TITLE 11-DEPARTMENT OF JUSTICE
DIVISION 4-PROPOSITION 65 PRIVATE ENFORCEMENT

REQUEST FOR IMMEDIATE EFFECT UPON PUBLICATION

The Department of Justice requests that this regulation take effect immediately upon publication in the California Regulatory Notice Register.

This regulation, among other things, establishes certain requirements for a "Certificate of Merit" which must be attached to notices of intent to sue pursuant to Health and Safety Code section 25249.7 in which violations of Health and Safety Code section 25249.6 are alleged. If the regulation takes effect thirty days after publication in the California Regulatory Notice Register, persons giving notices of intent to sue may attempt to avoid the requirements of the regulation by serving such notices before the effective date of the regulation.

The Department's request is based on a prior experience concerning this statute. In 2001, the Legislature adopted SB 471 (Stats 2001, Ch. 578), which imposed the Certificate of Merit requirement (although not with the specificity set forth in the regulation), and which took effect on January 1, 2002. While the Attorney General had received about 2,000 notices of intent to sue under Proposition 65 per year for the last several years, during the month of December, 2001, just before SB 471 was to take effect, the Attorney General received approximately 4,300 notices of intent to sue. These notices were submitted in an apparent attempt to avoid application of the Certificate of Merit requirement. Many Certificates of Merit received by the Attorney General during 2002 do not meet the requirements for Certificates of Merit as set forth in the regulation. If the regulation is published with the normal thirty day delay prior to effectiveness, the Attorney General may receive a large number of notices during the thirty day period designed to avoid application of the new regulation.