

**TEXAS DEPARTMENT OF INSURANCE
EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE
CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96**

**ADOPTION OF AMENDATORY MANDATORY ENDORSEMENTS, MANDATORY
OFFER ENDORSEMENTS, AN AMENDMENT TO ENDORSEMENT NO. HO-170,
AND AMENDMENTS TO THE TEXAS PERSONAL LINES MANUAL RULES TO
MODIFY COVERAGE FOR MOLD AND OTHER FUNGI; AND AMENDMENTS TO
THE TEXAS STATISTICAL PLAN FOR RESIDENTIAL RISKS**

The Commissioner of Insurance adopts: (1) new amendatory mandatory endorsements to certain residential property insurance policies; (2) new mandatory offer endorsements to certain residential property insurance policies; (3) amendments to the policy writing rules of the Homeowners and Dwelling Sections of the Texas Personal Lines Manual (Manual); and (4) amendments to the Texas Statistical Plan for Residential Risks (Residential Statistical Plan), with changes to the endorsements, Manual rules, and amendments to the Residential Statistical Plan as proposed by Texas Department of Insurance (Department) staff in a petition filed September 19, 2001, and a conforming amendment to Endorsement No. HO-170. Notice of the proposal (Reference No. P-0901-13-I), which was designed to modify current coverage for mold and other fungi losses that are ensuing losses resulting from covered water losses in Texas homeowners and dwelling policies, was published for comment in the September 28, 2001 issue of the *Texas Register* (26 TexReg 7579). Comments on and alternatives to the proposed endorsements, Manual rules, and amendments to the Residential Statistical Plan were solicited through the notice, and a public hearing under

Docket No. 2498 was held October 16, 2001, at 9:00 a.m., in the LBJ Library Auditorium, 2313 Red River, Austin, Texas.

Upon consideration of the staff petition and all comments received, and for the reasons detailed herein, the Commissioner adopts, with changes to the proposal as noticed in the *Texas Register*, nine amendatory mandatory endorsements, nine mandatory offer endorsements, and amendments to the policy writing manual rules. The Commissioner declines to adopt the two policy rating manual rules and attendant rating examples that were proposed in the petition. Additionally, the Commissioner adopts an amendment to Endorsement No. HO-170 which conforms the water damage coverage in this endorsement to the changes made to the Texas Homeowners Form-A (HO-A) by one of the adopted amendatory mandatory endorsements. The Commissioner also adopts conforming amendments to the Residential Statistical Plan with changes to the proposal as noticed in the *Texas Register*. These conforming amendments remove the fields that were responsive to staff's petition as noticed in the *Texas Register* and add new fields to capture the use of nine mandatory offer endorsements adopted by this order as well as other mold endorsements that may be approved on an individual insurer basis. Prior to the next benchmark rate proceeding in which charges and credits for the adopted endorsements will be established, rate regulated insurers may file charges and credits for approval through individual insurer filings under the provisions of Section 4, Article 5.101 of the Texas Insurance Code.

Texas Insurance Code Articles 5.35, 5.96, and 5.98 authorize the action taken by the Commissioner. Article 5.35 authorizes the Commissioner to adopt policy forms and endorsements for certain lines of insurance, including residential property insurance. Article 5.96 allows the Commissioner to, among other things, promulgate, adopt, or amend standard and uniform manual rules, rating plans, statistical plans, and policy and endorsement forms for fire and allied lines (which includes residential property insurance) pursuant to the procedures specified under that article; Article 5.96 also provides that the Administrative Procedure Act (Texas Government Code Chapter 2001) does not apply to action taken under that article. Article 5.98 allows the agency to adopt reasonable rules appropriate to accomplish the purposes of Texas Insurance Code Chapter 5.

This order is adopted without prejudice to individual insurers' ability to file with the Department individual policies or endorsements, as authorized by Article 5.35.

I. Background

The current action had its genesis in a relatively sudden, large and unprecedented proliferation of mold claims against Texas homeowners policies over the past two years. Exacerbating the problem is the fact that the most commonly purchased Texas policy, Texas Homeowners Form-B (HO-B), which is presently a promulgated and standardized form, that provides the most expansive coverage, of all the states, for water damage and any ensuing mold and fungi losses. Texas also leads

the nation as the most costly venue for homeowners insurance. This currently is due to the Texas standard policies' generous coverage for water damage losses as well as extreme weather-related losses.

Following recent substantial increases in the frequency and severity of water damage claims with an ensuing mold loss component, the Department received insurance company filings for approval to use homeowners and dwelling endorsements which would either totally or partially exclude coverage for mold as an ensuing loss without an option to buy back the excluded or limited coverage. These filings were made pursuant to Article 5.35(d), which allows the Commissioner to approve endorsements filed by insurers. To date, no such endorsements have been approved by the Commissioner, although several filings have been made and are under review, and one individual company filing was disapproved on October 3, 2001 (Order No. 01-0941). In addition, national insurers and national organizations of insurance companies have filed policy forms and endorsements which would, in part, place limitations on the coverage for mold. No such policies have yet been approved by the Commissioner.

In response to extreme levels of concern from both policyholders and insurance companies regarding increasing mold-related claims and losses, the Department undertook several careful, comprehensive, and deliberate efforts to gather information and address relevant issues related to mold coverage. Beginning on June 26, 2001, the Commissioner convened a series of informational hearings in Austin, Corpus Christi, and Houston on mold coverage in general. As part of this information gathering

process, the Commissioner obtained information, comments and data from a wide variety of sources, including individual insureds; consumer and citizens' groups such as the Office of Public Insurance Counsel, Consumers Union, Texas Watch, and Homeowners for Better Building; governmental agencies including the Texas Department of Health, the U.S. Environmental Protection Agency, and the National Flood Insurance Program; individual insurance companies and insurance trade associations; the scientific community; mold and water remediators; and the mortgage lending, real estate, and building industries.

In addition, on July 30, 2001, the Department's Property and Casualty Actuarial Division issued a data call to the five largest insurance groups that collectively write about three fourths of the residential property insurance in Texas, requesting statistical data on mold losses by August 31, 2001. The data allowed the Department to gauge, in part, the magnitude of mold losses in the state, including the frequency and severity of claims and how rapidly the class of mold claims was increasing.

While all five company groups responded to the data call, only three groups were able to provide all the data requested in time for the actuarial division to complete its studies. Nevertheless, the data analyzed, which represented approximately 65% of the homeowners insurance market in Texas, clearly demonstrated that the number and dollar amount of ensuing mold claims had risen exponentially over the 18 months ending on June 30, 2001. The data showed that in the course of a year and a half, claim frequency (i.e. the number of claims per thousand policies insured) had grown

more than sixfold, from 1.6 to 10.8. Furthermore, the cost of the average mold claim was found to be approximately \$18,000, which is 4.7 times the cost of an average homeowner's claim and 5.6 times the cost of an average non-mold related water damage claim. The frequency and severity of these mold claims point to the likelihood of sizeable increases in homeowners insurance rates if the current coverage is not modified.

Pursuant to Article 5.101, benchmark rates for homeowners insurance have been set annually through a ratemaking proceeding. The most recent benchmark rate order was issued on August 30, 2001 (Order No. 01-0828). However, because these rates were based on loss experience for the years 1994-1999, the current rates reflect few, if any, of the increased mold-related losses identified in the Department's data call and, most particularly, do not reflect the substantial increase in these claims in 2000 and 2001. The benchmark rates only apply to companies that by law are rate regulated. Over the past 20 or more years the Texas homeowners insurance market has increasingly moved to companies that are not rate regulated, to the point where currently approximately 95% of the homeowners business is written by non-rate regulated companies. Since it is unclear when or if the number and severity of mold claims will level off, consumers could face double digit rate increases for the next several years if mold coverage is left unchanged with no opportunity for insurers and consumers to limit mold coverage. As previously noted, Texas already has the highest premiums for homeowners insurance in the nation. Continued, significant increases in

premiums for the next several years could make homeowners insurance unaffordable or effectively unavailable for many Texans.

Potentially making the rate affordability problem especially acute for some Texans is the fact that an analysis of mold claims by rating territory indicates that there are significant regional differences in claim frequencies and costs. For example, mold-related claim frequencies (the numbers of claims per 1,000 policies) ranged from .06 in Territory 7, El Paso County, to 13.2 in Territory 9, Nueces County. Sharp differences also exist between neighboring territories. For example, the average cost per policy for mold claims of \$5,000 or more was \$520 in Territory 9, Nueces County, while it was roughly one third of that, \$165, in adjoining Territories 10 and 11. Therefore, while the state as a whole might possibly face an increase of 40 percent or more if no change were made to existing mold coverage, as some commenters and the staff petition suggested, certain specific regions could conceivably see two or three times that increase.

Another issue that appears to be unique to mold claims is the unusually high number of multiple claims (i.e., from multiple individual water leaks or discharges) alleged to be associated with a single mold infestation under a policy and which has led insurers to pay more than the stated policy limits for a dwelling damage claim (a situation which is commonly referred to as “stacking”). If a fire or a tornado were to destroy a home, an insured would be entitled to recover no more than the policy limits. While the possibility exists that there could be multiple fire losses within a policy period,

with the combined amount of loss exceeding policy limits, it is extremely unlikely. It is the nature of mold-related losses that creates the stacking problem by which some claimants have recovered claim amounts far in excess of policy limits, increasing the losses attributable to mold. While this obviously creates a rate problem, it also raises an issue of equity.

Another factor unique to mold involves the process and costs related to mold testing, containment, and remediation. Currently, there are no federal or state licensing or certification standards for mold testers or remediators, nor are there officially adopted protocols or guidelines for assessment and remediation. This fact, coupled with the lack of federal or state health or environmental standards establishing acceptable background or tolerance levels for various types of mold, makes remediation procedures diverse and, often, costly. Indeed, many consumers and industry representatives have cited a wide variety of costs associated with testing, containment, and remediation of mold, separate from the costs required to repair or replace property physically damaged by water and ensuing mold. In addition, many initial attempts at remediation are unsuccessful, which also contributes to costs.

The industry has estimated additional statewide rate increases of 40 percent or more if the current ensuing mold damage coverage is not changed which, as noted above, could be greater in certain areas of the state. Consumers have also recognized that mold coverage is costly. Many have told the Department that they are willing to pay increased premium for some mold coverage in the basic homeowners policy. Others

have said that they do not want to pay for mold coverage and want an option to exclude mold coverage from the policy. Many have asked that the Department refrain from eliminating mold coverage entirely.

Since the Department began studying mold coverage issues, several companies have announced plans to take action on their own to address the situation. Such action has included ceasing to write the HO-B policy, an all risk policy which until recently has constituted 96% of the homeowners policies issued in Texas in favor of the HO-A; ceasing to write new business altogether; nonrenewing all HO-B coverage and offering instead HO-A coverage; and adjusting their marketing strategy by, for example, declining to write policyholders with previous water losses. While the Commissioner has asked the industry not to take such actions, but rather to give the Department an opportunity to find an industrywide solution, companies nevertheless have continued to pursue their own solutions. Numerous companies have also filed individual policy endorsements containing coverage limitations for mold and water damage and others have filed or indicated they will file their own policies with the Department. It was against this backdrop that the Commissioner called upon Department staff to develop a compromise, which was proposed in the petition. Comments and changes to that proposal have been thoroughly evaluated in reaching the decision adopted in this order.

II. Changes to the Endorsements and Manual Rules As Proposed

The original petition proposed a coverage scheme meant to address insurers' concerns about rapidly increasing claims and losses specific to mold and the attendant rate impact; some homeowners' concerns for the need for continued coverage; high claims costs due to "stacking" of policy limits; and the Department's and some consumers' general concern about continued availability and affordability of residential property insurance. The proposed compromise contained in the petition attempted to address the above concerns by establishing a flat \$5,000 limit on mold coverage in the basic policy while requiring insurers to give consumers the ability to purchase additional coverage ("buybacks") in increments of 25%, 50%, and 100% of policy limits. It also contained a "stacking" provision whereby multiple mold-related claims due to water damage during a single policy period could not exceed policy limits.

While the \$5,000 basic limit was meant to be a compromise measure that would address the large increase in losses while covering approximately 50 percent of mold claims, the vast majority of consumers, insurers, and other interested persons who commented on this provision opposed it. Numerous commenters expressed concern that a \$5,000 limit was woefully inadequate because mold remediation costs, particularly with regard to testing and containment, were far in excess of this amount. Estimates of the average cost of a mold-related claim ranged from \$18,000 to \$92,000. Some commenters advocated raising the basic limit to \$10,000 or \$15,000. Some commenters stated that air quality testing costs are routinely high and therefore should be placed outside a basic dollar limit. Many consumers alleged it was unfair for the

policy to provide such low levels of coverage for undetectable mold infestations. Conversely, many other commenters believed that mold claims frequently arise from a home maintenance failure by the insured, and argued that this coverage was not appropriate in a homeowners policy. Several insurers urged the Commissioner not to adopt the \$5,000 limit because they believe mold damage and water damage are inseparable; some argued that a \$5,000 limit would be difficult to adjust, citing the lack of standards for remediation, and felt that insurers would be inclined to add \$5,000 to any water damage claim, thus increasing costs to all insureds. Some insureds stated that they did not want any mold coverage, nor did they want to pay for it.

The Commissioner believes many of these concerns are valid, and agrees that limiting basic coverage for mold as an ensuing loss based on a fixed dollar amount is not the optimal solution to address the Department's fundamental goal: to allow some basic, limited coverage for ensuing mold, while giving consumers the ability to purchase increased coverage, in order to enhance continued availability and affordability. As many comments made clear, addressing ensuing mold is frequently a part of repairing and replacing property damaged by a covered water loss; however, the remediation process, particularly testing for and containment of airborne mold, has been a major cost driver in losses. Accordingly, the coverage scheme as proposed is modified in response to the above comments and concerns to replace the flat dollar limit on basic coverage with a basic limitation that will allow coverage where mold ensues from a covered water discharge, leak, or overflow that is sudden and accidental (including a

discharge, leak, or overflow that is hidden or concealed and is undetectable), but only covers the repair and replacement of water-damaged property and not the cost of remediation or testing. This is intended to effectively return coverage to what it was prior to the recent sharp escalation of mold claims.

The buyback provisions have not changed substantially from the original proposal, and continue to allow enhanced mold coverage in the incremental amounts of 25%, 50% and 100% of policy limits. The coverage purchased in these endorsements is not additional insurance that increases the limit of liability for Coverage A (Dwelling) and/or Coverage B (Personal Property). However, other changes to the original proposal have been made to conform to the modification of the coverage scheme detailed above. Remediation is basically defined to include testing, treating, containing, decontaminating, or disposing of mold beyond that which is necessary to repair or replace property that is physically damaged by water. Further, the “stacking” provision is modified to apply only to the incremental buybacks. This is because the adopted changes to the basic policy coverage to eliminate coverage for remediation costs should obviate the problem that the stacking provision was intended to address: without remediation and testing costs, it becomes highly unlikely that the repair or replacement of property damaged by a covered water loss with an ensuing mold component would exceed policy limits.

Other changes to the proposal have also been made in response to comments, including adding “other microbes” to the category of ensuing losses that include mold or

other fungi to address concerns that these could cause problems similar to mold; requiring consumers to report a hidden or concealed water loss no later than 30 days after such loss is or should have been detected; adding the requirement that insurers provide information to consumers about their options under the policy and obtain insureds' written acknowledgement of the coverage selected; and clarifying that insurers are allowed to continue to underwrite residential property policies. These changes and the comments on which they were based are also discussed elsewhere in this order.

Based on the comments and information received, the Commissioner believes the revised coverage scheme is a reasonable, equitable compromise that protects the public while addressing concerns raised by the public and the insurance industry.

A. Amendatory Mandatory Endorsements (Basic Policy Coverage)

Based on comments on the proposal and on information received as a result of the special Mold Data Call, the Commissioner adopts nine amendatory mandatory endorsements which are a modification of the original proposal. The policy modifications made by the adopted amendments are described in more detail as follows:

1. The Exclusions portion of the HO-B, HO-C, HO-CT, HO-C-CON, and TDP-3 policies (where there is currently a mold exclusion, except in the case of mold ensuing from covered water damage) is amended to delete the words "mold or other fungi" from

the current mold exclusion and to add a new exclusion to exclude loss caused by or resulting from mold, fungi or other microbes.

2. In addition to the exclusionary language in the new exclusions, several other provisions within the exclusion provide limited mold coverage, as follows:

a. An exception to the exclusion that provides coverage for "ensuing mold, fungi or other microbial losses caused by or resulting from sudden and accidental discharge, leakage, or overflow of water or steam if the water loss would otherwise be covered under the policy."

b. A provision that clarifies that sudden and accidental includes "a physical loss that is hidden or concealed for a period of time until it is detectable." Further, a hidden loss must be reported to the insurer no later than thirty days after the date that the insured detected or should have detected the loss.

c. A provision clarifying that for purposes of the mold coverage provided in the exception to the general mold exclusion, the ensuing mold losses covered include "reasonable and necessary repair or replacement of property covered under Coverage A (Dwelling) and/or Coverage B (Personal Property)."

d. A provision that limits the mold coverage provided in the exception to the general mold exclusion by clarifying that the cost of remediation, "including testing of ensuing mold, fungi or other microbes," is not covered. Additionally, any increases in expenses for Loss of Use and/or Debris Removal due to remediation and testing are not covered.

e. A definition of remediation as "to treat, contain, remove or dispose of mold, fungi or other microbes beyond that which is required to repair or replace the covered property physically damaged by water or steam. Remediation includes any testing to detect, measure or evaluate mold, fungi or other microbes and any decontamination of the residence premises or property".

Basically, these adopted endorsements provide a new, broad mold exclusion but create some basic ensuing mold coverage in an exception to this exclusion. The new mold coverage is more limited than the current coverage in that it only covers mold losses that ensue from a sudden and accidental discharge of water or steam, which is defined to include hidden or concealed water damage until it is detectable. Under the current coverage, mold is covered if it ensues from an accidental discharge, leakage, or overflow of water or steam. The addition of the word "sudden" to the water damage peril as it relates to mold is intended to exclude loss caused by mold resulting from leakage or seepage of water over a period of time that is not hidden or concealed. This is distinguished from the current coverage because currently, mold resulting from repeated and continuous leakage or seepage would be covered.

The other provisions in the adopted amendatory mandatory endorsements limit the mold coverage to provide that there is no mold coverage beyond the physical damage to the covered property from a covered sudden and accidental water loss. With respect to the physical damage caused by a covered water loss, only reasonable and necessary costs to repair or replace the damage are covered. Any expenses

beyond this due to mold, fungi or other microbes, such as remediation and testing, are not covered. Additionally, any increase in expenses for Loss of Use and/or Debris Removal due to remediation and testing of mold is not covered. An insured who desires mold coverage beyond the physical repair of the property (e.g., remediation including testing, increased Loss of Use, increased Debris Removal, and remediation of property not physically damaged by water) may purchase the additional mold coverage available in the mandatory offer endorsements.

The nine adopted amendatory mandatory endorsements are a modification of the proposed amendatory mandatory endorsements. Basically, in both the proposed endorsements and the adopted endorsements the current policy exclusion for mold was amended to remove mold or other fungi and a new policy exclusion was created. Additionally, in both the proposed endorsements and the adopted endorsements some limited mold coverage was created through an exception to the exclusion. There are differences between the proposed and adopted endorsements in the limitations and related provisions that govern the mold coverage. However, the amendatory mandatory endorsements as proposed and as adopted consist of a similar general coverage scheme for mold-related losses.

The adopted amendatory mandatory endorsements are: (1) Endorsement No. HO-161A which will be attached to Texas Homeowners Form-A (HO-A), (2) Endorsement No. HO-162A which will be attached to Texas Homeowners Form-B (HO-B), (3) Endorsement No. HO-163A which will be attached to Texas Homeowners Form-

C (HO-C), (4) Endorsement No. HO-164A which will be attached to the Texas Homeowners Tenant Policy–Form B (HO-BT), (5) Endorsement No. HO-165A which will be attached to the Texas Homeowners Condominium Policy-Form B (HO-B-CON), (6) Endorsement No. HO-166A which will be attached to the Texas Homeowners Tenant Policy–Form C (HO-CT), (7) Endorsement No. HO-167A which will be attached to the Texas Homeowners Condominium Policy-Form C (HO-C-CON), (8) Endorsement No. TDP-004A which will be attached to the Texas Dwelling Policy-Form 1 (TDP-1) and the Texas Dwelling Policy-Form 2 (TDP-2), and (9) Endorsement No. TDP-005A which will be attached to the Texas Dwelling Policy–Form 3 (TDP-3). These adopted endorsements are more particularly set forth in Exhibits A through I which are attached hereto and made a part hereof for all purposes.

B. Mandatory Offer Endorsements (“Buyback” of Mold Coverage)

The Commissioner adopts the mandatory offer endorsements with only minor changes to the endorsements as originally proposed. The principle change to the endorsements is that all references to the \$5,000 base level of coverage have been removed since the Commissioner declines to adopt the \$5,000 base level of coverage, and certain other changes have been made to conform to the amendatory mandatory endorsements. In all other respects, the provisions in these endorsements as described below are substantially the same as contained in the original proposal.

The nine new mandatory offer endorsements allow consumers to purchase, for an additional premium, a specified percentage of policy limits for mold, fungi or other microbes coverage. The attachment of one of the proposed mandatory offer endorsements (HO-161, HO-162, HO-163, HO-164, HO-165, HO-166, HO-167, TDP-004, and TDP-005) to the appropriate homeowners or dwelling policy would provide enhanced coverage for mold, fungi or other microbes as an ensuing loss from a covered water claim. The mold coverages specified in the adopted mandatory offer endorsements do not affect any direct water damage coverage otherwise provided in the policy.

These endorsements amend the mold exclusion contained in the policy to provide, for an additional premium, enhanced coverage for ensuing mold, fungi or other microbes. The endorsements further specify the coverage provisions, loss of use provisions, and loss settlement provisions that apply to mold coverage, as follows:

1. Coverage Provisions.

- a. The insurer agrees to pay the reasonable and necessary expenses to remediate, repair, or replace property described on the declarations page at a percentage (25%, 50%, or 100%) of the limits applicable to Coverage A (Dwelling) and Coverage B (Personal Property) for loss caused by ensuing mold, fungi or other microbes caused by covered water damage (this coverage only applies to Coverage B (Personal Property) for the HO-164, HO-165, HO-166, and HO-167).

b. The maximum limit of liability for this mold coverage is shown on the declarations page. The coverage purchased in this endorsement is not additional insurance and does not increase the limit of liability for Coverage A (Dwelling) and/or Coverage B (Personal Property).

2. Loss of Use Provisions.

a. In the event a loss caused by ensuing mold, fungi or other microbes that is covered under these endorsements makes the residence wholly or partially untenable, the insurer will pay the additional living expenses, if the basic policy provides such coverage, so that the household can maintain its normal standard of living and/or the fair rental value of the residence premises usually rented to others by the insured, less any expenses that do not continue.

b. The total limit of liability for all loss of use is included in the maximum limit of liability for this coverage as shown on the declarations page. The deductible clause does not apply to loss of use coverage.

c. The payment for loss of use will be for the reasonable time required to remediate, repair, or replace the damaged property. If the insured permanently relocates, the payment will be for the reasonable time required for the household to become settled.

d. The periods of time for loss of use are not limited by the expiration of the policy.

3. Loss Settlement Provisions.

This provision specifies that an insurer's limit of liability for mold losses covered under items 1 and 2 of the endorsement is the maximum amount the insurer will pay for the sum of all losses regardless of the number of losses that occur during the policy period stated on the declarations page.

4. General Provisions.

a. There is a general provision containing the definition of the term "remediate" that applies to the entire endorsement, which defines this term to include the treatment, containment, removal, decontamination for, and disposal of mold, fungi or other microbes as required to complete the repair or replacement of covered property, including the testing required to evaluate levels of mold, fungi or other microbes.

b. There is also a general provision that all other terms of the policy apply.

The adopted mandatory offer endorsements are: (1) Endorsement No. HO-161 which may be attached to Texas Homeowners Form-A (HO-A), (2) Endorsement No. HO-162 which may be attached to Texas Homeowners Form-B (HO-B), (3) Endorsement No. HO-163 which may be attached to Texas Homeowners Form-C (HO-C), (4) Endorsement No. HO-164 which may be attached to the Texas Homeowners Tenant Policy-Form B (HO-BT), (5) Endorsement No. HO-165 which may be attached to the Texas Homeowners Condominium Policy-Form B (HO-B-CON), (6) Endorsement No. HO-166 which may be attached to the Texas Homeowners Tenant Policy-Form C (HO-CT), (7) Endorsement No. HO-167 which may be attached to the Texas Homeowners Condominium Policy-Form C (HO-C-CON), (8) Endorsement No. TDP-

004 which may be attached to the Texas Dwelling Policy-Form 1 (TDP-1) and the Texas Dwelling Policy-Form 2 (TDP-2), and (9) Endorsement No. TDP-005 which may be attached to the Texas Dwelling Policy-Form 3 (TDP-3). These adopted endorsements are more particularly set forth in Exhibits J through R which are attached hereto and made a part hereof for all purposes.

C. Amendment to Endorsement No. HO-170

Endorsement No. HO-170 (Additional Extended Coverage) is an optional endorsement which may be attached to the HO-A, for an additional premium, to extend Coverage A (Dwelling) and Coverage B (Personal Property) to include ten additional Perils Insured Against, including the accidental discharge of water or steam from within a plumbing, heating or air conditioning system or household appliance. With the addition of water as a peril to the HO-A, it is necessary to amend the Exclusions portion of the HO-170 to conform to the other adopted endorsements. The adopted amendment to the HO-170 amends the Exclusions portion of the endorsement to add a new item 4 to exclude loss caused by or resulting from mold, fungi or other microbes, but preserves the same limited coverage as the amendatory mandatory endorsements in the case of sudden and accidental water damage. The language of this new exclusion closely tracks the language of the new exclusion that is contained in the adopted amendatory mandatory endorsements. This amendment to the HO-170 is necessary to ensure that the HO-A includes the same ensuing mold coverage provided

by the other adopted amendatory mandatory endorsements. This adopted amended endorsement is more particularly set forth in Exhibit S which is attached hereto and made a part hereof for all purposes.

D. Manual Rules-Policy Writing Sections

To conform to the adopted changes detailed above, the Commissioner adopts two new policy writing Manual rules which are a modification of the original proposal: (1) Rule IV-A, "Section I Mandatory Offer Endorsements" is added in the Homeowners Section, (2) Rule IV, "Mandatory Offer Endorsements" is added in the Dwelling Section. These new rules provide that all applicants who are offered a residential property insurance policy shall also be offered, at the time of application, the Mold, Fungi or Other Microbes Coverage Endorsement. Additionally, the rules specify that coverage is available to provide selected percentages of mold coverage (25%, 50%, or 100% of the limits of liability applicable to Coverage A (Dwelling), Coverage B (Personal Property), and Loss of Use) and that all coverage limits must be offered to each applicant. An illustrative example is included to demonstrate the effect that the elected percentage of coverage has on the limits of liability. These rules are intended to ensure that all applicants for insurance have the opportunity to purchase additional mold coverage to pay the increased expenses for remediation, testing, loss of use, and debris removal if they so desire.

The first modification specifies that insurers may file endorsements (subject to prior approval) to offer limits of liability selection options in lieu of the 25% and 50% selection options. However, the rules maintain the 100% selection option as originally proposed by requiring insurers to offer a 100% selection option in conjunction with selection options that are filed by individual insurers and approved by the Commissioner. A second modification adds a new provision that prevents an insurer from conditioning the sale of a policy based on an insured's selection option. The purpose of this provision is to ensure full consumer choice by requiring that all options be offered by insurers. The next modification provides that an insurer may decline a request by an applicant or insured to purchase the Mold, Fungi or Other Microbes Coverage Endorsement if the declination is based on sound underwriting principles related to an actual or anticipated mold loss exposure for the risk. The purpose of this provision is to address comments by insurers concerning the problem of adverse selection and to provide insurers with the opportunity to decline to provide the optional coverage to those risks that might, for example, have an unreported water claim that may involve mold at the time they are attempting to purchase mold coverage. A note is included to require insurers to offer the Mold, Fungi or Other Microbes Coverage endorsement to insureds upon renewal of their policy without the insured having to make a request for the coverage.

This rule is further modified, in response to comments, to add a provision entitled "Consumer Notice Requirements", to address concerns about the minimum information

that insurers are required to provide to explain the available options to applicants or insureds. As advocated by some commenters, this provision is designed to provide some protection for insurers when they provide this basic information to consumers concerning the offer of the new endorsements; in addition, it will assist consumers in making an informed choice. The consumer notice requirements specify that insurers must provide to each applicant a clear explanation of the available selection options that outlines the coverage and premium charge associated with each option and further require that the consumer sign the written explanation to acknowledge that the consumer understands the options available and is making an informed decision regarding the option selected. A sample of the language that may be used to satisfy the consumer notice requirements is also included in the Manual rules and is outlined as follows:

1. A definition of remediation that specifies this term means to treat, contain, remove or dispose of mold, fungi or other microbes beyond that required to repair or replace the covered property physically damaged by water or steam. It defines remediation to include any testing or measures to evaluate mold, fungi or other microbes and any decontamination.

2. Option 1. (Basic Mold Coverage Only) This option provides the applicant with an explanation of the basic mold coverage in the policies and includes the amount of premium that would be paid if this option were selected. More particularly, the applicant is informed that mold losses must be caused by or result from a sudden and accidental

discharge of water or steam to be covered under the policy. A sudden and accidental discharge of water or steam is further clarified to include physical loss that is hidden for a period of time until it is detected. The applicant is further informed that the basic policy does not provide coverage for the cost of remediation, including mold testing, or increases in expenses due to remediation or testing, but does pay for reasonable and necessary repair or replacement of covered property.

3. Option 2 (25%), Option 3 (50%) and Option 4 (100%). (Optional Buybacks)

These options provide the applicant with an explanation of the 25%, 50% and 100% selection options and include the amount of premium the applicant would pay for each option. More particularly, the applicant is informed that if one of these percentages of additional mold coverage is chosen, the policy will provide 25%, 50%, or 100%, depending on the option chosen, of the limit of liability for Coverage A (Dwelling) and Coverage B (Personal Property) to pay for the cost to remediate (including testing), repair or replace covered property due to loss caused by ensuing mold, fungi or other microbes resulting from water or steam damage if such loss would otherwise be covered. Additionally, these options will provide 25%, 50%, or 100%, depending on the option chosen, of the loss of use limit of liability to pay for additional living expenses or fair rental value if a loss caused by mold, fungi or other microbes that results from a water or steam loss that is covered under the policy makes the residence premises wholly or partially untenantable.

The adopted rules are a modification of the rules as originally proposed in that the same general scheme of coverage options (25%, 50%, or 100% of the limits of liability applicable to Coverage A (Dwelling), Coverage B (Personal Property), and Loss of Use) are preserved in the adopted rules and are the focus of the rules. Additionally, in both the proposed and adopted rules there are provisions to ensure a smooth effective phase-in of the new mandatory offer endorsements.

These adopted rules and amendments are more particularly set forth in Exhibits T and U which are attached hereto and made a part hereof for all purposes.

E. Policy Rating Manual Rules and Rating Examples

Because the Commissioner is not establishing rates in this order, it is unnecessary for the Commissioner to adopt the two proposed policy rating Manual rules: Rating Rule VI-O for Homeowners, Tenants, and Condominium Policies and Rating Rule VI-L for Dwelling, Additional Extended Coverage, and Physical Loss Form.

F. Amendments to the Residential Statistical Plan

Conforming amendments to the coding section, premiums section, and losses section of the Residential Statistical Plan are set forth in Exhibit V that is attached hereto and made a part hereof for all purposes.

III. Summary of Comments and Agency's Response

In addressing the mold issue, the Department conducted three public informational hearings across the state, received testimony at those hearings as well as at the hearing on staff's petition, and analyzed hundreds of written comments. While all comments were considered, not every comment is specifically identified or addressed individually herein. This is consistent with Article 5.96 which exempts this order from the rulemaking procedures of the APA. However, the following summary generally addresses substantive, procedural, and legal issues raised concerning the proposal, and comments and suggestions for changes to the proposal.

A. TDI Policy Issues

One commenter stated that the proposed endorsements and rules shift the burden of mold problems from insurers to consumers. The Department's original proposal, while limiting basic coverage for mold to \$5,000, was not intended to shift the burden of coverage; rather, it was meant to provide for a meaningful level of basic coverage while allowing consumers the ability to select additional levels. The adoption similarly allows a basic level of coverage, although not limited by a flat dollar amount, along with the possibility of obtaining enhanced coverage. However, in response to numerous comments as detailed herein, the Department modified the basic coverage to exempt losses from ensuing mold coverage where the loss was not sudden and accidental and was detectable by the insured. The Department believes this is not a shifting of the burden of coverage; rather, it is a recognition that routine home maintenance should be the responsibility of homeowners rather than insurers.

One commenter states there is an absence of meaningful competition in the residential property insurance market in Texas and an absence of regulatory authority to ensure that mold buyback coverage is reasonably priced and even offered by insurers and suggests legislative action on rate regulation for all insurers. Another commenter calls for an interim legislative study of the homeowners insurance market. The commenter states that since 95% of all homeowners in Texas pay rates that are unregulated, the current proposal assures a cap on the industry's exposure to claims but offers no assurance of a cap on rate increases. The commenter maintains that the Insurance Code's exemption from rate regulation for certain companies was never intended to develop into a wholesale circumvention of the flex-band rating system.

The Department understands the commenters' concerns and recognizes that a significant portion of the market is not rate regulated. An interim charge has been directed to the Senate Committee on Business and Commerce to study among other things, rate regulation of homeowners insurance, and the effects of deregulation on insurance rates and consumers. Additionally, an interim charge has been directed to the House Committee on Insurance to review issues associated with homeowners insurance coverage of toxic mold and mold-related claims, including considering measures that would ensure appropriate coverage and remediation of damage and maintain the viability of the homeowners insurance market.

One commenter states that the Department's proposal is flawed because the model of a bare-bones policy with "consumer choice" for buying back coverages has

been discredited, and cites the example of the “Property Protection Plan” forms and endorsements, not one of which policies the commenter states has been sold in the designated underserved areas. The Department disagrees with this comment because the Property Protection Plan, which is operated pursuant to Article 5.35-3, was developed solely to assist underserved markets. Modifying the residential property policies is not analogous, and therefore, not appropriate for comparison.

A commenter believes that any endorsements limiting mold coverage should expire one year from their effective date to allow the Department to re-evaluate the situation. While the Department does not believe an automatic expiration is appropriate, it is fully committed to monitoring and re-evaluating the status of the market with regard to this adoption order and in general does not believe an automatic expiration is appropriate.

A commenter suggests that the legislature may need to address certain mold issues, such as, insurers should not be allowed to “cherry pick”; rates should be regulated by TDI or by the legislature; and that Article 21.55, concerning prompt payment of claims needs to be amended to shorten the time period that an insurer has to investigate and adjust water damage claims. Another commenter believes that the legislature should exercise oversight over any proposal adopted by TDI to address the mold crisis. As noted above, the legislature has indicated that it will be reviewing certain issues related to mold and rate regulation.

B. Sub-Limits /Base Coverage (\$5,000 basic limits)

Numerous commenters expressed disagreement with the \$5,000 basic mold coverage as originally proposed. Several said this amount was inadequate to cover the majority of mold claims, and some said the base amount should be increased to \$10,000 or \$15,000. Others said that a flat cap on mold coverage would remove the incentive for insurers to respond to water claims in a timely manner. Another commenter said the \$5,000 limit would be difficult to adjust because of the lack of standards for remediation and the debate over health effects, thus making it unworkable for insurers. Another commenter said the \$5,000 cap would merely cause a shift from mold damage claims to water damage, and that insurers would be inclined to merely add a flat \$5,000 to a water claim, as it would be too difficult to separate mold from water damage. The same commenter also expressed concerns over liability for not telling insureds how to utilize their \$5,000 claim payment. Many commenters suggested changes or alternatives to the proposed approach, including endorsements allowing catastrophic coverage within policy limits; changes to the “remediate, repair, or replace” language; removing this coverage from the Exclusions section and putting it in an endorsement to the Extensions of Coverage section; clarifying the language of the proposed endorsement; providing an exclusion to address wet and dry rot and bacteria in addition to mold and other fungi; amending the definition to make testing part of the claims investigation; and restricting the definition to prevent the recharacterization of remediation costs as water damage and thereby circumventing the base limits.

The proposed cap on mold coverage was designed to be a compromise measure that would address the increase in losses while covering approximately 50 percent of mold claims. However, the vast majority of those who commented on this provision, including both consumers and insurers, opposed it entirely or recommended changes. For the reasons stated earlier, and in response to those comments, the Department has determined not to adopt the base \$5,000 coverage limit. The Department believes the current decision provides a compromise that addresses the concerns raised by both consumers and insurers, in that it allows limited coverage for mold, fungi or other microbes, except where such mold results from a home maintenance failure, and excludes coverage for remediation and testing.

C. Stacking of Policy Limits

While some commenters expressed support for the anti-stacking policy limits provision, others believed that the proposed amendments did not entirely alleviate this problem. One commenter said the proposal did not limit the definition of “occurrence” when mold appears in several locations, while another commenter said additional language was needed to clarify that limits apply to claims made within the policy period. Several said that this provision should be amended to prevent stacking over multiple policy periods and multiple occurrences of the same event. One commenter disagreed with limiting coverage for damage caused by multiple events; another said there should be no distinction between claims involving mold, fire, lightning strikes, or hurricanes and that consumers should be able to collect on multiple claims that exceed 100% of their

home's value. One commenter said this provision should be deleted because a \$5,000 cap on mold claims would solve the problem of exceeding policy limits.

After considering all comments, the Department does not believe that stacking remains a problem in the case of the basic coverage adopted in this order because such coverage is limited to repair or replacement of covered property which would limit to some extent recovery beyond policy limits. Due to the broader coverage provided in the optional buyback endorsements, however, the Department still believes that an anti-stacking provision for mold is necessary in order to control losses in excess of policy limits. The Department believes the language of the anti-stacking provision is sufficient to apply to multiple claims occurring within a policy period. The anti-stacking provision as adopted in this order also addresses the situation where mold appears in several locations since the total losses for all mold-related claims within a policy period are limited to policy limits. Despite the fact that a home theoretically could be totally destroyed by fire or hurricane more than once in a policy period, the likelihood of such events creating the magnitude of losses that have occurred with multiple mold claims is slight. In addition, because the homeowners policy is an occurrence-based policy, it would not be appropriate to apply the stacking provision over policy periods.

D. Separating Mold Claims From Water Claims for Purposes of Claims Handling

Some commenters opposed staff's petition because they believe that mold and water are inseparable and therefore the problem of escalating mold losses will not be

solved due to claims disputes regarding whether the costs are allocated to water or mold.

The Department acknowledges and agrees that this may be a concern. To address this concern, the basic coverage adopted herein contains the coverage descriptions and definitions that are directed at excluding certain services related specifically to mold, rather than attempting to differentiate between the damage that may have been caused by mold and the damage caused by water itself. The Department expects and intends that under the basic coverage adopted in this order insurers will pay any and all direct losses due to water damage as provided by the coverage description and definitions in the policy.

E. Under What Circumstances Should Mold Claims Be Covered?

Some commenters contended that mold is frequently the result of a homeowner's failure to maintain or timely repair the plumbing, heating, AC system or a household appliance. The residential property policy was designed to cover unforeseen and fortuitous types of water damage and should not be a service contract or home maintenance policy on a residence. Others said it should be the insured's responsibility to mitigate a condition before it becomes a loss and that the failure to do so should not be covered by insurance. Homeowners who conduct proper maintenance should not be penalized, in the form of higher rates, due to those who shirk their maintenance responsibilities. A commenter said consumers can use simple preventative maintenance techniques to prevent, eliminate, or control mold growth, while another

said that a conscientious homeowner could discover a leak before it becomes a serious problem. One agreed that quick repair, evaluation, and remediation can avoid a mold contamination claim altogether. Another commenter said that the “onus” should be placed on the policyholder to notify and remediate in a timely manner. Some commenters pointed out that a tiny leak could go undetected and a problem could be growing without a person’s awareness. Another commenter contended that insurance coverage is intended to protect against unexpected and unforeseeable events, but that mold generally is a maintenance issue rather than an insurable event.

Some commenters urged that mold be limited to water losses that are sudden and accidental, or that the water losses themselves be so limited, consistent with many policies used nationwide. Others disagreed with this approach. One commenter believed coverage should be limited to visible mold rather than mold spores, and that coverage should be limited to repair and replacement of materials that cannot be cleaned with disinfectants. This commenter also noted that one needs only to breathe to be exposed to mold spores; that mold testing compares the inside to outside mold count; and that the homeowners policy cannot be expected to insure the resident against the quality of outdoor air. Another commenter said that the standard policy should exclude all coverage related to remediation, similar to the way in which environmental remediation from other sources is not included, but that consumers should be able to purchase special mold remediation coverage related to water leaks.

After hearing all the comments, the Department is convinced that it is a fair and equitable solution to place the responsibility for mold resulting from inadequate home maintenance on those homeowners, otherwise all homeowners will bear the cost of the omissions of the few. Encouraging homeowners to be vigilant will help to mitigate mold-related losses and costs. This concept, in addition to the limitation in the policy to repair or replace rather than test and remediate, is intended to return coverage to what it was prior to the recent surge in mold-related claims.

F. Mold and Other Fungi

Some commenters stated that “mold and fungi” should be defined to include “bacteria” or “bacteria and other microbial contamination” which one commenter said is abundant in the atmosphere and could be as expensive as mold to remediate. The commenter claimed that without such definition, persons taking advantage of the current mold crisis could recharacterize the problem and seek coverage. The Department agrees with these concerns and has accordingly added the term “other microbes.”

G. Exclusion of Water Damage/Mold

Numerous comments were received regarding the issue of a total exclusion of water damage or mold damage or water and mold damage. The focus of the comments concerned discussions regarding some level of base coverage; optional coverages involving insurer’s choice or consumer’s choice; limitations of coverage to “sudden and accidental”; and certain groups subsidizing mold coverage for other groups.

As noted above, after considering all comments received, the Department has determined that the most reasonable, fair, and equitable approach is for mold coverage to be available to all insureds by providing some basic coverage for mold-related claims in the basic residential insurance policies but giving insureds the option to purchase enhanced mold coverage. The adoption set forth in this order, therefore, is believed to be the appropriate solution to address the issue of mold coverage in Texas residential property policies.

H. Availability of Homeowners Insurance and Mold Coverage

Numerous commenters have expressed concern that mold claims have caused insurers to restrict writing or offer inadequate coverage and that insurance coverage for mold will make policies unaffordable, thereby impacting the Texas economy.

Availability and affordability are the Department's paramount concerns. For that reason, it shares these commenters' concerns, especially in light of market changes that have occurred. This adoption order responds to these concerns by creating a coverage scheme that attempts to return coverage to what it was prior to the recent surge of mold claims.

The issue of availability also generated comments calling for legislative review of the availability and affordability of mold coverage that insurers offer and a desire for broad mold coverage to be available even with the understanding that rates would increase. Conversely, some consumers have indicated that they would forego mold coverage in exchange for lower rates.

As noted previously, the legislature has indicated that it will be reviewing certain issues related to mold and rate regulation. The Department reiterates that the adoption set forth herein is intended to promote market stability by limiting the coverage for mold and providing consumer choice. The adoption set forth herein does provide broad consumer flexibility to the extent that an insured may determine how much mold coverage they desire to purchase.

I. Mandatory Offer Endorsements (25%, 50%, 100% Buybacks)

One commenter supported the mandated offer of additional coverage up to policy limits and believes that if not mandated, insurers would not offer mold coverage. Many commenters opposed the mandatory offer endorsements on various grounds, including the mandatory feature of the offer to buy back coverage; the claim that the proposed percentage limits are too high; the belief that the additional amounts purchased should be stated in specific dollar amounts rather than a percentage of Coverage A and Coverage B or at least the option to so state; and the belief that it is confusing to have a single limit base coverage and a mandatory offer endorsement that provides a “per coverage” limit. One commenter questioned how the percentage buyback of mold coverage will apply when policy limits are increased due to inflationary changes, and one commenter asked for clarification whether the base coverage is additional insurance over the percentage limits chosen. There were also suggestions by commenters that the word “ensuing” should be deleted as being too confusing and that

additional language should be added to clarify that mold coverage is intended to be provided only in direct conjunction with water damage.

The Department's rationale for considering mandatory offer coverage was to provide flexibility for consumer choice as well as to address availability of coverage issues. The specific elements of the mandatory offer coverage were designed to allow greater choice by setting forth percentages for buybacks and to preserve the current elements of mold coverage as an ensuing loss resulting from covered water damage. Percentage limits of increased coverage were chosen rather than specific dollar amounts because the wide range of home values as well as the wide variations in claim costs made it difficult for the Department to identify appropriate dollar amount limits. However, the Department is willing to consider alternative approaches in individual insurer filings, including specific dollar limits.

The Department disagrees that the proposed language concerning the base coverage was unclear because the mandatory offer endorsements clearly stated that the coverage would be increased above the \$5,000 base amount. However, in response to comments, the adoption changes the flat \$5,000 base limit for mold to the limited mold coverage as described herein. Regarding the issue of when policy limits would be increased due to inflationary changes, the Department believes the mold coverage limits, since they are stated as a percentage of policy limits, would necessarily be increased at the same time and to the same extent any other limits are adjusted in the policy.

J. Manual Rule IV. A.-Mandatory Offer Endorsements

Many commenters raised issues in support and opposition to the manual rule governing mandatory offer endorsements. Several commenters believed that the mandatory offer should be required only one time or every other year or that subsequent offers should be optional; that the mandatory offer could lead to adverse selection and does not allow for underwriting; and that the mechanics of the mandatory offer be clarified to ensure clear consumer information, clear indication of consumer choices, and protection for agents and insurers to document the consumer's ultimate choice. Some commenters spoke to the \$5,000 base coverage in terms of either an offer to consumers or the recommendation that this coverage should be offered as an endorsement.

The Department's adoption set forth herein should alleviate many of these concerns. Specifically, the manual rule as modified based on the comments provides that an insurer may decline the insured's option to purchase additional mold coverage if the denial is based upon sound underwriting principles reasonably related to an actual or anticipated mold exposure for the insured risk. This change obviates the concern about timing of the offer. With regard to comments expressing concern about disclosure to consumers, the adopted rule provides minimum required information that must be included in a notice form required to be provided to applicants or insureds, as well as sample language that would satisfy the minimum requirements. The adopted manual rule is also designed to provide for informed consumer choice and

documentation of same. Regarding offers of the \$5,000 base coverage, because the initial proposal intended that some level of coverage be included in the policy, an offer or an endorsement was not pertinent. This is equally true of the basic policy as adopted herein.

K. Implementation Date

Some commenters expressed concerns regarding the effective date and the issue of implementation of the endorsements. Such concerns centered on insurer system and programming changes, indicating that the time necessary for implementation varied from an eight to ten week period to a six-month period. One commenter suggested one effective date for new business and a later date for renewals.

The Department's adoption of the endorsements and rules as set forth herein provides that the adopted endorsements and rules will be effective, and available for use, on January 1, 2002. Given the comments regarding time needed to implement the endorsements, no fixed implementation date is mandated until January 1, 2003. Rate regulated insurers may use such endorsements upon filing and approval under Article 5.101, Section 4, for appropriate rate changes to be used with the endorsements.

L. Policy Deductibles

Various suggestions were made either to waive policy deductibles on verified mold claims in addition to the \$5,000 cap proposal; to have the \$5,000 base coverage apply in excess of the policy deductible; to apply the deductible to the \$5,000 base

coverage and any higher limits of liability that are purchased; or to have a rule allowing insurers to offer different deductibles specific to any higher limits of mold coverage offered by the insurer.

The Department believes that the adoption set forth herein address the concerns raised by these issues; however, the Department notes that policy deductibles under a residential property policy apply to the total amount of the loss and a deductible would apply to each occurrence. The application of deductibles will remain the same under the new basic coverage and the mandatory offer coverage.

M. Loss of Use Coverage Clarification (Additional Living Expenses)

Several commenters expressed concern that the loss of use provisions in the new endorsements are ambiguous or unclear, and that clarification is needed to more clearly reflect the intent stated in the manual rules. Some commenters suggested that the coverage for “loss of use” in the endorsements (termed “additional living expenses” and “fair rental value” in the endorsements) could apply in addition to the loss of use provision in the base policy. There was also a suggestion to delete all language referring to loss of use from the endorsements or clarify that loss of use coverage is not further limited.

The Department disagrees that these provisions are unclear and believes that the manual rules and endorsements clearly state the application of the coverage. Regarding the suggestion to delete all language referring to loss of use in the mandatory offer endorsements, it remains the Department’s goal to provide consumers

the option to buy back enhanced coverage, including coverage for loss of use. If an insured purchased 100% limits of mold coverage, the loss of use percentage of coverage would be the percentage loss of use coverage provided in the policy (20% in the case of HO-B), and if an insured purchased 25% limits of mold coverage, the loss of use percentage of coverage would be 25% of the percentage loss of use coverage provided in the policy.

N. Third Party Liability

Several commenters contended that third party property damage and bodily injury claims for mold should be excluded from the proposed endorsements and the residential property policies or that there should be a limit on third party bodily injury coverage. The Department disagrees because it has not seen any indication that this is a problem which should be addressed in the prescribed forms at this time.

O. Individual Insurer Filings

Several commenters recommended freedom of choice for consumers by allowing insurers to file their own endorsements or to file national forms. These commenters further suggested that insurers be given the option of using the current HO-B forms with appropriate anti-stacking language and that consumers be given the ability to “opt-out” of mold coverage if they desire. One commenter believes that insurers should be allowed to file and receive approval of individual endorsements that limit mold coverage to sudden and accidental water damage. There were also

statements that stability in the homeowners insurance market can be restored only by allowing insurers to make their own filings under Insurance Code Article 5.35.

In response to comments, the Commissioner has adopted what he believes is a fair and balanced compromise approach by preserving some coverage for ensuing mold while allowing insureds to buy back additional limits of coverage for mold. However, pursuant to Article 5.35, insurers continue to have the ability to file individual policies or endorsements modifying coverage in order to provide various levels of mold coverage and/or to provide other forms of mold coverage, and the Department will review and consider for approval or adoption all such filings in addition to those adopted in this order.

P. Pricing of Coverage

A commenter believes that the terms of staff's proposal make it impossible for insurers to predict the frequency or severity of losses, which makes accurate pricing a problem. The Department disagrees. It is the rapidly changing mold-related loss environment that has made accurate pricing a problem, not any action taken by the Department. Ultimately, the changes adopted in this order should stabilize the experience, facilitating accurate pricing.

Several commenters do not believe that the proposed rates for the buyback coverage are adequate. The Department believes that the rating factors it proposed for the optional buyback coverage in its petition were reasonable given the uncertainties surrounding trends in mold losses. However, this is no longer an issue as the

Commissioner has decided not to adopt the rating rules contained in the original proposal. The Department does intend to issue another special Mold Data Call early next year to obtain information on mold-related claims reported in the last two quarters of 2001 as well as to update information on claims that were still open in the data reported in the original call. This more mature information and the resulting rate indications will be considered in the next benchmark rate proceeding.

One commenter believes that widely affordable rates are not possible due to the nature of adverse selection. It is a paramount concern to the Department that rates remain affordable. To address the concern raised by many commenters about adverse selection, the adopted manual rules permit an insurer to decline to issue a policy with the mandatory offer mold coverage endorsement if that declination is based on sound underwriting principles reasonably related to an actual or anticipated mold exposure for the risk, minimizing potential adverse selection. This is intended to promote affordable rates.

A commenter believes that since the Texas Windstorm Insurance Association (TWIA) would have to bear the entire cost of mold claims associated with TWIA policies (TWIA cannot spread mold losses over the whole state), such policies would become unaffordable if mold coverage were required. The Department would anticipate and expect that under individual insurer filings, and ultimately the benchmark rates, each region of the state would bear its own costs with or without mold coverage. This would

be true for more than just TWIA policies. However, the Department also notes that TWIA rates and policies are not a subject of this proceeding.

One commenter believes that the solution to the pricing problem is to allow insurers to raise rates and spread the risk and premium over the entire pool of ratepayers. Another commenter expressed concern over certain groups subsidizing mold coverage for other groups.

Staff's petition did indicate the amount by which rates for the optional buybacks would need to increase in each region of the state so that the risk is spread to each region, allowing each region to bear its own costs. The Department believes that this is the most equitable approach to spreading the risk and premium over all the ratepayers so that those with the greatest exposure to mold pay more, while those with a lesser exposure pay less. In this way subsidization of one group by another is minimized. The Department would anticipate and expect that individual insurer filings would vary charges and discounts among the various rating territories so that insureds in each territory pay their fair share.

Several commenters believe that if mold coverage is removed from the residential property policies consumers should receive a credit for this reduction in coverage. Some commenters believe that the current rates do not reflect the losses for mold coverage.

The benchmark rates that became effective November 1, 2001, and current rates for the rate regulated market, reflect few, if any, mold claims. This is because the loss

data that went into calculating those benchmark rates was from the five-year period 1994-1999. Insurers that are rate regulated have just begun to make filings in conjunction with the benchmark rates that went into effect November 1, 2001. The Department will review these filings to ensure that the charges are appropriate. The amount of any credit for the limitation on mold coverage in the basic policy would depend on what portion of the premiums are due to mold losses. The Department will also review for reasonability those filings involving charges for optional mold coverage. As noted earlier, however, the vast majority of homeowners insurance is written by non-rate regulated companies.

One commenter believes that the mold premium should be fully earned at the time the coverage is accepted unless the entire policy is cancelled. While the Department understands the commenter's concern, it disagrees that this warrants a departure from well-established insurance accounting principles.

One commenter states that an actuarial consulting firm has reviewed the rate proposed by staff for the mandatory \$5,000 limit and has found that it should be 20% instead of the proposed 10%. A commenter believes that leaving \$5,000 of mold coverage in the policy will still result in a 25% to 40% rate increase.

While this comment is related to a part of the proposal that was not adopted, the Department disagrees, as the cited study specifically said that it did not try to quantify the effects of the limits on coverage and anti-stacking provisions contained in the original proposal. While the other commenter did not provide any basis for the 25% to

40% rate increase, the Department notes that this issue is no longer relevant because this order does not adopt the \$5,000 basic coverage.

One commenter believes that the proposal is premature because the data underlying the staff analysis, according to the commenter, has not been audited or otherwise verified, and the public was not given any opportunity to review the data.

The Department disagrees. The Department's actuarial staff reviewed the data for reasonability and where appropriate resolved possible problems with the insurers. Statistics used in ratemaking are generally not audited but are rather subjected to certain edits and general tests for reasonability. This is analogous to what the Department's actuarial staff did. Data summaries derived from the data call have been posted on the Department's website for some time, and have been available for public review. The Commissioner believes that to defer action on the proposal until more mature claims data can be obtained could have dire effects on the homeowners market in the state.

A commenter believes that recent large increases in losses due to mold claims are unsubstantiated. Another commenter was concerned about the reliability of the reported data because mold and water claims are so difficult to distinguish.

The Department disagrees. The data gathered by the Department in its special Mold Data Call clearly shows that mold claims are increasing drastically in the state. While the full extent of the problem cannot be determined with certainty since many of the claims are ongoing, the Department's actuarial staff believes that, if anything, the

data may understate the extent of the problem, particularly in the most recent quarter for which data was gathered under the special Mold Data Call. The special Mold Data Call defined mold claims as being "any homeowners insurance claim where damages alleged include the presence or removal of mold (whether or not it was one of the species of mold commonly referred to as 'toxic mold') within the home." Thus, there would have been a mold element in all of the reported claims. The Department recognizes that some of the costs included in the reported mold-related claims may represent costs that would have existed had mold not ensued from the covered water damage. However, this was recognized and reflected in calculating the charges for the optional buyback coverages in the original proposal.

A commenter alleges TDI's analysis does not contain data from consumer advocate groups and is therefore biased. The commenter further alleges that the average remediation cost/mold claim is \$92,000.

The Department disagrees that the data it has collected is necessarily biased. For the purposes of insurance pricing, it is a well-established actuarial principle that the use of data derived from the insurance system itself is preferred. Other databases such as the one cited are apt to be much more statistically biased for several reasons. They would tend to exclude smaller claims through self-selection, producing apparent average costs that are not reflective of overall insurance system losses. They also would not necessarily include important data elements such as limits of coverage and their effect on covered costs, nor the kind of coverage, if any, held by the affected

individuals. Most importantly, they would not include a measure of the size of the total population, including those who did not have claims, from which the claims were drawn. Without these features, the information would not be useable for ratemaking purposes.

One commenter urges that the Department first develop premium rollbacks or discounts for the proposed endorsements in the regulated market. The commenter states that the staff petition ignores the amount of mold claims experience in current rates and that staff should present a petition that provides a discount to customers opting into a capped exclusion. The commenter states that this rate reduction should come only after the parties have closely examined the available data in a contested case hearing.

The Department agrees in part and disagrees in part. The Department believes that the benchmark rates that became effective November 1, 2001, as well as the existing rates for rate regulated carriers, reflect few if any mold claims. Rate regulated insurers may implement the adopted endorsements by filing appropriate credits and charges under Section 4 of Article 5.101, Texas Insurance Code, for approval by the Commissioner. Credits and charges for the adopted mold endorsements will be considered in the next benchmark rate hearing to be held in 2002. Pursuant to the procedural changes enacted by HB 2102 in the 77th Legislature, these rates are adopted through an uncontested non-Administrative Procedure Act rulemaking proceeding.

Q. Claims Handling Practices

Many commenters have expressed frustration with insurer claims handling practices, and have called for a review and development of better and more responsive claims handling, including the establishment of evaluation and remediation guidelines. In regard to claims handling practices, one commenter believes if insurers view claims as separate occurrences and impose a deductible for each occurrence, they should also be liable for policy limits for each occurrence.

Regarding frustrations concerning claims handling and the development of standards for evaluation and remediation guidelines, the Department agrees that improvement is needed; therefore, the Department intends to convene a task force to suggest best practices for claims handling with regard to mold-related claims. While the Department may not be able to mandate that insurers abide by the recommended practices, these practices should help by providing some guidance and expectation to insurers and claimants as to how to adequately respond to mold-related claims. Moreover, the Texas Department of Health has convened a task force to study mold remediation standards and certification of mold remediators. The Department acknowledges that a separate deductible applies to each occurrence; however, the basic coverage adopted in this decision does not affect the application of deductibles and available policy limits for each occurrence.

R. Lack of Mold Remediation Standards

Commenters suggested that the lack of standards for mold testing, inspection, and remediation exacerbate the mold problem. A commenter says that without

standards for air quality or mold remediation, fraud and excessive costs will continue to exist. Another believes that mold remediators are “gouging” the insurers (and ultimately the insured through rising rates) with exorbitant charges for mold remediation. Several commenters recommended that a task force be convened to address these issues.

As noted above, the Department intends to convene a task force to suggest best practices for claims handling with regard to mold-related claims, and the Texas Department of Health has convened task forces to develop standards regarding air quality, testing labs, and mold remediation activity. The Department will continue to monitor the referral to the Attorney General's office regarding mold clean-up practices that may be abusive, including the possibility of excessive pricing.

S. Builders, Realtors, and Lenders

Several commenters point to builders and building codes as a root cause of the mold problem and made a variety of recommendations including licensing and bonding of all residential and commercial builders and inspections prior to occupancy; requiring builders and real estate agents to carry certain limits of liability coverage for mold claims; and developing and enforcing building codes and requirements for lenders to furnish evidence of mold clean up and remediation to all buyers and sellers. A commenter suggests that builders have no incentive to build to compliance with code since codes are not enforced, they are not licensed nor are they held accountable in a court of law because of lawsuit abuse proponents and binding arbitration. Many commenters have expressed their belief that a frequent cause of mold in homes is the

inferior workmanship and defective building materials that are often used in construction of new homes. These commenters have further expressed considerable frustration that the Texas homeowners policy does not provide coverage for these construction defects and defective building materials. A commenter urged the Department to take certain actions including encouraging insurance companies to subrogate claims to recover losses due to manufacturers and builders and to become proactive as to mold prevention.

The Department plans to evaluate and possibly adopt building code standards that would help in suppressing mold growth, although the Department's authority at this point is limited to the building code governing coverage written through the Texas Windstorm Insurance Association. The Department has no authority to address the other issues raised by the commenters such as licensing of builders and mandating insurance requirements. While the Department certainly understands the frustration of these commenters, it is important to understand that coverage for defective building materials and inferior workmanship is outside the scope of the coverage in the homeowners policy and is not an insurable hazard under a homeowners policy. That exposure should be borne by builders and materials manufacturers, either through direct legal action by consumers or through subrogation initiated by homeowners insurers.

T. Consumer Education

A commenter suggests taking a proactive approach by educating consumers on how to spot signs or potential problems. Another urges the Commissioner to promote public awareness of actions that can be taken by homeowners to mitigate mold damage which include (1) maintenance and inspection of plumbing, roofing, heating and AC systems; (2) early detection of water leakage; (3) early reporting of water damage to insurers; (4) rapid repair of leakage and damage; (5) importance of drying wet area; (6) maintenance of humidity levels in the home.

The Department strongly agrees that consumer education is important both to assist consumers in the mitigation of mold damage and to provide help in the resolution of their claims. The Commissioner has already issued public statements outlining steps consumers can take, and fully expects that such educational efforts will continue in the future.

U. Alternative Solutions

A commenter suggested, in lieu of staff's proposal, that insurers be liable for the cost of testing for the type of mold that is present and, if the type of mold present is "toxic" then the insurer would be liable for the clean up; if the type(s) of mold present are "non-toxic" then the clean up would be the responsibility of the insured. The Department disagrees as this would require testing to be done on every claim that in any way involves mold, thus driving up the cost of these claims. This is what the adoption order is designed to prevent.

Another commenter suggested an alternative solution as follows: (1) damages related solely to a mold claim (i.e., excluding cost and repairs for related water damage that would exist regardless of mold) that are \$10,000 or less the homeowner suffers no penalty, (2) mold damages that exceed \$10,000 but do not exceed \$20,000 the insurance company would have the option to discontinue all water coverage for the next policy period, (3) mold damages that exceed \$20,000 but do not exceed \$30,000 the insurance company would have the option to discontinue water coverage for two years, and (4) mold damages that exceed \$30,000, the insurance company would have the option to discontinue water coverage for three years.

It appears that the solution proposed by the commenter uses underwriting as a tool to address the mold problem. The Department's decision, which now specifically provides for underwriting based on principles reasonably related to an actual or anticipated mold, fungi or other microbes loss exposure, would not preclude insurers from adopting this approach, provided it complies with applicable statutes.

V. Procedural Issues

A commenter asserted that it is entitled to a hearing based on 28 Tex. Admin. Code §§1.203(d) and 1.205(1) and Texas Insurance Code Article 5.96. The commenter stated that §1.203(d) contemplates that the hearing will be held after the comment period and after the staff's summary of comments is complete so that all interested persons may respond to the written comments.

The Department disagrees. The referenced citations do not state that the hearing will be held after the comment period. Indeed, a complete reading of §§1.203 and 1.205 shows that the Commissioner may take a matter under advisement at the conclusion of a hearing. The Department routinely sets hearings for matters noticed pursuant to Article 5.96. The Department did so in this instance and gave full and fair notice that “while the public hearing will be held before the end of the comment period, no action will be taken by the Commissioner until after the expiration of the comment period.” Moreover, while written comments on the published proposal may be filed with the Department, the rules state that at the hearing, “all interested persons shall be permitted to make oral comments to the Commissioner.” It does not state “all interested persons may respond to the written comments,” as asserted by the commenter, although commenters may certainly obtain all written comments for review.

One commenter requested that the Commissioner not act on staff’s petition, stating that the Department failed to comply with the notice requirement of Texas Insurance Code Article 5.96(c), which the commenter says requires notice of the meeting or hearing at which the Commissioner will adopt the proposals.

The Department disagrees because the statute and rules do not state that the Commissioner must act at the hearing; to the contrary, the statute refers to notice of the hearing scheduled “to consider a proposal” (Article 5.96(g)), and the rule states that the Commissioner may take the matter under advisement at the conclusion of the hearing

(§1.205(3)). The Department provided full and fair notice of the hearing and the matters to be considered.

The Department also disagrees with another commenter's assertion that the Department's notice failed to comply with Article 5.96(g) which requires the notice to provide the legal authority for the hearing. Article 5.96(g) states in its entirety: "If a hearing is scheduled to consider a proposal, the board shall publish notice in the Texas Register not less than 10 days before the hearing and shall state the time, place, legal authority for the hearing, and the matters to be considered." The Department's notice complied with this requirement by referencing all statutory authority for the hearing.

One commenter stated that the Department's notice failed to comply with the requirements of the Administrative Procedure Act, Texas Gov't. Code §2001.024, which the commenter claims is necessary since staff's petition proposes rules under Article 5.98, which the commenter states is not exempt from the requirements of the Government Code.

The Department disagrees. Article 5.98 is included along with Article 5.96 in Insurance Code Chapter 5, Subchapter L, which sets forth the administrative procedure for changes in manual rules, statistical plans, policy and endorsement forms, and certain rates, and allows the agency to adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5, Texas Insurance Code. As stated in the notice, the Administrative Procedure Act, (APA) does not apply to actions taken under Article 5.96. The Department's interpretation has been that the APA does not apply because

Articles 5.96 and 5.98 are part of the same subchapter and must work in harmony, and actions under Article 5.96 are specifically exempted from the APA.

W. Legal Issues

A commenter suggests that the Commissioner issue a cease and desist order against those insurers that have ceased writing HO-B policies, on the grounds that this constitutes a violation of Insurance Code Article 21.21-8. However, this comment does not relate to the proposed action, as it addresses the agency's enforcement authority. Nothing in the proposal or adopted action relates to, or alters in any way, any enforcement actions which the agency may undertake on a fact-specific basis.

Several commenters assert that mold coverage exists only because the Texas Supreme Court in *Balandran v. Safeco Insurance Company of America*, 972 S.W.2d 738 (Tex. 1998) held that no exclusions apply to repeated and continuous leakage and seepage and accidental discharge from a plumbing system. The commenters believe that the *Balandran* case eliminated the exclusion for damages to the dwelling caused by an accidental discharge of water and that based on this "new" coverage sanctioned by the court, there has been a flood of mold claims.

The Department disagrees because the Texas Supreme Court in the *Balandran* case held that the exclusion repeal provision applied to exclusion 1.h., which concerns foundations, and more importantly that the exclusion repeal language applied to coverage A (Dwelling). The Department believes that the mold coverage comes from the "ensuing loss" language contained in exclusion 1.f. which provides an exception to

the exclusion for mold or other fungi if the mold loss ensues from a covered peril. The commenters appear to believe that the court created new coverage; however, claims for water damage to the dwelling have been covered since at least 1978, and the exclusion repeal language that was at issue in the *Balandran* case was in the exclusions section of the policy (and clearly applicable to both dwelling and contents) until a rewrite of the policy in 1990 to make it more easily read by consumers. It was the mandate of the then State Board of Insurance not to change coverage through the rewrite process; therefore, the class of claims that the commenters are asserting are “new” claims were clearly covered prior to the 1990 policy rewrite. The assertion that *Balandran* created a new class of water claims which are now creating a flood of mold claims is inaccurate because this coverage has been in the policy since 1978.

Several commenters alleged that the proposal would greatly expand current coverage by acknowledging an intent to provide mold coverage. The commenters further assert that most Texas courts have held that the “ensuing loss” provision does not require coverage for mold claims caused by water damage. The commenters maintain that the correct interpretation of the “ensuing loss” clause in exclusion 1. f. is that ensuing water damage is required to follow from mold or fungi damage or damage from one of the other perils enumerated in the exclusion.

The Department disagrees because it believes there is currently mold coverage in the policy as a result of the ensuing loss language. The endorsements as proposed or adopted would only modify the coverage that is currently in the policy. The

Department also disagrees with the allegation that most courts have held there is no mold coverage even when the loss ensues from a covered water damage. The only cases cited are *Harrison v. USAA*, 2000 WL 391539 (Tex. App.—Austin, April 19, 2001) and *Lambros v. Standard Fire Ins. Co.*, 530 S.W. 2d 138 (Tex. Civ. App.—San Antonio 1975, writ ref'd). The *Harrison* case, an unpublished decision, does not involve the peril of mold but instead focuses on the peril of rot. The *Lambros* case also does not involve the peril of mold but instead involves foundation damage caused by underground water. Additionally, the pre-1978 policy in the *Lambros* case excluded most forms of water damage from the policy, unlike the HO-B that has broad water damage coverage. It appears that the insurance industry believes mold is covered as an ensuing loss in the residential property policies because insurers are paying a large number of such claims.

The Department further disagrees that the ensuing loss provision requires that ensuing water damage follow from one of the types of damage enumerated in exclusion (f). The Department believes there is currently mold coverage in the HO-B policy as a result of the ensuing loss provision and that therefore neither the proposed or adopted changes create new or expanded coverage.

One commenter asserts that Manual rules apply only to the rate regulated companies and do not apply to non-rate regulated companies (i.e., Lloyd's and reciprocal exchanges). The Department disagrees because both Lloyd's and reciprocal exchange insurers are subject to Article 5.35 which requires that all insurers use the policy forms promulgated by the Commissioner. In addition to the promulgated policy

forms, the Commissioner has also adopted policy-writing rules in the Personal Lines Manual (Manual) that all insurers are required to follow. This is because without such rules to govern policy eligibility, coverages, and other general requirements, the use of the standard policy forms would not be uniform and consistent.

Two commenters stated that the Department does not have the legal authority to mandate the offer of mold coverage through a Manual rule. One of those commenters added that the Commissioner cannot require insurers to offer such coverage in any minimum amount. The Department disagrees. The authority granted to the Commissioner pursuant to Articles 5.35, 5.96, and 5.98 has been consistently interpreted by the agency to provide for the Commissioner's adoption of both policy forms and endorsements and concomitant Manual rules to guide the insurers in the writing of policies, for example, setting forth provisions relating to eligibility, coverages, and other general requirements. The requirement for insurers to offer mold coverage is a policy writing rule specific to the policy endorsements adopted herein that all insurers will be required to follow.

A commenter believes that the 1997 amendments to Article 5.35 mean that regulatory disapproval cannot be based on a disagreement between the company and the Department about the appropriateness or extent of coverage. Another commenter asserts that the 1997 changes, which among other things deleted the requirement for equivalent coverage, clearly say that the Commissioner cannot mandate coverage, minimum or otherwise, and maintains that whatever rulemaking authority the

Commissioner may have cannot be used to overrule what the commenter says is legislative intent that the companies are free of compulsory coverages or minimum coverages that might have otherwise been imposed under prior law.

The Department disagrees. To accept the commenters' assertions would render meaningless the authority granted to the Commissioner by Article 5.35, which authorizes the Department to review policy forms and endorsements filed for approval to ensure that they meet all standards set forth in Article 5.35. The 1997 changes do not prevent the Commissioner from promulgating a standard policy form, although Article 5.35 allows certain insurers to file their own policy forms for approval. The Department will continue to review such filings and consider them for approval.

One commenter contended that the proposed amendments to the residential property policies have a rate impact which requires adoption of the proposal under the APA (as an Article 5.101 benchmark rate proceeding) rather than under Article 5.96. The Department disagrees with this comment. As noted earlier, Article 5.96, which governs the adoption or approval of policy forms, endorsements and manual rules, specifically states that the APA does not apply to such actions by the Department. To the extent that the Department's action will have a rate impact, rate regulated insurers will have to make individual insurer filings pursuant to Section 4, Article 5.101 if they desire to use the endorsements prior to the benchmark proceeding in 2002. Industry-wide rates will continue to be set under the benchmark proceeding. Pursuant to HB

2102, effective September 1, 2001, benchmark rates are established under a non-APA rulemaking proceeding.

One commenter believes that the Texas Windstorm Insurance Association (TWIA) policy does not provide, and should not be read to provide, mold coverage because such coverage is inconsistent with the legislative intent expressed in Insurance Code Article 21.49. However, this comment relates to a policy form not under consideration herein and is therefore not relevant to the original proposal or the forms adopted by this order.

A commenter believes that other issues in addition to mold are affecting the availability and affordability of homeowners insurance. These include increased foundation claims as a result of the Balandran decision and that companies' ability to cancel and non-renew has been hampered by enactment of Article 21.49-2B in 1991. One commenter advocated a cap on attorneys' fees and disallowing exemplary damages. Another commenter complains of excessive pricing for mold-related property inspections.

The question of foundation claims is outside the scope of this proceeding. The provisions of Article 21.49-2B were enacted by the Texas legislature and any changes would have to be addressed by that body. The remaining comments relate to actions that are beyond the Department's authority.

X. General Comments

One commenter opposes staff's petition and urges that the endorsements, rule amendments, and statistical plan changes not be adopted on the grounds that the changes would only serve to compound the problem. Another commenter opposes the staff petition and, while commending the Department's diligence and perseverance in seeking input and proposed solutions from the public and insurers, believes that the proposal does not address the heart of the homeowner insurance crisis, which the commenter states is Texas' expansive coverage for water damage. The commenter advocates a major overhaul of the homeowners insurance system and that a "quick fix" of an "old-fashioned, one-size-fits-all, state-promulgated policy form", should be abandoned. The commenter recommends alternatives such as: contain \$5,000 base policy limits for mold remediation that is the direct result of a covered water loss; limit covered losses of all types, but particularly water losses, to "sudden and accidental" losses; exclude from coverage losses resulting from faulty, inadequate or defective design, construction, materials or maintenance; exclude from coverage liability that results in whole or in part from exposure to mold; limit tear out and replacement costs associated with a covered water loss from a plumbing drain system located within or under the slab or foundation of the dwelling to \$3,500 or 5% of Coverage A (Dwelling) limits, whichever is greater.

In response to these and other comments, the Department has adopted what it believes is a fair and balanced compromise approach by preserving some coverage for ensuing mold while allowing insureds to buy back enhanced coverage for mold.

However, pursuant to Article 5.35, insurers continue to have the ability to file individual policies or endorsements modifying coverage in order to provide various levels of mold coverage and/or to provide other forms of mold coverage, and the Department will review and consider for approval or adoption all such filings in addition to those adopted in this order.

A commenter recommends that different endorsement numbers be used for each of the percentage buyback endorsements to facilitate statistical reporting. Otherwise new statistical fields will have to be added and that will greatly add to the implementation costs. The Department agrees and has incorporated this recommendation into the adopted statistical plan changes displayed in Exhibit V.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.35, 5.96, and 5.98.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96((h)), the Department will notify all insurers affected by this section of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that nine amendatory mandatory endorsements, to be attached to certain residential property insurance policies: (1) Endorsement No. HO-161A which will be attached to Texas Homeowners Form-A (HO-A), (2) Endorsement No. HO-162A which will be attached to Texas Homeowners Form-B (HO-B), (3) Endorsement No. HO-163A which will be attached to Texas Homeowners Form-C (HO-C), (4) Endorsement No. HO-164A which will be attached to the Texas Homeowners Tenant Policy–Form B (HO-BT), (5) Endorsement No. HO-165A which will be attached to the Texas Homeowners Condominium Policy-Form B (HO-B-CON), (6) Endorsement No. HO-166A which will be attached to the Texas Homeowners Tenant Policy–Form C (HO-CT), (7) Endorsement No. HO-167A which will be attached to the Texas Homeowners Condominium Policy-Form C (HO-C-CON), (8) Endorsement No. TDP-004A which will be attached to the Texas Dwelling Policy-Form 1 (TDP-1) and the Texas Dwelling Policy-Form 2 (TDP-2), and (9) Endorsement No. TDP-005A which will be attached to the Texas Dwelling Policy–Form 3 (TDP-3) as specified herein and which are attached to this Order and incorporated into this Order by reference, be adopted and are applicable to be effective and available for use on and after January 1, 2002, but

insurers must implement the endorsements no later than January 1, 2003, and rate regulated insurers may use such endorsements upon filing and approval of discounts and charges for the endorsements under Article 5.101 §4.

IT IS FURTHER ORDERED that nine mandatory offer endorsements, to be attached to certain residential property insurance policies: (1) Endorsement No. HO-161 which may be attached to Texas Homeowners Form-A (HO-A), (2) Endorsement No. HO-162 which may be attached to Texas Homeowners Form-B (HO-B), (3) Endorsement No. HO-163 which may be attached to Texas Homeowners Form-C (HO-C), (4) Endorsement No. HO-164 which may be attached to the Texas Homeowners Tenant Policy–Form B (HO-BT), (5) Endorsement No. HO-165 which may be attached to the Texas Homeowners Condominium Policy-Form B (HO-B-CON), (6) Endorsement No. HO-166 which may be attached to the Texas Homeowners Tenant Policy–Form C (HO-CT), (7) Endorsement No. HO-167 which may be attached to the Texas Homeowners Condominium Policy-Form C (HO-C-CON), (8) Endorsement No. TDP-004 which may be attached to the Texas Dwelling Policy-Form 1 (TDP-1) and the Texas Dwelling Policy-Form 2 (TDP-2), and (9) Endorsement No. TDP-005 which may be attached to the Texas Dwelling Policy–Form 3 (TDP-3) as specified herein and which are attached to this Order and incorporated into this Order by reference, be adopted and applicable to be effective on and after January 1, 2002, but insurers must implement the endorsements no later than January 1, 2003, and rate regulated insurers may use such

endorsements upon filing and approval of discounts and charges for the endorsements under Article 5.101 §4.

IT IS FURTHER ORDERED that an amendment to Endorsement No. HO-170 (Additional Extended Coverage) which may be attached to Homeowners Form HO-A, as specified herein and which is attached to this Order and incorporated into this Order by reference, is adopted, and applicable to be effective on and after January 1, 2002, but insurers must implement this endorsement no later than January 1, 2003, and rate regulated insurers may use this endorsement upon filing and approval of discounts and charges for this endorsement under Article 5.101 §4.

IT IS FURTHER ORDERED that two Texas Personal Lines Manual rules: (1) Rule IV-A, "Section I Mandatory Offer Endorsements" in the Homeowners Section, and (2) Rule IV, "Mandatory Offer Endorsements" in the Dwelling Section as specified herein and which are attached to this Order and incorporated into this Order by reference, be adopted and applicable to be effective on and after January 1, 2002, but insurers must implement these rules no later than January 1, 2003.

IT IS FURTHER ORDERED that conforming amendments to the coding section, premiums section, and losses section of the Residential Statistical Plan as specified herein and which are attached to this Order and incorporated into this Order by

reference, be adopted and applicable to be effective on and after January 1, 2002, but insurers must implement these amendments no later than January 1, 2003.

AND IT IS SO ORDERED.

JOSE MONTEMAYOR
COMMISSIONER OF INSURANCE

COMMISSIONER'S ORDER NO. 01-1105