

107TH CONGRESS  
2D SESSION

# H. R. 5040

To combat toxic mold, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 2002

Mr. CONYERS (for himself, Mrs. JONES of Ohio, Mr. HONDA, Mr. GORDON, Mr. WYNN, Ms. KILPATRICK, Mr. HILLIARD, Ms. DELAURO, Mr. WAXMAN, Ms. WOOLSEY, Mr. GUTIERREZ, Mr. LIPINSKI, Mr. UNDERWOOD, Ms. MCCOLLUM, Ms. LEE, Mr. LANTOS, Mr. FROST, and Mr. BONIOR) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Financial Services, Ways and Means, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To combat toxic mold, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “United States Toxic Mold Safety and Protection Act of  
6 2002” or the “Melina Bill”.

7 (b) TABLE OF CONTENTS.—The table of contents for  
8 this Act is as follows:

TITLE I—RESEARCH AND PUBLIC EDUCATION

- Sec. 101. Definitions.
- Sec. 102. Health effects study and report.
- Sec. 103. Standards for preventing, detecting and remediating indoor mold growth.
- Sec. 104. Public education program.

TITLE II—HOUSING AND REAL PROPERTY PROVISIONS

- Sec. 201. Inspection of residential property.
- Sec. 202. Sale or lease of residential property.
- Sec. 203. Inspection requirements for existing public housing.
- Sec. 204. Construction requirements for new public housing.
- Sec. 205. Building codes.
- Sec. 206. Inspection requirement in connection with federally made or insured mortgages.

TITLE III—INDUSTRY STANDARDS DEVELOPMENT

- Sec. 301. Industry Standards Development.

TITLE IV—INDOOR MOLD HAZARD ASSISTANCE

- Sec. 401. Grants for remediation of public buildings.

TITLE V—TAX PROVISIONS

- Sec. 501. Tax credit for toxic mold inspection and remediation.

TITLE VI—NATIONAL TOXIC MOLD HAZARD INSURANCE PROGRAM

Subtitle A—Insurance Program

- Sec. 601. Program authority.
- Sec. 602. Scope of program and priorities.
- Sec. 603. Nature and limitation of insurance coverage.
- Sec. 604. Estimates of premium rates.
- Sec. 605. Establishment of chargeable premium rates.
- Sec. 606. National toxic mold hazard insurance fund.
- Sec. 607. Operating costs and allowances.
- Sec. 608. Payment of claims.
- Sec. 609. Dissemination of insurance information.
- Sec. 610. Coordination with other programs.
- Sec. 611. Reports.

Subtitle B—Organization and Administration of Insurance Program

- Sec. 621. Implementation.

**PART 1—INDUSTRY PROGRAM WITH FEDERAL FINANCIAL ASSISTANCE**

- Sec. 631. Industry insurance pool.
- Sec. 632. Agreements with insurance pool.
- Sec. 633. Adjustment and payment of claims and judicial review.

- Sec. 634. Premium equalization payments.
- Sec. 635. Emergency implementation of program.

**PART 2—GOVERNMENT PROGRAM WITH INDUSTRY ASSISTANCE**

- Sec. 641. Federal operation of program.
- Sec. 642. Adjustment and payment of claims and judicial review.

**PART 3—PROVISIONS OF GENERAL APPLICABILITY**

- Sec. 651. Services by insurance industry.
- Sec. 652. Use of insurance pool, companies, or other private organizations for certain payments.
- Sec. 653. Settlement and arbitration.
- Sec. 654. Records and audits.

Subtitle C—Miscellaneous Provisions

- Sec. 661. Definitions.
- Sec. 662. Payments.
- Sec. 663. Government corporation control act.
- Sec. 664. Finality of certain transactions.
- Sec. 665. Authorization of appropriations.

TITLE VII—HEALTH CARE PROVISIONS

- Sec. 701. Medicaid waiver.

1           **TITLE I—RESEARCH AND**  
2           **PUBLIC EDUCATION**

3   **SEC. 101. DEFINITIONS.**

4           For purposes of this Act—

5                   (1) the term “mold” means any furry growth of  
6           minute fungi occurring in moist conditions;

7                   (2) the term “toxic mold” means any indoor  
8           mold growth capable of creating toxins that can  
9           cause pulmonary, respiratory, neurological or other  
10          major illnesses after minimal exposure, as such ex-  
11          posure is defined by the Environmental Protection  
12          Agency, Center for Disease Control, National Insti-  
13          tute of Health or other Federal, State or local agen-

1 cy organized in part to study and/or protect human  
2 health;

3 (3) the term “toxic mold risk assessor” means  
4 a person who establishes the level of risk to public  
5 health associated with toxic mold; and

6 (4) the term “mold inspection” means an in-  
7 spection of real property that is designed to discover  
8 indoor mold growth, toxic mold growth, conditions  
9 that facilitate indoor mold growth and/or indicia of  
10 conditions that are likely to facilitate indoor mold  
11 growth.

12 **SEC. 102. RESEARCH AND REPORTING.**

13 (a) The Centers for Disease and Control, the Envi-  
14 ronmental Protection Agency, and the National Institutes  
15 of Health shall jointly undertake a comprehensive study  
16 of the health effects of indoor mold growth and toxic mold.  
17 The results of the aforementioned study shall be submitted  
18 to the Congress, the President and the general public. The  
19 study should ascertain among other things—

20 (1) detailed information about harmful and/or  
21 toxic strains of mold;

22 (2) methods of detecting harmful and/or toxic  
23 mold;

24 (3) potential dangers of prolonged exposure to  
25 indoor mold growth;

1 (4) minimum levels of exposure at which indoor  
2 mold growth is harmful to human health; and

3 (5) the hazards involved in mold remediation.

4 (b) The Department of Housing and Urban Develop-  
5 ment shall study and report the impact of construction  
6 standards on indoor mold growth.

7 (c) All research and study conducted pursuant to this  
8 Act shall be ongoing with updated reports published as  
9 needed to adequately inform the public and protect human  
10 health.

11 **SEC. 103. STANDARDS FOR PREVENTING, DETECTING, AND**  
12 **REMEDATING INDOOR MOLD GROWTH.**

13 (a) After appropriate research and study as required  
14 by this Act, but not later than one year after the effective  
15 date of this Act, the Environmental Protection Agency,  
16 in conjunction with appropriate Federal agencies, shall  
17 promulgate national standards that include, among other  
18 things—

19 (1) standards for mold inspection, mold remedi-  
20 ation, testing the toxicity of mold, and protection of  
21 mold remediators;

22 (2) standards for certification of mold inspec-  
23 tors, mold remediators, mold testing labs, mold risk  
24 assessors and industrial hygienist involved with mold  
25 remediation planning; and

1           (3) standards for the design, installation, and  
2           maintenance of air ventilation and/or air-condi-  
3           tioning systems to prevent mold growth or creation  
4           of conditions that foster mold growth.

5           (b) After appropriate research and study as required  
6           by this Act, but not later than one year after the effective  
7           date of this Act, the Department of Housing and Urban  
8           Development shall promulgate guidelines identifying con-  
9           ditions created during construction that facilitate the  
10          growth of indoor mold growth and recommending appro-  
11          priate means of eliminating those conditions.

12          (c) To the maximum extent possible, the standards,  
13          guidelines and recommendations established under this  
14          section shall be developed with the assistance of organiza-  
15          tions involved in establishing national building construc-  
16          tion standards representatives of State or local authorities  
17          responsible for building inspections and issuance of certifi-  
18          cates of occupancy.

19          (d) The Environmental Protection Agency and the  
20          Department of Housing and Urban Development shall  
21          make drafts of their respective documents available for  
22          public review and comment 30 days prior to publication.  
23          The Environmental Protection Agency and the Depart-  
24          ment of Housing and Urban Development shall make final

1 model standards and techniques available to the public no  
2 later than one year after the effective date of this Act.

3 (e) The Environmental Protection Agency shall take  
4 such actions as may be necessary to inform appropriate  
5 State and local government agencies and authorities of the  
6 model standards and techniques with the goal of ensuring  
7 that such agencies and authorities adopt such standards  
8 and techniques by June 1, 2004.

9 (f) All standards and guidelines promulgated pursu-  
10 ant to this Act shall be updated and published as needed  
11 to adequately inform the public and protect human health.

12 **SEC. 104. PUBLIC EDUCATION.**

13 (a) The Environmental Protection Agency, the Cen-  
14 ters for Disease Control, the National Institutes of Health,  
15 and the Department of Housing and Urban Development,  
16 and other relevant agencies shall sponsor public education  
17 programs to promote and increase public awareness of the  
18 dangers of indoor mold growth or toxic mold.

19 (b) The public education programs should include,  
20 among other things, information regarding the conditions  
21 that facilitate indoor mold growth; guidelines for remedi-  
22 ating indoor mold growth; dangers of exposure to indoor  
23 mold growth in public buildings; risk assessment and in-  
24 spection methods for toxic mold; and other necessary in-  
25 formation as determined by—

1           (1) the public education programs shall provide  
2           education and information through modes of com-  
3           munication that are commonly utilized and able to  
4           be easily consumed by relevant individuals or organi-  
5           zations;

6           (2) public educations programs should be de-  
7           signed to reach health professionals; the general  
8           public; homeowners, prospective homeowners, land-  
9           lords, and tenants; consumers of home improvement  
10          products; the real estate industry; the home con-  
11          struction and renovation industry, including the  
12          heating and air conditioning industry; and other in-  
13          dividuals and organizations with an interest in the  
14          use and/or occupancy of real property.

15          (c) Notwithstanding the foregoing, the Environ-  
16          mental Protection Agency, in consultation with appro-  
17          priate agencies shall publish, and periodically revise a  
18          pamphlet regarding indoor mold hazards. Among other  
19          things this pamphlet should—

20                (1) contain information regarding the health  
21                risks associated with exposure to indoor mold  
22                growth;

23                (2) provide information on the hazards of in-  
24                door mold growth in federally assisted and federally  
25                owned housing;



1           (3) describe the risks of mold exposure for per-  
2           sons residing in a dwelling with toxic mold;

3           (4) provide information on approved methods  
4           for evaluating and reducing mold growth and their  
5           effectiveness in identifying, reducing, eliminating, or  
6           preventing mold growth;

7           (5) advise persons how to obtain a list of per-  
8           sons certified to inspect or remediate mold growth in  
9           the area in which the pamphlet is to be used;

10          (6) state that a risk assessment or inspection  
11          for mold growth is recommended prior to the pur-  
12          chase, lease, or renovation of target housing;

13          (7) state that certain State and local laws im-  
14          pose additional requirements related to mold growth  
15          in housing and provide a listing of Federal, State,  
16          and local agencies in each State, including address  
17          and telephone number, that can provide information  
18          about applicable laws and available governmental  
19          and private assistance and financing; and

20          (8) provide information deemed appropriate and  
21          or necessary to promote awareness of the hazards  
22          posed by indoor mold.

23          (d) There is authorized to be appropriated such sums  
24          as may be necessary to carry out this section.

1 **TITLE II—HOUSING PROVISIONS**  
2 **FOR INDOOR MOLD HAZARD**  
3 **PREVENTION AND DETEC-**  
4 **TION**

5 **SEC. 201. INSPECTIONS OF RESIDENTIAL PROPERTY.**

6 Beginning with the calendar year 2004, the lessor of  
7 each unit of rental property shall conduct an annual in-  
8 spection of such property in accordance with the model  
9 standards and techniques set forth in section 103 and  
10 shall promptly notify the occupants of such property of  
11 the results of such inspection.

12 **SEC. 202. SALE OR LEASE OF RESIDENTIAL PROPERTY.**

13 (a) Not later than 2 years after the date of enactment  
14 of this Act, the Secretary of Housing and Urban Develop-  
15 ment and the Administrator of the Environmental Protec-  
16 tion Agency shall promulgate regulations under this sec-  
17 tion for the disclosure of mold hazards in housing which  
18 is offered for sale or lease.

19 (b) The regulations shall require that, before the sale  
20 or lease of real property a mold inspection be conducted  
21 by a State certified mold inspector and, within a reason-  
22 able time prior to the effective date of the purchase or  
23 lease, the seller or lessor shall clearly and accurately dis-  
24 close to the purchaser or lessee the results of the inspec-  
25 tion required under this subsection.

1 (c) Regulations promulgated under this section shall  
2 provide that every contract for the sale or lease of any  
3 interest in housing shall contain a statement signed by  
4 both the seller or lessor and by the purchaser or lessee  
5 that acknowledges the result of the mold inspection re-  
6 quired by subsection (b).

7 (b)(1) Any person who knowingly misrepresents the  
8 results of a mold inspection or causes the results of a mold  
9 inspection to be inaccurate shall be subject to civil money  
10 penalties in accordance with the provisions of section 102  
11 of the Department of Housing and Urban Development  
12 Reform Act of 1989 (42 U.S.C. 3545).

13 (2) Any person who knowingly violates the provisions  
14 of this section shall be jointly and severally liable to the  
15 purchaser or lessee in an amount equal to 3 times the  
16 amount of damages incurred by such individual.

17 (3) In any civil action brought for damages, the ap-  
18 propriate court may award court costs to the party com-  
19 mencing such action, together with reasonable attorney  
20 fees and any expert witness fees, if that party prevails.

21 (e) The regulations under this section shall take ef-  
22 fect 3 years after the date of the enactment of this Act.

1 **SEC. 203. INSPECTION REQUIREMENTS FOR EXISTING PUB-**  
2 **LIC HOUSING.**

3 (a) IN GENERAL.—The Secretary of Housing and  
4 Urban Development shall establish procedures to eliminate  
5 as far as practicable the hazards of indoor mold with re-  
6 spect to any existing public housing which may present  
7 such hazards, in accordance with this section. Such proce-  
8 dures shall provide for appropriate measures to conduct  
9 risk assessments, inspections, interim controls, and abate-  
10 ment of indoor mold hazards.

11 (b) PROCEDURES.—At a minimum, such procedures  
12 shall require—

13 (1) the provision of indoor mold hazard infor-  
14 mation pamphlets to tenants;

15 (2) periodic risk assessments and interim con-  
16 trols in accordance with a schedule determined by  
17 the Secretary;

18 (3) mold inspections;

19 (4) abatement of indoor mold hazards identi-  
20 fied;

21 (5) where risk assessment, inspection, or reduc-  
22 tion activities have been undertaken, the provision of  
23 notice to occupants describing the nature and scope  
24 of such activities and the actual risk assessment or  
25 inspection reports; and

1           (6) such other measures as the Secretary deems  
2 appropriate.

3           (c) TRANSITIONAL TESTING AND ABATEMENT.—

4           (1) PUBLIC HOUSING RECEIVING CAPITAL FUND  
5 ASSISTANCE.—The inspection required under this  
6 section for public housing assisted with amounts  
7 from the Capital Fund under section 9(d) of the  
8 United States Housing Act of 1937 (42 U.S.C.  
9 1437g(d)) shall be conducted with respect to—

10                   (A) a random sample of dwellings and  
11 common areas in all public housing projects as-  
12 sisted under such section; and

13                   (B) each dwelling in any public housing  
14 project in which there is a dwelling determined  
15 under subparagraph (A) to have indoor mold  
16 hazards.

17           (d) INSPECTION.—The Secretary shall require the in-  
18 spection of all housing subject to this paragraph in accord-  
19 ance with the modernization schedule. A public housing  
20 agency may elect to test for indoor mold hazards and may  
21 elect to abate such hazards under standards more strin-  
22 gent than those established under this section by the Sec-  
23 retary, and such abatement shall qualify for assistance  
24 from the Capital Fund. The Secretary shall require abate-  
25 ment of indoor mold hazards in housing in which the test

1 results equal or exceed the standard established under this  
2 Act. Final inspection and certification after abatement  
3 shall be made by a certified mold inspector, industrial hy-  
4 gienist, or local public health official.

5 (e) OTHER PUBLIC HOUSING.—

6 (1) REQUIRED INSPECTION.—The Secretary  
7 shall require the inspection under this section for—

8 (A) a random sample of dwellings and  
9 common areas in all public housing that is not  
10 subject to paragraph (1); and

11 (B) each dwelling in any public housing  
12 project in which there is a dwelling determined  
13 under subparagraph (A) to have indoor mold  
14 hazards.

15 (2) SCHEDULE.—The Secretary shall require  
16 the inspection of all housing subject to this para-  
17 graph before the June 1, 2004. The Secretary may  
18 prioritize, within such period, inspections on the  
19 basis of vacancy, age of housing, or projected mod-  
20 ernization or rehabilitation. The Secretary shall re-  
21 quire abatement and final inspection and certifi-  
22 cation of such housing in accordance with the last  
23 two sentences of paragraph (1).

1 (f) REPORT.—Not later than September 1, 2004, the  
2 Secretary shall submit a report to the Congress describing  
3 the results of the activities under this section.

4 (g) FUNDING.—The Secretary shall use amounts  
5 available under the Capital Fund under section 9(d) of  
6 the United States Housing Act of 1937 to carry out this  
7 section. The Secretary shall submit annually to the Con-  
8 gress an estimate of the funds required to carry out the  
9 provisions of this section.

10 **SEC. 204. CONSTRUCTION REQUIREMENTS FOR NEW PUB-**  
11 **LIC HOUSING.**

12 The Secretary of Housing and Urban Development  
13 shall take such actions and impose such standards and  
14 conditions as may be necessary or appropriate to ensure  
15 that public housing constructed after the date of the  
16 issuance of the model construction standards and tech-  
17 niques established under section 103, is constructed in ac-  
18 cordance with such model standards and techniques.

19 **SEC. 205. BUILDING CODES.**

20 (a) IN GENERAL.—The Secretary of Housing and  
21 Urban Development shall develop model construction  
22 standards and techniques for preventing and controlling  
23 mold within new buildings.

24 (b) CONTENTS.—The model standards and tech-  
25 niques shall provide for geographic differences in construc-

1 tion types and materials, geology, weather, and other vari-  
2 ables that may affect mold levels in new buildings.

3 (c) DEVELOPMENT AND PUBLICATION.—To the max-  
4 imum extent possible, these standards and techniques  
5 should be developed with the assistance of organizations  
6 involved in establishing national building construction  
7 standards and techniques. The Secretary shall make a  
8 draft of the document containing the model standards and  
9 techniques available for public review and comment. The  
10 Secretary shall make final model standards and techniques  
11 available to the public no later than one year after the  
12 effective date of this Act.

13 **SEC. 206. INSPECTION REQUIREMENT IN CONNECTION**  
14 **WITH FEDERALLY MADE OR INSURED MORT-**  
15 **GAGES.**

16 (a) IN GENERAL.—After December 31, 2003, no  
17 Federal agency (as such term is defined in section 551  
18 of title 5, United States Code) may make, insure, or guar-  
19 antee a mortgage or loan for purchase or lease of residen-  
20 tial real property unless—

21 (1) there has been an inspection of the property  
22 for the presence of indoor mold growth, toxic mold  
23 and/or the conditions that facilitate indoor mold  
24 growth hazards by a mold inspector certified in ac-  
25 cordance with standards promulgated pursuant to



1 this Act within a reasonable time prior to the mak-  
2 ing, insuring, or guaranteeing of the mortgage or  
3 loan and the results of the inspection are clearly and  
4 accurately disclosed to the purchaser, seller and  
5 mortgagor; and

6 (2) the contract for purchase and sale of an in-  
7 terest in residential real property for which such  
8 mortgage or loan was made contains a statement  
9 signed by the seller or lessor and by the purchaser  
10 or lessee that paragraph (1) has been complied with.

11 (b) REGULATIONS.—The heads of each of the agen-  
12 cies that make, insure, or guarantee mortgages or loans  
13 for purchase or lease of residential real property shall, not  
14 later than September 30, 2003, issue such regulations as  
15 may be necessary to carry out this section.

16 **TITLE III—INDUSTRY**  
17 **STANDARDS DEVELOPMENT**

18 **SEC. 301. INDUSTRY STANDARDS DEVELOPMENT.**

19 (a) DEFINITIONS.—Section 2 of the National Cooper-  
20 ative Research and Production Act of 1993 (15 U.S.C.  
21 4301) is amended—

22 (1) in subsection (a) by adding at the end the  
23 following:

24 “(7) The term ‘standards development activity’  
25 means any action taken by a standards development

1 organization for the purpose of developing, promul-  
2 gating, revising, amending, reissuing, interpreting,  
3 or otherwise maintaining a voluntary consensus  
4 standard for building products that are designed to  
5 retard the development of mold or the storage of  
6 those products or using such standard in conformity  
7 assessment activities.

8 “(8) The term ‘standards development organi-  
9 zation’ has the same meaning as the terms ‘vol-  
10 untary consensus standards body’ and ‘voluntary,  
11 private sector consensus standards body’ as such  
12 term are used in section 12(d) of the National Tech-  
13 nology Transfer and Advancement Act of 1995 and  
14 in Circular Number A-119, as revised February 10,  
15 1998, of the Office of Management and Budget.

16 “(9) The term ‘technical standard’ has the  
17 meaning given such term in section 12(d)(4) of the  
18 National Technology Transfer and Advancement Act  
19 of 1995.

20 “(10) The term ‘voluntary consensus standard’  
21 has the meaning given such term in Circular Num-  
22 ber A-119, as revised February 10, 1998, of the Of-  
23 fice of Management and Budget.”; and

24 (2) by adding at the end the following:

1       “(c) The term ‘standards development activity’ ex-  
2 cludes the following activities:

3           “(1) Exchanging information among competi-  
4 tors relating to cost, sales, profitability, prices, mar-  
5 keting, or distribution of any product, process, or  
6 service that is not reasonably required for the pur-  
7 pose of developing or promulgating a voluntary con-  
8 sensus standard, or using such standard in con-  
9 formity assessment activities.

10          “(2) Entering into any agreement or engaging  
11 in any other conduct that would allocate a market  
12 with a competitor.

13          “(3) Entering into any agreement or conspiracy  
14 that would set or restrain prices of any good or serv-  
15 ice.”.

16       (b) RULE OF REASON STANDARD.—Section 3 of the  
17 National Cooperative Research and Production Act of  
18 1993 (15 U.S.C. 4302) is amended by striking “of any  
19 person in making or performing a contract to carry out  
20 a joint venture shall” and inserting the following:

21 “of—

22           “(1) any person in making or performing a con-  
23 tract to carry out a joint venture, or

24           “(2) a standards development organization  
25 while engaged in a standards development activity,

1 including a standards development activity for build-  
2 ing products that are designed to retard the develop-  
3 ment of mold or the storage of those products  
4 shall”.

5 (c) LIMITATION ON RECOVERY.—Section 4 of the  
6 National Cooperative Research and Production Act of  
7 1993 (15 U.S.C. 4303) is amended—

8 (1) in subsections (a)(1), (b)(1), and (c)(1) by  
9 inserting “, for a standards development activity en-  
10 gaged in by standards development organization  
11 against which such claim is made” after “joint ven-  
12 ture”, and

13 (2) in subsection (e)—

14 (A) by inserting “, or of a standards devel-  
15 opment activity engaged in by a standards de-  
16 velopment organization” before the period at  
17 the end, and

18 (B) by redesignating such subsection as  
19 subsection (f), and

20 (3) by inserting after subsection (d) the fol-  
21 lowing:

22 “(e) Subsections (a), (b), and (c) shall not be con-  
23 strued to modify the liability under the antitrust laws of  
24 any person (other than a standards development organiza-  
25 tion) who—

1           “(1) directly (or through an employee or agent)  
2           participates in a standards development activity with  
3           respect to which a violation of any of the antitrust  
4           laws is found,

5           “(2) is not a fulltime employee of the standards  
6           development organization that engaged in such ac-  
7           tivity, and

8           “(3) is, or is an employee or agent of a person  
9           who is, engaged in a line of commerce that is likely  
10          to benefit directly from the operation of the stand-  
11          ards development activity with respect to which such  
12          violation is found.”.

13          (d) ATTORNEY FEES.—Section 5 of the National Co-  
14          operative Research and Production Act of 1993 (15  
15          U.S.C. 4304) is amended—

16               (1) in subsection (a) by inserting “, or of a  
17               standards development activity engaged in by a  
18               standards development organization (including an  
19               organization developing standards for building prod-  
20               ucts that are designed to retard the development of  
21               mold or the storage of those products)” after “joint  
22               venture”, and

23               (2) by adding at the end the following:

24               “(c) Subsections (a) and (b) shall not apply with re-  
25          spect to any person who—

1           “(1) directly participates in a standards devel-  
2           opment activity (including developing standards for  
3           building products that are designed to retard the de-  
4           velopment of mold or the storage of those products)  
5           with respect to which a violation of any of the anti-  
6           trust laws is found,

7           “(2) is not a fulltime employee of a standards  
8           development organization (including an organization  
9           developing standards for building products that are  
10          designed to retard the development of mold or the  
11          storage of those products) that engaged in such ac-  
12          tivity, and

13          “(3) is, or is an employee or agent of a person  
14          who is, engaged in a line of commerce that is likely  
15          to benefit directly from the operation of the stand-  
16          ards development activity with respect to which such  
17          violation is found.”.

18          (e) DISCLOSURE OF STANDARDS DEVELOPMENT AC-  
19          TIVITY.—Section 6 of the National Cooperative Research  
20          and Production Act of 1993 (15 U.S.C. 4305) is  
21          amended—

22                 (1) in subsection (a)—

23                         (A) by redesignating paragraphs (1), (2),  
24                         and (3) as subparagraphs (A), (B), and (C), re-  
25                         spectively,

1 (B) by inserting “(1)” after “(a)”, and

2 (C) by adding at the end the following:

3 “(2) A standards development organization (includ-  
4 ing an organization developing standards for building  
5 products that are designed to retard the development of  
6 mold or the storage of those products) may, not later than  
7 90 days after commencing a standards development activ-  
8 ity engaged in for the purpose of developing or promul-  
9 gating a voluntary consensus standards or not later than  
10 90 days after the date of the enactment of the Standards  
11 Development Organization Advancement Act of 2002,  
12 whichever is later, file simultaneously with the Attorney  
13 General and the Commission, a written notification  
14 disclosing—

15 “(A) the name and principal place of business  
16 of the standards development organization, and

17 “(B) documents showing the nature and scope  
18 of such activity.

19 Any standards development organization (including an or-  
20 ganization developing standards for building products that  
21 are designed to retard the development of mold or the  
22 storage of those products) may file additional disclosure  
23 notifications pursuant to this section as are appropriate  
24 to extend the protections of section 4 to standards develop-

1 ment activities that are not covered by the initial filing  
2 or that have changed significantly since the initial filing.”,

3 (2) in subsection (b)—

4 (A) in the 1st sentence by inserting “, or  
5 a notice with respect to such standards develop-  
6 ment activity that identifies the standards de-  
7 velopment organization engaged in such activity  
8 and that describes such activity in general  
9 terms” before the period at the end, and

10 (B) in the last sentence by inserting “or  
11 available to such organization, as the case may  
12 be” before the period,

13 (3) in subsection (d)(2) by inserting “, or the  
14 standards development activity,” after “venture”,

15 (4) in subsection (e)—

16 (A) by striking “person who” and inserting  
17 “person or standards development organization  
18 that”, and

19 (B) by inserting “or any standards devel-  
20 opment organization (including an organization  
21 developing standards for building products that  
22 are designed to retard the development of mold  
23 or the storage of those products)” after “per-  
24 son” the last place it appears, and



1 (5) in subsection (g)(1) by inserting “or stand-  
2 ards development organization (including an organi-  
3 zation developing standards for building products  
4 that are designed to retard the development of mold  
5 or the storage of those products)” after “person”.

6 **TITLE IV—INDOOR MOLD**  
7 **HAZARD ASSISTANCE**

8 **SEC. 401. GRANTS FOR REMEDIATION OF PUBLIC BUILD-**  
9 **INGS**

10 The Administrator of the Environmental Protection  
11 Agency shall make grants available to State and local gov-  
12 ernments to cover cost associated with remediating mold  
13 growth in buildings owned or leased by such governments,  
14 including but not limited to schools and multifamily dwell-  
15 ings.

16 **TITLE V—TAX PROVISIONS**

17 **SEC. 501. TAX CREDIT FOR TOXIC MOLD INSPECTION AND**  
18 **REMEDICATION.**

19 (a) IN GENERAL.—Subpart B of part IV of sub-  
20 chapter A of chapter 1 of the Internal Revenue Code of  
21 1986 is amended by adding at the end the following new  
22 section:

1 **“SEC. 30B. CREDIT FOR MOLD INSPECTION AND REMEDI-**  
2 **ATION.**

3 “(a) GENERAL RULE.—There shall be allowed as a  
4 credit against the tax imposed by this chapter for the tax-  
5 able year an amount equal to 60 percent of mold inspec-  
6 tion and remediation expenses paid or incurred by the tax-  
7 payer during such taxable year.

8 “(b) LIMITATION.—The amount of the credit allowed  
9 under subsection (a) for any taxable year shall not exceed  
10 \$50,000.

11 “(c) MOLD INSPECTION AND REMEDIATION EX-  
12 PENSES.—For purposes of this section, the term ‘mold in-  
13 spection and remediation expenses’ means expenses paid  
14 or incurred by the taxpayer (and not reimbursed by insur-  
15 ance or otherwise) to carry out—

16 “(1) a risk assessment or inspection of housing  
17 for the presence of indoor mold hazards under sec-  
18 tion 202 of the United States Toxic Mold Safety and  
19 Protection Act,

20 “(2) a risk assessment or inspection of any  
21 other building for the presence of mold (as defined  
22 in section 101(2) of the United States Toxic Mold  
23 Safety and Protection Act), or

24 “(3) a remediation of mold growth in housing  
25 or any other building.

1       “(d) DENIAL OF DOUBLE BENEFIT.—No deduction  
2 or credit under any other provision of this chapter shall  
3 be allowed with respect to mold inspection and remedi-  
4 ation expenses taken into account for the credit under this  
5 section.

6       “(e) CERTAIN RULES MADE APPLICABLE.—All per-  
7 sons treated as one employer under subsection (a) or (b)  
8 of section 52 shall be treated as 1 taxpayer for purposes  
9 of this section.

10       “(f) APPLICATION WITH OTHER CREDITS.—The  
11 credit allowed by subsection (a) for any taxable year shall  
12 not exceed the excess (if any) of—

13               “(A) the regular tax for the taxable year,  
14               reduced by the sum of the credits allowable  
15               under subpart A and the preceding sections of  
16               this subpart, over

17               “(B) the tentative minimum tax for the  
18               taxable year.”.

19       (b) CLERICAL AMENDMENT.—The table of sections  
20 for subpart B of part IV of subchapter A of chapter 1  
21 of the Internal Revenue Code of 1986 is amended by add-  
22 ing at the end the following:

                  “Sec. 30B. Credit for mold inspection and remediation.”.

23       (c) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to amounts paid or incurred in tax-  
25 able years beginning after December 31, 2002.

1 **TITLE VI—NATIONAL TOXIC**  
2 **MOLD HAZARD INSURANCE**  
3 **PROGRAM**

4 **Subtitle A—Insurance Program**

5 **SEC. 601. PROGRAM AUTHORITY.**

6 (a) IN GENERAL.—The Director of the Federal  
7 Emergency Management Agency shall establish and carry  
8 out a national toxic mold insurance program to enable in-  
9 terested persons to purchase insurance against losses re-  
10 sulting from mold hazards in real properties located in the  
11 United States.

12 (b) PARTICIPATION.—In carrying out the toxic mold  
13 hazard insurance program under this title, the Director  
14 shall, to the maximum extent practicable, encourage and  
15 arrange for—

16 (1) appropriate financial participation and risk  
17 sharing in the program by insurance companies and  
18 other insurers; and

19 (2) other appropriate participation on other  
20 than a risk-sharing basis, by insurance companies  
21 and other insurers, insurance agents and brokers,  
22 and insurance adjustment organizations, in accord-  
23 ance with the provisions of subtitle B.

1 **SEC. 602. SCOPE OF PROGRAM AND PRIORITIES.**

2 (a) PRIORITY OF PROGRAM SCOPE.—In carrying out  
3 the toxic mold hazard insurance program, the Director  
4 shall afford a priority to making toxic mold hazard insur-  
5 ance available to cover residential properties which are de-  
6 signed for the occupancy of from one to four families.

7 (b) ADDITIONAL SCOPE.—If, pursuant to studies and  
8 investigations pursuant to section 604 or such other infor-  
9 mation as the Director considers appropriate, the Director  
10 determines that it would be feasible to extend the insur-  
11 ance program under this title to cover other properties,  
12 the Director may take such action under this title as may  
13 be necessary to make insurance available to cover, on such  
14 basis as may be feasible, any types and classes of—

15 (1) other residential properties;

16 (2) church properties, and business properties  
17 which are owned or leased and operated by small  
18 business concerns;

19 (3) other business properties;

20 (4) properties occupied by private nonprofit or-  
21 ganizations; and

22 (5) properties owned by State and local govern-  
23 ments and agencies thereof;

24 and any such extensions of the program to any types and  
25 classes of these properties shall from time to time be pre-  
26 scribed in regulations.

1 **SEC. 603. NATURE AND LIMITATION OF INSURANCE COV-**  
2 **ERAGE.**

3 The Director shall from time to time, after consulta-  
4 tion with interested parties (including the insurance au-  
5 thorities of the States), provide by regulation for general  
6 terms and conditions of insurability which shall be applica-  
7 ble to properties eligible for toxic mold hazard insurance  
8 coverage under section 602, including—

9 (1) the types, classes, and locations of any such  
10 properties which shall be eligible for such insurance;

11 (2) the nature and limits of loss or damage that  
12 may be covered by such insurance, which shall in-  
13 clude costs of property damage and loss, remedi-  
14 ation, relocation (during remediation or perma-  
15 nently), and rental of an alternative dwelling during  
16 remediation;

17 (3) the classification, limitation, and rejection  
18 of any risks that may be appropriate;

19 (4) appropriate minimum premiums;

20 (5) appropriate loss-deductibles;

21 (6) appropriate limits on aggregate liability  
22 under such coverage, based on the type of property  
23 insured; and

24 (7) any other terms and conditions relating to  
25 insurance coverage or exclusion which may be nec-  
26 essary to carry out the purposes of this title.

1 **SEC. 604. ESTIMATES OF PREMIUM RATES.**

2 The Director shall undertake and carry out such  
3 studies and investigations and receive or exchange such  
4 information as may be necessary to estimate, and shall  
5 from time to time estimate the following premium rates  
6 for toxic mold hazard insurance coverage under this title:

7 (1) ACTUARIAL RATES.—The risk premium  
8 rates that would be required to make such insurance  
9 available on an actuarial basis for any types and  
10 classes of properties for which insurance coverage is  
11 available under section 602 and which—

12 (A) are based on consideration of the risk  
13 involved and accepted actuarial principles; and

14 (B) include the applicable operating costs  
15 and allowances set forth in the schedules pre-  
16 scribed under section 607 and reflected in such  
17 rates; and

18 (C) include any administrative expenses of  
19 carrying out the insurance program under this  
20 title.

21 (2) SUBSIDIZED RATES.—The risk premium  
22 rates that—

23 (A) are less than the rates estimated under  
24 paragraph (1);

25 (B) would be reasonable;

1 (C) would encourage prospective insureds  
2 to purchase toxic mold hazard insurance cov-  
3 erage;

4 (D) would be consistent with the purposes  
5 of this title; and

6 (E) include any administrative expenses in-  
7 curred in carrying out the insurance program  
8 under this title.

9 **SEC. 605. ESTABLISHMENT OF CHARGEABLE PREMIUM**  
10 **RATES.**

11 (a) IN GENERAL.—On the basis of estimates made  
12 under section 604 and such other information as may be  
13 necessary, the Director shall from time to time, after con-  
14 sultation with the interested parties (including the insur-  
15 ance authorities of the States), prescribe by regulation—

16 (1) chargeable premium rates for any types and  
17 classes of properties for which insurance coverage  
18 shall be available under section 602 (at less than the  
19 estimated risk premium rates under section 604(1),  
20 where necessary), and

21 (2) the terms and conditions under which, and  
22 the areas within which, such rates shall apply.

23 (b) FACTORS.—Such rates shall, insofar as prac-  
24 ticable, be—



1           (1) based on a consideration of the respective  
2 risks involved, including differences in risks due to  
3 construction types and materials, building systems,  
4 geology, climate, and other factors that may affect  
5 mold levels in buildings;

6           (2)(A) adequate, on the basis of accepted actu-  
7 arial principles, to provide reserves for anticipated  
8 losses; or

9           (B) if less than such amount consistent with  
10 the objective of making toxic mold hazard insurance  
11 coverage available where necessary at reasonable  
12 rates so as to encourage prospective insureds to pur-  
13 chase such insurance and with the purposes of this  
14 title;

15           (3) adequate to provide for any administrative  
16 expenses of the insurance programs under this title;  
17 and

18           (4) stated so as to reflect the basis for such  
19 rates, including the differences (if any) between the  
20 estimated actuarial risk premium rates under section  
21 604(1) and the estimated subsidized risk premium  
22 rates under section 604(2).

23           (c) FULL ACTUARIAL RATES FOR COMMUNITIES NOT  
24 IN COMPLIANCE WITH BUILDING INSPECTION, CERTIFI-  
25 CATE OF OCCUPANCY, AND PUBLIC DISCLOSURE PROVI-

1 SIONS.—Subject only to the limitation under subsection  
2 (d), the chargeable rate with respect to any property that  
3 is located within a jurisdiction that the Director deter-  
4 mines has not adopted adequate toxic mold control meas-  
5 ures, with effective enforcement provisions, that the Direc-  
6 tor determines are consistent with the model standards  
7 and techniques for inspection and certification of occu-  
8 pancy issued under section 201 and with the model stand-  
9 ards for public disclosure issued under section 202, shall  
10 not be less than the applicable estimated risk premium  
11 rate for such area (or subdivision thereof) under section  
12 604(1), except that such premium rate for such properties  
13 may not in any case exceed \$200 per year (a such amount  
14 may be adjusted annually by the Director for inflation,  
15 in accordance with an appropriate index).

16 (d) ANNUAL LIMITATION ON PREMIUM IN-  
17 CREASES.—Notwithstanding any other provision of this  
18 title, the chargeable risk premium rates for toxic mold  
19 hazard insurance under this title for any properties within  
20 any single risk classification may not be increased by an  
21 amount that would result in the average of such rate in-  
22 creases for properties within the risk classification during  
23 any 12-month period exceeding 10 percent of the average  
24 of the risk premium rates for properties within the risk

1 classification upon the commencement of such 12-month  
2 period.

3 **SEC. 606. NATIONAL TOXIC MOLD HAZARD INSURANCE**  
4 **FUND.**

5 (a) ESTABLISHMENT AND USES.—To carry out the  
6 toxic mold hazard insurance program under by this title,  
7 the Director shall establish in the Treasury of the United  
8 States a National Toxic Mold Hazard Insurance Fund,  
9 which shall be an account separate from any other ac-  
10 counts or funds available to the Director and shall be  
11 available as described in subsection (f), without fiscal year  
12 limitation (except as otherwise provided in this section)—

13 (1) for making such payments as may, from  
14 time to time, be required under section 634;

15 (2) to repay to the Secretary of the Treasury  
16 such sums as may be borrowed (together with inter-  
17 est) pursuant to subsection (e);

18 (3) to the extent approved in appropriation  
19 Acts, to pay any administrative expenses of the toxic  
20 mold hazard insurance program; and

21 (4) for the purposes specified in subsection (d)  
22 under the conditions provided therein.

23 (b) CREDITS.—The Fund shall be credited with—

24 (1) any amounts borrowed under subsection (e);

1           (2) any amounts as may be appropriated for  
2           the Fund;

3           (3) interest which may be earned on invest-  
4           ments of the Fund pursuant to subsection (c);

5           (4) receipts from any other operations under  
6           this title (including premiums under the conditions  
7           specified in subsection (d)); and

8           (5) such other amounts as may be credited to  
9           the Fund.

10          (c) INVESTMENT.—If the Director determines that  
11          the amounts in the Fund are in excess of current needs,  
12          the Director may request the investment of such amounts  
13          as the Director deems advisable by the Secretary of the  
14          Treasury in obligations issued or guaranteed by the  
15          United States.

16          (d) FEDERAL OPERATION OF PROGRAM.—In the  
17          event the Director makes a determination under section  
18          641 that operation of the toxic mold hazard insurance pro-  
19          gram, in whole or in part, should be carried out through  
20          the facilities of the Federal Government, the Fund shall  
21          be available for all purposes incident thereto, including—

22                 (1) costs incurred in the adjustment and pay-  
23                 ment of any claims for losses, and

24                 (2) payment of applicable operating costs set  
25                 forth in the schedules prescribed under section 607,

1 for so long as the program is so carried out, and in such  
2 event any premiums paid shall be deposited by the Direc-  
3 tor to the credit of the Fund.

4 (e) BORROWING.—

5 (1) AUTHORITY.—To the extent that the  
6 amounts in the Fund are insufficient to pay claims  
7 and expenses under the toxic mold hazard insurance  
8 program, the Director may issue such obligations of  
9 the Fund as may be necessary to cover the insuffi-  
10 ciency and the Secretary of the Treasury shall pur-  
11 chase any such obligations issued.

12 (2) PUBLIC DEBT TRANSACTION.—For the pur-  
13 pose of purchasing any such obligations, the Sec-  
14 retary may use as a public debt transaction the pro-  
15 ceeds from the sale of any securities issued under  
16 chapter 31 of title 31, United States Code, and the  
17 purposes for which securities are issued under such  
18 chapter are hereby extended to include any purchase  
19 by the Secretary of such obligations under this sub-  
20 section.

21 (3) CHARACTERISTICS OF OBLIGATIONS.—Obli-  
22 gations issued under this subsection shall be in such  
23 forms and denominations, bear such maturities, bear  
24 interest at such rate, and be subject to such other

1 terms and conditions, as the Secretary shall deter-  
2 mine.

3 (4) TREATMENT.—All redemptions, purchases,  
4 and sales by the Secretary of obligations under this  
5 subsection shall be treated as public debt trans-  
6 actions of the United States.

7 (f) AVAILABILITY.—The Fund shall be available, with  
8 respect to any fiscal year only to the extent approved in  
9 appropriation Acts; except that the Fund shall be available  
10 for the purpose described in subsection (d)(1) without  
11 such approval.

12 **SEC. 607. OPERATING COSTS AND ALLOWANCES.**

13 (a) IN GENERAL.—The Director shall from time to  
14 time negotiate with appropriate representatives of the in-  
15 surance industry for the purpose of establishing—

16 (1) a current schedule of operating costs appli-  
17 cable both to risk-sharing insurance companies and  
18 other insurers and to insurance companies and other  
19 insurers, insurance agents and brokers, and insur-  
20 ance adjustment organizations participating on other  
21 than a risk-sharing basis, and

22 (2) a current schedule of operating allowances  
23 applicable to risk-sharing insurance companies and  
24 other insurers,

1 which may be payable in accordance with the provisions  
2 of subtitle B, and such schedules shall from time to time  
3 be prescribed in regulations.

4 (b) DEFINITIONS.—For purposes of subsection (a),  
5 the following definitions shall apply:

6 (1) OPERATING ALLOWANCES.—The term “op-  
7 erating allowances” includes amounts for profit and  
8 contingencies that the Director determines are rea-  
9 sonable and necessary to carry out the purposes of  
10 this title.

11 (2) OPERATING COSTS.—The term “operating  
12 costs” includes—

13 (A) expense reimbursements covering the  
14 direct, actual, and necessary expenses incurred  
15 in connection with selling and servicing toxic  
16 mold hazard insurance coverage;

17 (B) reasonable compensation payable for  
18 selling and servicing such coverage, or commis-  
19 sions or service fees paid to producers;

20 (C) loss adjustment expenses; and

21 (D) other direct, actual, and necessary ex-  
22 penses which the Director finds are incurred in  
23 connection with selling or servicing such insur-  
24 ance coverage.

1 **SEC. 608. PAYMENT OF CLAIMS.**

2 The Director shall prescribe regulations establishing  
3 the general method or methods by which proved and ap-  
4 proved claims for losses may be adjusted and paid for any  
5 losses or damages covered by toxic mold hazard insurance  
6 made available under this title.

7 **SEC. 609. DISSEMINATION OF INSURANCE INFORMATION.**

8 The Director shall from time to time take such action  
9 as may be necessary in order to make information avail-  
10 able to the public, and to any State or local agency or  
11 official, with regard to—

12 (1) the toxic mold hazard insurance program,  
13 its coverage, and objectives; and

14 (2) estimated and chargeable insurance pre-  
15 mium rates under the program, including the basis  
16 for and differences between such rates in accordance  
17 with the provisions of this subtitle.

18 **SEC. 610. COORDINATION WITH OTHER PROGRAMS.**

19 In carrying out this title, the Director shall consult  
20 with other departments and agencies of the Federal Gov-  
21 ernment, and with interstate, State, and local agencies  
22 having responsibilities for toxic mold inspection and pre-  
23 vention, in order to ensure that the programs of such  
24 agencies and the program under this title are mutually  
25 consistent.



1 **SEC. 611. REPORTS.**

2 The Director shall annually submit a report of oper-  
3 ations under this title to the Congress.

4 **Subtitle B—Organization and Ad-**  
5 **ministration of Insurance Pro-**  
6 **gram**

7 **SEC. 621. IMPLEMENTATION.**

8 Following such consultation with representatives of  
9 the insurance industry as may be necessary, the Director  
10 shall implement the toxic mold hazard insurance program  
11 under subtitle A in accordance with the provisions of part  
12 1 of this subtitle, and, if a determination is made by the  
13 Director under section 641, under part 2 of this subtitle.

14 **PART 1—INDUSTRY PROGRAM WITH**  
15 **FEDERAL FINANCIAL ASSISTANCE**

16 **SEC. 631. INDUSTRY INSURANCE POOL.**

17 (a) **FORMATION.**—The Director may encourage and  
18 otherwise assist any insurance companies and other insur-  
19 ers that meet the requirements prescribed under sub-  
20 section (b) to form, as associate, or otherwise join together  
21 in a pool—

22 (1) in order to provide the insurance coverage  
23 authorized under subtitle A; and

24 (2) for the purpose of assuming, on such terms  
25 and conditions as may be agreed upon, such finan-  
26 cial responsibility as will enable such companies and

1 other insurers, with the Federal financial and other  
2 assistance available under this title, to assure a rea-  
3 sonable proportion of responsibility for the adjust-  
4 ment and payment of claims for losses under the  
5 toxic mold hazard insurance program.

6 (b) REQUIREMENTS.—To promote the effective ad-  
7 ministration of the toxic mold hazard insurance program  
8 under this part, and to ensure that the objectives of this  
9 title are furthered, the Director may prescribe appropriate  
10 requirements for insurance companies and other insurers  
11 participating in such pool, including minimum require-  
12 ments for capital or surplus or assets.

13 **SEC. 632. AGREEMENTS WITH INSURANCE POOL.**

14 (a) AUTHORITY.—The Director may enter into such  
15 agreements with the pool formed or otherwise created  
16 under this part as the Director deems necessary to carry  
17 out the purposes of this title.

18 (b) CONTENTS.—Such agreements shall specify—

19 (1) the terms and conditions under which risk  
20 capital will be available for the adjustment and pay-  
21 ments of claims;

22 (2) the terms and conditions under which the  
23 pool (and the companies and other insurers partici-  
24 pating therein) shall participate in premiums re-  
25 ceived and profits or losses realized or sustained;

1           (3) the maximum amount of profit, established  
2           by the Director and set forth in the schedules pre-  
3           scribed under section 607, which may be realized by  
4           such pool (and the companies and other insurers  
5           participating therein);

6           (4) the terms and conditions under which oper-  
7           ating costs and allowances set forth in the schedules  
8           prescribed under section 607 may be paid; and

9           (5) the terms and conditions under which pre-  
10          mium equalization payments under section 634 will  
11          be made.

12          (c) PARTICIPATION.—In addition, such agreements  
13          shall contain such provisions as the Director finds nec-  
14          essary to ensure that—

15               (1) no insurance company or other insurer that  
16               meets the requirements prescribed under section  
17               631(b) and has indicated an intention to participate  
18               in the toxic mold hazard insurance program on a  
19               risk-sharing basis, will be excluded from partici-  
20               pating in the pool;

21               (2) the insurance companies and other insurers  
22               participating in the pool will take whatever action  
23               may be necessary to provide continuity of toxic mold  
24               hazard insurance coverage by the pool; and

1           (3) any insurance companies and other insur-  
2           ers, insurance agents, and brokers and insurance ad-  
3           justment organizations will be permitted to cooper-  
4           ate with the pool as fiscal agents or otherwise, on  
5           other than a risk-sharing basis, to the maximum ex-  
6           tent practicable.

7   **SEC. 633. ADJUSTMENT AND PAYMENT OF CLAIMS AND JU-**  
8                                   **DICIAL REVIEW.**

9           The insurance companies and other insurers that  
10          form, associate, or otherwise join together in the pool  
11          under this part may adjust and pay all claims for proved  
12          and approved losses covered by toxic mold hazard insur-  
13          ance in accordance with the provisions of this title and,  
14          upon the disallowance by any such company or other in-  
15          surer of any such claim, or upon the refusal of the claim-  
16          ant to accept the amount allowed upon any such claim,  
17          the claimant, within one year after the date of mailing  
18          of notice of disallowance or partial disallowance of the  
19          claim, may institute an action on such claim against such  
20          company or other insurer in the United States district  
21          court for the district in which the insured property or the  
22          major part thereof shall have been situated, and original  
23          exclusive jurisdiction is hereby conferred upon such court  
24          to hear and determine such action without regard to the  
25          amount in controversy.

1 **SEC. 634. PREMIUM EQUALIZATION PAYMENTS.**

2 (a) PAYMENTS.—The Director, on such terms and  
3 conditions as the Director may from time to time pre-  
4 scribe, shall make periodic payments to the pool formed  
5 or otherwise created under section 631, in recognition of  
6 such reductions in chargeable premium rates under section  
7 605 below estimated premium rates under section 604(1)  
8 as are required in order to make toxic mold hazard insur-  
9 ance available on reasonable terms and conditions.

10 (b) PERIODS AND METHODS.—Designated periods  
11 under this section and the methods for determining the  
12 sum of premiums paid or payable during such periods  
13 shall be established by the Director.

14 **SEC. 635. EMERGENCY IMPLEMENTATION OF PROGRAM.**

15 (a) AUTHORITY.—Notwithstanding any other provi-  
16 sions of this title, for the purpose of providing toxic mold  
17 hazard insurance coverage at the earliest possible time,  
18 the Director may carry out the insurance program under  
19 subtitle A during the period ending September 30, 2004,  
20 in accordance with the provisions of this part and the  
21 other provisions of this title insofar as they relate to this  
22 part, but subject to the modifications made by or under  
23 subsection (b).

24 (b) PREMIUM RATES AND PROCEDURES.—In car-  
25 rying out the toxic mold hazard insurance program pursu-  
26 ant to subsection (a), the Director—

1           (1) shall provide insurance coverage without re-  
2           gard to any estimated risk premium rates which  
3           would otherwise be determined under section 604;  
4           and

5           (2) shall utilize the provisions and procedures  
6           contained in or prescribed by this part (other than  
7           section 634) and sections 651 and 652 to such ex-  
8           tent and in such manner as the Director may con-  
9           sider necessary or appropriate to carry out the pur-  
10          pose of this section.

11       **PART 2—GOVERNMENT PROGRAM WITH**  
12                               **INDUSTRY ASSISTANCE**

13       **SEC. 641. FEDERAL OPERATION OF PROGRAM.**

14       (a) **AUTHORITY.**—If at any time, after consultation  
15       with representatives of the insurance industry, the Direc-  
16       tor determines that operation of the toxic mold hazard in-  
17       surance program as provided under part 1 cannot be car-  
18       ried out, or that such operation, in itself, would be assisted  
19       materially by the Federal Government’s assumption, in  
20       whole or in part, of the operational responsibility for toxic  
21       mold insurance under this title (on a temporary or other  
22       basis), the Director shall promptly undertake any nec-  
23       essary arrangements to carry out the program of toxic  
24       mold hazard insurance under subtitle A through the facili-

1 ties of the Federal Government, utilizing, for purposes of  
2 providing such insurance coverage—

3 (1) insurance companies and other insurers, in-  
4 surance agents and brokers, and insurance adjust-  
5 ment organizations, as fiscal agents of the United  
6 States;

7 (2) such other officers and employees of any ex-  
8 ecutive agency (as defined in section 105 of title 5  
9 of the United States Code) as the Director and the  
10 head of any such agency may from time to time,  
11 agree upon, on a reimbursement or other basis; or

12 (3) both the alternatives specified in paragraphs  
13 (1) and (2).

14 (b) REPORT.—Upon making the determination re-  
15 ferred to in subsection (a), the Director shall make a re-  
16 port to the Congress and, at the same time, to the private  
17 insurance companies participating in the toxic mold haz-  
18 ard insurance program under this title. Such report  
19 shall—

20 (1) state the reason for such determinations;

21 (2) include findings that support such deter-  
22 mination;

23 (3) indicate the extent to which it is anticipated  
24 that the insurance industry will be utilized in pro-

1       viding toxic mold hazard insurance coverage under  
2       the program; and

3               (4) contain such recommendations as the Direc-  
4       tor considers appropriate.

5 The Director shall not implement the program of toxic  
6 mold hazard insurance under subtitle A through the facili-  
7 ties of the Federal Government before the expiration of  
8 the 9-month period beginning upon the date of submission  
9 of the report under this subsection unless it would be im-  
10 possible to continue to effectively carry out the program  
11 operations during such period.

12 **SEC. 642. ADJUSTMENT AND PAYMENT OF CLAIMS AND JU-**  
13 **DICIAL REVIEW.**

14       If the program is carried out as provided in section  
15 1341, the Director may adjust and make payment of any  
16 claims for proved and approved losses covered by toxic  
17 mold hazard insurance, and upon the disallowance by the  
18 Director of any such claims, or upon the refusal of the  
19 claimant to accept the amount allowed upon any such  
20 claim, the claimant, within one year after the date of mail-  
21 ing of notice of disallowance or partial disallowance by the  
22 Director, may institute an action against the Director on  
23 such claim in the United States district court for the dis-  
24 trict in which the insured property or the major part  
25 thereof shall have been situated, and original exclusive ju-



1 jurisdiction is hereby conferred upon such court to hear and  
2 determine such action without regard to the amount in  
3 controversy.

4           **PART 3—PROVISIONS OF GENERAL**  
5   **APPLICABILITY**

6   **SEC. 651. SERVICES BY INSURANCE INDUSTRY.**

7           (a) **CONTRACTS AND AGREEMENTS.**—In admin-  
8 istering the toxic mold hazard insurance program under  
9 this subtitle, the Director may enter into any contracts,  
10 agreements, or other appropriate arrangements which  
11 may, from time to time, be necessary for the purpose of  
12 utilizing, on such terms and conditions as may be agreed  
13 upon, the facilities and services of any insurance compa-  
14 nies or other insurers, insurance agents and brokers, or  
15 insurance adjustment organizations; and such contracts,  
16 agreements, or arrangements may include provision for  
17 payment of applicable operating costs and allowances for  
18 such facilities and services as set forth in the schedules  
19 prescribed under section 607.

20           (b) **EXEMPTION FROM COMPETITIVE BIDDING RE-**  
21 **QUIREMENTS.**—Any such contracts, agreements, or other  
22 arrangements may be entered into without regard to the  
23 provisions of section 3709 of the Revised Statutes (41  
24 U.S.C. 5) or any other provisions of law requiring competi-

1 tive bidding and without regard to the provisions of the  
2 Federal Advisory Committee Act (5 U.S.C. App.).

3 (c) LIABILITY.—The Director of the Federal Emer-  
4 gency Management Agency shall hold any agent or broker  
5 selling or undertaking to sell toxic mold insurance cov-  
6 erage under this title harmless from any judgment for  
7 damages against such agent or broker as a result of any  
8 court action by a policyholder or applicant arising out of  
9 an error or omission on the part of the Federal Emergency  
10 Management Agency, and shall provide any such agent or  
11 broker with indemnification, including court costs and rea-  
12 sonable attorney fees, arising out of and caused by an  
13 error or omission on the part of the Federal Emergency  
14 Management Agency and its contractors. The Director of  
15 the Federal Emergency Management Agency may not hold  
16 harmless or indemnify an agent or broker for his or her  
17 error or omission.

18 **SEC. 652. USE OF INSURANCE POOL, COMPANIES, OR**  
19 **OTHER PRIVATE ORGANIZATIONS FOR CER-**  
20 **TAIN PAYMENTS.**

21 (a) AUTHORITY.—To provide for maximum efficiency  
22 in the administration of the toxic mold hazard insurance  
23 program and to facilitate the expeditious payment of any  
24 Federal funds under such program, the Director may  
25 enter into contracts with a pool formed or otherwise cre-

1 ated under section 631, or any insurance company or  
2 other private organization, for the purpose of securing per-  
3 formance by such pool, company, or organization or any  
4 or all of the following responsibilities:

5 (1) Estimating and later determining any  
6 amounts of payments to be made.

7 (2) Receiving from the Director, disbursing,  
8 and accounting for funds in making such payments.

9 (3) Making such audits of the records of any  
10 insurance company or other insurer, insurance agent  
11 or broker, or insurance adjustment organization as  
12 may be necessary to assure that proper payments  
13 are made.

14 (4) Otherwise assisting in such manner as the  
15 contract may provide to further the purposes of this  
16 title.

17 (b) TERMS AND CONDITIONS.—Any contract with the  
18 pool or an insurance company or other private organiza-  
19 tion under this section may contain such terms and condi-  
20 tions at the Director finds necessary or appropriate for  
21 carrying out responsibilities under subsection (a), and may  
22 provide for payment of any costs which the Director deter-  
23 mines are incidental to carrying out such responsibilities  
24 which are covered by the contract.

1 (c) EXEMPTION FROM COMPETITIVE BIDDING RE-  
2 QUIREMENTS.—Any contract entered into under sub-  
3 section (a) may be entered into without regard to section  
4 3709 of the Revised Statutes (41 U.S.C. 5) or any other  
5 provision of law requiring competitive bidding.

6 (d) EFFICIENCY AND EFFECTIVENESS.—No contract  
7 may be entered into under this section unless the Director  
8 finds that the pool, company, or organization will perform  
9 its obligations under the contract efficiently and effec-  
10 tively, and will meet such requirements as to financial re-  
11 sponsibility, legal authority, and other matters as the Di-  
12 rector finds appropriate.

13 (e) CERTIFICATION OF PAYMENTS.—

14 (1) BONDING.—Any such contract may require  
15 the pool, company, or organization or any of its offi-  
16 cers or employees certifying payments or disbursing  
17 funds pursuant to the contract, or otherwise partici-  
18 pating in carrying out the contract, to give surety  
19 bond to the United States in such amount as the Di-  
20 rector may deem appropriate.

21 (2) LIABILITY.—

22 (A) No individual designated pursuant to a  
23 contract under this section to certify payments  
24 shall, in the absence of gross negligence or in-  
25 tent to defraud the United States, be liable with

1           respect to any payment certified by such indi-  
2           vidual under this section.

3           (B) No officer disbursing funds shall in  
4           the absence of gross negligence or intent to de-  
5           fraud the United States, be liable with respect  
6           to any payment by such officer under this sec-  
7           tion if it was based upon a voucher signed by  
8           an individual designated to certify payments as  
9           provided in paragraph (2) of this subsection.

10       (f) CONTRACT TERM.—Any contract entered into  
11 under this section shall be for a term of one year, and  
12 may be made automatically renewable from term to term  
13 in the absence of notice by either party of an intention  
14 to terminate at the end of the current term; except that  
15 the Director may terminate any such contract at any time  
16 (after reasonable notice to the pool, company, or organiza-  
17 tion involved) if the Director finds that the pool, company,  
18 or organization has failed substantially to carry out the  
19 contract, or is carrying out the contract in a manner in-  
20 consistent with the efficient and effective administration  
21 of the toxic mold hazard insurance program under this  
22 title.

23 **SEC. 653. SETTLEMENT AND ARBITRATION.**

24       (a) AUTHORITY.—The Director may make final set-  
25 tlement of any claims or demands which may arise as a

1 result of any financial transactions that the Director is  
2 authorized to carry out under this subtitle, and may, to  
3 assist the Director in making any such settlement, refer  
4 any disputes relating to such claims or demands to arbi-  
5 tration, with the consent of the parties concerned.

6 (b) ARBITRATION.—Such arbitration shall be advi-  
7 sory in nature, and any award, decision, or recommenda-  
8 tion which may be made shall become final only upon the  
9 approval of the Director.

10 **SEC. 654. RECORDS AND AUDITS.**

11 (a) MAINTENANCE OF RECORDS.—The insurance  
12 pool formed or otherwise created under part 1 of this sub-  
13 title, and any insurance company or other private organi-  
14 zation executing any contract, agreement, or other appro-  
15 priate arrangement with the Director under part 2 or this  
16 part, shall keep such records as the Director shall pre-  
17 scribe, including records which fully disclose the total costs  
18 of the program undertaken or the services being rendered,  
19 and such other records as will facilitate an effective audit.

20 (b) ACCESS TO RECORDS.—The Director and the  
21 Comptroller General of the United States, or any of their  
22 duly authorized representatives, shall have access for the  
23 purpose of audit and examination to any books, docu-  
24 ments, papers and any such insurance company or other

1 private organization that are pertinent to the costs of the  
2 program undertaken or the services being rendered.

3 **Subtitle C—Miscellaneous**  
4 **Provisions**

5 **SEC. 661. DEFINITIONS.**

6 For purposes of this title, the following definitions  
7 shall apply:

8 (1) DIRECTOR.—The term “Director” means  
9 the Director of the Federal Emergency Management  
10 Agency.

11 (2) FUND.—The term “Fund” means the Na-  
12 tional Toxic Mold Hazard Insurance Fund estab-  
13 lished under section 606.

14 (3) INSURANCE ADJUSTMENT ORGANIZATION.—  
15 The term “insurance adjustment organization” in-  
16 cludes any organizations and persons engaged in the  
17 business of adjusting loss claims arising under insur-  
18 ance policies issued by any insurance company or  
19 other insurer.

20 (4) INSURANCE COMPANY; OTHER INSURER; IN-  
21 SURANCE AGENT OR BROKER.—The terms “insur-  
22 ance company”, “other insurer” and “insurance  
23 agent or broker” include any organizations and per-  
24 sons authorized to engage in the insurance business  
25 under the laws of any State.

1 **SEC. 662. PAYMENTS.**

2 Any payments under this title may be made (after  
3 necessary adjustment on account of previously made un-  
4 derpayments or overpayments) in advance or by way of  
5 reimbursement, and in such installments and on such con-  
6 ditions, as the Director may determine.

7 **SEC. 663. GOVERNMENT CORPORATION CONTROL ACT.**

8 The provisions of chapter 91 of title 31, United  
9 States Code, shall apply to the program under this title  
10 to the same extent that such provisions apply to wholly  
11 owned Government corporations.

12 **SEC. 664. FINALITY OF CERTAIN TRANSACTIONS.**

13 Notwithstanding any other provisions of law—

14 (1) any financial transaction authorized to be  
15 carried out under this title, and

16 (2) any payment authorized to be made or to  
17 be received in connection with any such financial  
18 transaction,

19 shall be final and conclusive upon all officers of the Gov-  
20 ernment.

21 **SEC. 665. AUTHORIZATION OF APPROPRIATIONS.**

22 There are authorized to be appropriated such sums  
23 as may from time to time be necessary to carry out this  
24 title, including amounts—

25 (1) to reimburse the National Toxic Mold Haz-  
26 ard Insurance Fund established under section 604



1 for premium equalization payments under section  
2 634 which have been made from the Fund;

3 (2) for studies under this title; and

4 (3) to make such other payments as may be  
5 necessary to carry out the purposes of this title.

6 Any amounts appropriate pursuant to this section shall  
7 be available without fiscal year limitation.

8 **TITLE VII—HEALTH CARE**  
9 **PROVISIONS**

10 **SEC. 701. MEDICAID WAIVER.**

11 Notwithstanding any other provision of law, a State  
12 (as defined for purposes of title XIX of the Social Security  
13 Act) may waive income, resource, and other requirements  
14 otherwise applicable under such title in order to provide  
15 medical assistance to individuals—

16 (1) whose health has been adversely impacted  
17 (as certified by a physician) due to exposure to toxic  
18 mold; and

19 (2) who do not have any health insurance cov-  
20 erage, or lack adequate health insurance coverage, to  
21 treat the physical harm due to toxic mold poisoning.

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