

**BUREAU OF CANNABIS CONTROL
CHANGES WITHOUT REGULATORY EFFECT UNDER
CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100**

SUBJECT MATTER OF PROPOSED REGULATIONS: Commercial cannabis billboard advertisements on interstate and state highways.

SECTION AFFECTED: Title 16, California Code of Regulations, section 5040.

BACKGROUND

On January 16, 2019, the Bureau of Cannabis Control (Bureau) adopted regulations to clarify and make specific licensing and enforcement criteria for commercial cannabis businesses under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

As a part of the adopted regulations, California Code of Regulations (CCR), title 16, section 5040, subdivision (b)(3), *Advertising Placement*, was intended to clarify the provisions found in section 26152, subdivision (d), of the Business and Professions Code (BPC), by allowing the placement of outdoor signs or billboards along Interstate Highways or State Highways, provided they are located further than 15 miles from the California border.

This provision came before the San Luis Obispo County Superior Court (Court) in the matter of *Farmer v. Bureau of Cannabis Control & Lori Ajax (Farmer)*, with hearings held before the Court on August 11, 2020, and October 21, 2020.

On November 20, 2020, having considered the administrative record, the evidence and papers of the parties, the tentative rulings, and the arguments of counsel, the Court issued its Ruling On Petition for Writ of Mandate And Complaint For Injunctive And Declarative Relief, ruling that regulation 16 CCR 5040(b)(3) is invalid.

On January 11, 2021, the Court entered its Judgment. On January 22, 2021, the parties filed a Stipulation Regarding Costs and Attorneys' Fees and Order Amending the Judgment, which awarded costs and attorneys' fees to the plaintiff. On January 26, 2021, the Court entered the Stipulation and Order and ordered that the Judgment be amended to reflect the stipulated award of costs and attorneys' fees. The Amended Judgment was entered on February 2, 2021 (See Attachment A).

STATEMENT OF EXPLANATION

1 CCR 100 (a)(3), provides that an agency may delete text published in the California Code of Regulations when a regulatory provision has been held invalid in a final judgment entered by a California court of competent jurisdiction, such as a county superior court, as in the present case.

In the Court's February 2, 2021 final judgment, 16 CCR 5040(b)(3) was held to be invalid and is no longer in effect. The Court also ordered the Bureau to delete 16 CCR 5040 (b)(3), pursuant to 1 CCR 100. Therefore, Bureau licensees may not place advertising or marketing on a billboard, or similar advertising device, anywhere on an interstate or state highway that crosses the California border, as indicated in BPC section 26152, subdivision (d).

Based upon the foregoing, the Bureau has determined that the proposed change to 16 CCR 5040 (b)(3) is appropriate for deletion, under 1 CCR 100, because such a change makes 16 CCR 5040 (b)(3) consistent with the Court's ruling in *Farmer*, and eliminates any potential confusion created by the existing language of 16 CCR 5040 (b)(3). The proposed change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any other provision of MAUCRSA.

ATTACHMENTS

Attachment A – Amended Judgment On Petition for Writ of Mandate And Complaint For Injunctive And Declarative Relief