

**SUBCHAPTER B. AUDIT COVERAGES REQUIRED FOR THE RECEIVER  
AND SPECIAL DEPUTY RECEIVERS  
28 TAC §§31.101 – 31.107**

**1. INTRODUCTION.** The Commissioner of Insurance (Commissioner) adopts the repeal of Subchapter B, §§31.101 – 31.107, concerning Audit Coverages Required for the Receiver and Special Deputy Receivers. The repeal is adopted without changes to the proposal published in the December 3, 2010 issue of the *Texas Register* (35 TexReg 10597).

**2. REASONED JUSTIFICATION.** The repeal of this subchapter is necessary to implement legislative changes as a result of the enactment of revisions to the Insurance Code. The Insurance Code Article 21.28 §12(j) required the State Board of Insurance to adopt rules prescribing the audit coverage required for the receiver, special deputy receivers, and guaranty associations under specified provisions of the Insurance Code. Article 21.28 §12(j) required such rules to include provisions relating to scope, frequency, reporting requirements and costs of audits. Article 21.28 was repealed in the nonsubstantive Insurance Code revision, Acts 2005, 79th Legislature, Chapter 995, §9, effective September 1, 2005. Article 21.28 §12(j) was re-adopted as §442.451 in the nonsubstantive Insurance Code revision, Acts 2005, 79th Legislature, Chapter 727, §1, effective April 1, 2007, but §442.451 was later repealed by Acts 2007, 80th Legislature, Chapter 730, §3B.003, effective September 1, 2007.

House Bill (HB) 2157, enacted by the 79th Legislature, Regular Session, effective September 1, 2005, effectuated the Insurance Code §21A.355 which provides for an external audit of a receiver's books, which is similar to former Insurance Code Article 21.28 §12(g). Section 21A.355 was redesignated as §443.355 in the nonsubstantive Insurance Code revision, Acts 2007, 80th Legislature, Chapter 730, §3B.004(a)(1)(H), effective September 1, 2007. The Insurance Code §443.355 provides that the receivership court may, as it deems desirable, order audits to be made of the books of the receiver and a report of each audit shall be filed with the Commissioner and with the receivership court.

Under HB 2157, the authority to appoint a special deputy was retained under the Insurance Code Chapter 21A. Chapter 21A was redesignated as Chapter 443 in the nonsubstantive Insurance Code revision, Acts 2007, 80th Legislature, Chapters 730, §3B.004(a)(1), effective September 1, 2007. The Insurance Code §443.102(a) and §443.154(a) provides that the Commissioner, in his capacity as rehabilitator or liquidator, may appoint a special deputy to act on his behalf, and the special deputy serves at his pleasure. In accordance with the Insurance Code §443.102(e) and §443.154(x), the enumeration of the powers and authority of the Commissioner as rehabilitator or liquidator in these sections may not be construed as a limitation upon the rehabilitator or liquidator, nor may it exclude in any manner the right to do other acts not specifically enumerated or otherwise provided for, to the extent necessary or appropriate.

Pursuant to the Insurance Code Chapter 443, the Commissioner, as rehabilitator or liquidator, has the inherent authority to audit a special deputy receiver acting on his behalf. Sections 31.101 – 31.107 are not needed to administer audits of special deputy receivers, and contain conditions that can restrict the ability of the rehabilitator or liquidator to conduct effective audits. Therefore, these rules are repealed.

**3. HOW THE SECTIONS WILL FUNCTION.** The adoption of the repeal will result in increased flexibility for the rehabilitator or liquidator to conduct more effective audits of special deputy receivers.

**4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.** The Department did not receive any comments on the published proposal.

**5. STATUTORY AUTHORITY.** The repeal is adopted pursuant to the Insurance Code §36.001, which authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

**6. TEXT.**

## **SUBCHAPTER B. AUDIT COVERAGES REQUIRED FOR THE RECEIVER AND SPECIAL DEPUTY RECEIVERS**

**§31.101. Purpose.**

**§31.102. Applicability.**

**§31.103. Nature of Audits.**

**§31.104. Scope and Frequency of Audits.**

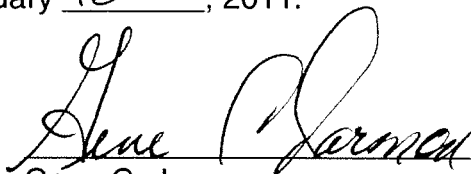
**§31.105. Audit Reporting Requirements.**

**§31.106. Cost of Audits.**

**§31.107. Severability.**

**CERTIFICATION.** This agency hereby certifies that the adopted repeal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on January 10<sup>th</sup>, 2011.

  
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Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance

**IT IS THEREFORE THE ORDER** of the Commissioner of Insurance that the repeal of Subchapter B, §§31.101 – 31.107 specified herein, concerning Audit

11-0020

TITLE 28. INSURANCE  
Part 2. Texas Department of Insurance  
Chapter 31. Liquidation

Adopted Sections  
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Coverages Required for the Receiver and Special Deputy Receivers, is adopted  
to be effective January 11, 2011.

**AND IT IS SO ORDERED.**



MIKE GEESLIN  
COMMISSIONER OF INSURANCE



Gene C. Jarmon  
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO.

**11-0020**

**JAN 11 2011**