

**TITLE 3. Food and Agriculture**  
**Division 7. Fairs and Expositions**  
**Chapter 3. Revenue Generated from Sales and Use Tax at State Designated Fairs**  
**Article 1. Allocation Procedures**  
**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 as fairs, means district agricultural associations, county fairs, citrus fruit fairs, and California Exposition and State Fair.
- (d) “Board” means the Board of Directors that governs a state designated fair.
- (e) “Funding” means the percentage of revenue 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 Funding.
- (g) “Required work conditions” means, notwithstanding federal and state exemptions other than those included in this chapter, conditions required to be provided to non-management employees of a fair or lessee in order to receive Funding.
- (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 person or entity that operates at the real property of a state designated fair pursuant to a lease.
- (j) “Lease” means an agreement under which a state designated fair grants a lessee the right of continuous and exclusive use and occupancy of the real property of the state designated fair for a term 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.
- (l) “Valid Collective Bargaining Agreement” means an effective written agreement between a labor union and an employer or if lapsed, in the process of renegotiation.

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) A state-designated fair must first apply to the Branch to become a qualified fair. With a status as a qualified fair, a state-designated fair is then eligible to apply for Funding.

(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 the required work conditions to all non-management employees and to require that lessees provide the 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.
- (3) Board adoption of contracting policy and procedures that state all lessees are required to provide to non-management employees the required work conditions and that leases shall include the required contract provisions.

(c) A fair is not eligible to apply for Funding until the Department has confirmed in writing that all the requirements for eligibility are met.

(d) Denial of a state-designated 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 Funding, the conditions herein shall apply to a qualified fair.

(a) Required Work Conditions. The fair and its lessees shall provide without interruption the following conditions to non-management employees:

- (1) 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) 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) Compensation at the rate of no less than one and one-half times the regular rate of pay for 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.
- (4) Compensation at the rate of no less than twice the regular rate of pay for any work in excess of 12 hours in one day.
- (5) Compensation at the rate of no less than twice the regular rate of pay for any work in excess of eight hours on any seventh day of a workweek.

(b) Exemptions. Required work conditions shall not apply to:

- (1) Full-time carnival ride operators.
- (2) Employees covered by a valid collective bargaining agreement if that agreement expressly provides for all of the following:
  - i. Wages, hours of work, and working conditions of the employees.
  - ii. Meal periods for the employees, including final and binding arbitration of disputes concerning application of its meal period provisions.
  - iii. 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.
- (3) Lessees that employ at the real property of the state designated fair less than fifty employees of a fulltime status as determined by the Internal Revenue Service's Monthly Measurement Method.

(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, or greater, outlined in “[Required Working Conditions Policy],” attached as Exhibit [X]. Failure to provide the working conditions shall be considered a material breach.”
- (2) “[Lessee] acknowledges that the [Qualified Fair] is a state institution under the oversight of the California Department of Food and Agriculture (CDFA) which conducts periodic audits for the purpose of ensuring compliance with state law and policy. Upon written request and with reasonable notice, Lessee shall make records available to the CDFA Audit Office for examination in order to confirm compliance with the required work conditions outlined in Exhibit [X]. Records may include but are not limited to, payroll and time keeping records of non-management employees.”
- (3) “Lessee shall notify [Qualified Fair] within 15 business days of receiving notice of any complaint made by a non-management employee or finding of a violation by a labor or personnel authority, based on the working conditions outlined in Exhibit [X].”
- (4) “Upon a finding that Lessee failed to comply with the required work conditions, Lessee shall provide [Qualified Fair] with written assurance within thirty (30) days of the finding that the breach will be cured before the [Qualified Fair] may terminate this lease as provided herein.”

The Board’s policy that outlines the required work conditions for all non-management employees of the fair and lessees shall be attached as an exhibit to all leases.

If a lease already exists, it shall be amended in writing and signed by both parties to include the required contract provisions.

(d) The Fair shall otherwise be in compliance with all labor laws and current with the Department’s audit reporting requirements.

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. Allocations and Use of Funds**

Funding is awarded within the discretion of the Department, but in accordance with the standards set forth in this chapter and subject to the amount apportioned to the Department. It is the intent of the Legislature that funds be used primarily for those fairs whose sources of revenue may be limited for purposes specified in this section.

- (a) Funding shall be provided to qualified fairs for general operational support or for the following project categories:
  - (1) Projects 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) When the Department determines that funds will be allocated to qualified fairs for projects, the Department shall issue the necessary guidelines, including information on the request for project proposals, submission deadlines, timing of the allocation, and other requirements. The Department may conduct public workshops to gather input from qualified fairs regarding use of the funds.
- (c) For the purpose of identifying and prioritizing projects to receive funding, the Department may include the following in its guidelines:
  - (1) Release an annual list identifying project categories that the Department will prioritize in determining fund recipients.
  - (2) Apportion the amount of funds 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) A portion of the funds may be provided to qualified fairs for general operational support.

- (e) Qualified fairs receiving Funding shall provide the required work conditions and require lessees to provide the required work conditions through the duration of the project or through the fiscal year for which it receives the operational support.
- (f) A denial of a state-designated fair's application for Funding or an adjustment to the amount of funds provided to a qualified fair 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 to the Branch approved Board meeting minutes that memorialize the decision.
- (b) 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 written Funding 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. Compliance**

- (a) The Department may perform regular audits of qualified fairs receiving Funding to confirm compliance with the use of funds pursuant to the Funding agreement, including the provision of required work conditions to non-management employees, as defined herein, and the contract requirements for leases.
- (b) A qualified fair receiving Funding shall make available all records necessary to conduct an audit. During an audit and upon request of the Department's audit office, the qualified fair shall assist the Department in requesting that the lessee make available its records for examination pursuant to the lease.
- (c) A qualified fair shall inform the Department in writing within 15 business days of receiving notice of either of the following:
  - (1) Any complaint or finding of a violation for the qualified fair's failure to provide the required work conditions to a non-management employee; or

(2) Any complaint or finding of a violation for a lessee's failure to provide the required work conditions to a non-management employee.

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

(1) An audit by the Department that determines a qualified fair or a lessee did not provide the required work conditions to non-management employees or the qualified fair did not require its lessees to provide the required work conditions to non-management employees; or

(2) A final ruling issued by a relevant labor or personnel authority that determines a qualified fair or 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 within 15 days of discovering or receiving notice of the violation.

(2) The qualified fair shall respond to the Department in writing by describing any actions the fair has taken or intends to take to remedy the violation no later than 60 days after the date of the Department's notice and monthly thereafter until final resolution has been achieved.

(3) The Department may not terminate a qualified fair status if written confirmation of resolution or identifiable course of action is provided by the 60-day deadline and the resolution or course of remedial action is accepted by the Department in writing.

(4) For the first and second violation within the preceding three State fiscal years:

A. If the fair fails to respond or refuses to correct the violation or the course of remedial action is unacceptable to the Department, the Department shall terminate the qualified fair status until the state designated fair reapplies to become a qualified fair and has proven compliance for the duration of a State fiscal year.

B. If the violation is corrected and the remedial action is accepted by the Department in writing, the Department may dismiss the violation.

(5) For the third violation within the preceding three State fiscal years:

A. The Department shall terminate the fair's qualified fair status for the next State fiscal year until the state designated fair reapplies to become a qualified fair and has proven compliance for the duration of a State fiscal year.

- B. If the qualified fair fails to respond or refuses to correct the violation or the course of remedial action is unacceptable to the Department, the Department shall terminate the qualified fair status for the next two State fiscal years and until the fair reapplies 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 Funding under section 7022, or termination of qualified fair status for any violation specified in section 7023.2 by requesting 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 shall submit a request for an informal hearing to the Department's Legal Office of Hearings and Appeals in writing, within 30 days of receipt of the notice of the denial or termination.

(c) Any request 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 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 may 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) 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 Secretary.

(b) The standard of proof to be applied by the hearing officer shall be preponderance of the evidence.

(c) 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 upon issuance.

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.