB1499 outlines specific usage of the monies (per Business and Professions Code 19620.2):
- ▶ Projects and General Operational Support
- ▶ Projects: grant / contract guidelines; project categories; apportion monies as needed by the fair industry
- ▶ Operational Support: specific to those fairs with limited sources of revenue
- ▶ Fairs receiving an allocation of monies shall provide the required working conditions throughout the duration of the grant agreement/project funding.

Regulation Review

7023.1 Termination By Qualified Fair

- ▶ Fair must submit Board minutes memorializing the decision
- ▶ CDFA needs to approve/confirm termination in writing



Regulation Review

7023.2 Enforcement

- ▶ CDFA may perform regular audits to ensure compliance
- ▶ Fairs shall notify CDFA within 15 business days of receiving notice of a grievance or failure of a leasee to provide the Required working conditions
- ▶ Issuance of Finding of a Violation (i.e., grievance is upheld) – Final Ruling
- ▶ Upon issuance of a Finding of a Violation – what then?
 - ▶ CDFA provides written notice to the fair of the violation
 - ▶ Fair shall respond to CDFA (i.e., how will the Fair resolve the problem?)
 - ▶ Escalated enforcement



Regulation Review

7023.3 - 7023.4 – 7023.5 – 7023.6 Appeals; Informal Hearings; Formal Hearings

- ▶ Outlines Fair Appeal Process
- ▶ CDFA Legal will handle the (informal or formal) hearing process



Assembly Bill 1499 Workshop

- ▶ Questions?
- ▶ Next Steps
 - ▶ Fairs should be performing a cost analysis
 - ▶ CDFA will revise the regulations based upon input received; changes may required CDFA Legal review
 - ▶ CDFA will develop a version that incorporates AB635 provisions
- ▶ Additional input can be submitted to: john. Quiroz@cdfa.ca.gov or
 - ▶ jeff.cesca@cdfa.ca.gov
- ▶ Thank you!