

# APA Rulemaking Update

2017 UTCLE Advanced Administrative Law Conference

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Office of the Attorney General

## The 85th Legislative Session



## HB 1290, sec. 1

New APA § 2001.0045 “One In, One Out” Rule

- ▶ Exclusions:
  - ▶ Agency headed by an elected official
  - ▶ DFPS, DMV, PUC, TCEQ, Texas Racing Commission
  - ▶ Self-directed or semi-independent agency
- ▶ Exclusions:
  - ▶ Rules related to: procurements; natural disasters; federal law/ funding match; protect water resources; health, safety and welfare; OR
  - ▶ Necessary to implement legislation

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## HB 1290, sec. 2

New APA § 2001.0221 requires a state agency to prepare a government growth impact statement for each proposed rule.

- ▶ Does the rule create or eliminate a government program?
- ▶ Would the implementation of the rule have a positive or negative impact on FTE needs?
- ▶ Would the rule increase the need for GR funding?
- ▶ Would the rule affect the amount of fees?
- ▶ Does the rule create a new regulation?
- ▶ Does the rule expand, limit, or repeal an existing regulation?
- ▶ Does the rule increase or decrease the number of individuals subject to regulation?
- ▶ The positive/ negative impact on the state's economy.

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## HB 3433

The new law amends Texas Government Code ch. 2006: AGENCY ACTIONS AFFECTING SMALL BUSINESSES AND RURAL COMMUNITIES

- ▶ Each state agency will need to do a separate analysis to describe any adverse fiscal impact of a proposed rule on a municipality with a population of less than 25,000.
- ▶ The proposed rule must include a regulatory flexibility analysis for rural communities.
- ▶ Notice of proposed rule must be sent, if feasible, to each member of the legislature who represents a rural community adversely impacted by the proposed rule.

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## APA § 2001.038



- ▶ Procedural Invalidity
  - Failure to Substantially Comply
  - Illegal Rulemaking (non-compliance)
- ▶ Substantive Invalidity: Exceeds Statutory Authority
- ▶ Applicability: Whether a Rule Applies?

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Title search: Trending Issues in APA § 2001.038 Rule Challenges

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First appeared as part of the conference materials for the  
12<sup>th</sup> Annual Advanced Texas Administrative Law Seminar session  
"Trending Issues in APA § 2001.038 Rule Challenges"