

Draft translation by Jamie P. Horsley

Official Chinese text of 国务院办公厅关于加强行政规范性文件制定和监督管理工作的通知

[http://www.gov.cn/zhengce/content/2018-05/31/content\\_5295071.htm](http://www.gov.cn/zhengce/content/2018-05/31/content_5295071.htm)

## **Circular of the State Council General Office on Strengthening the Formulation, Supervision and Management of Administrative Regulatory Documents**

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May 16, 2018

To the people's governments of each province, autonomous region and municipality directly under the central government and to each department, commission and directly subordinate organization of the State Council:

“**Administrative regulatory documents**”<sup>1</sup> are official documents, other than administrative regulations, decisions and orders of the State Council, departmental rules and local government rules, that are formulated according to statutory authority and procedures and publicly issued by an administrative organ or organization authorized by law or regulation and having the function of managing public affairs (hereafter collectively referred to as “**administrative organs**”) and that involve the rights and obligations of citizens, legal persons and other organizations, have a general binding force and are repeatedly applicable within a certain period of time. Formulating and issuing administrative regulatory documents is an important way for administrative organs to perform their functions in accordance with law and is directly related to the vital interests of the people and the image of the government. In recent years, various regions and departments have continuously strengthened the formulation and supervision of administrative regulatory documents and achieved certain results, but the phenomenon of randomly issuing documents and publishing “bizarre”<sup>2</sup> documents still exists to varying degrees, infringing on the lawful rights and interests of citizens, legal persons and other organizations and damaging the credibility of the government. In order to comprehensively put into practice Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era and the spirit of the Party's Nineteenth National Congress, implement the Party Central Committee's and the State Council's arrangements and requirements for advancing law-based administration and building a rule of law government, effectively protecting the lawful rights and interests of the people and safeguarding the credibility of the government, with the consent of the State Council, notice on strengthening the formulation, supervision and management of administrative regulatory documents is hereby given as follows:

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<sup>1</sup> The Chinese terms is 行政规范性文件. 规范性文件 has traditionally been translated as “normative documents,” which I still would use when the term is used in its broad meaning to include legislative documents (laws, State Council administrative regulations and central departmental and local government rules) as well as non-legislative documents, including “administrative” normative documents. Since many translations use “normative documents” to refer to the non-legislative documents without putting “administrative” in front of the term, creating confusion with the broader meaning of normative documents, this translation opts to use the State Council's preferred translation “administrative regulatory document” for 行政规范性文件.

<sup>2</sup> The Chinese character is “奇葩”文件. See, “Bizarre docs to be binned,” *China Daily*, June 7, 2018, at: <http://www.chinadaily.com.cn/a/201806/07/WS5b186c87a31001b82571e8d0.html>.

## **I. Strictly administer in accordance with law and prevent random issuance of documents**

(1) It is prohibited to exceed one's authority to issue documents. We must adhere to acting only in accordance with statutory duties, not act without legal authorization and perform duties in strict accordance with statutory authority. It is strictly prohibited to formulate and issue administrative regulatory documents in the name of an internal office of a department. The system of implementing power and responsibility lists<sup>3</sup> must be strictly implemented, and administrative regulatory documents may not increase administrative powers beyond those stipulated by laws and regulations or reduce statutory duties; may not enact such matters as administrative licenses, administrative penalties and administrative compulsory measures, increase conditions for handling administrative licensing matters, or stipulate recurring, duplicative or unnecessary certification; may not unlawfully impair the legal rights and interests of citizens, legal persons and other organizations or increase their obligations, or infringe upon the basic rights of citizens such as personal rights, property rights, personality rights, labor rights, and the right to rest; may not exceed one's authority to stipulate matters that should be regulated by the market, corporate or social self-discipline, and citizen self-management; and may not unlawfully formulate measures that eliminate or restrict fair competition, unlawfully intervene in or interfere with normal production and business activities of market entities, or unlawfully establish market access and exit conditions.

(2) The number of documents issued must be strictly controlled. When laws, regulations, rules, and higher-level documents already have clear stipulations on a matter, and existing documents have been issued and are still applicable, documents shall not be repetitively issued. When the content is similar, documents should be merged as far as possible, and in cases where a document need not be issued or does not have substantive content, it should never be issued, and it is strictly forbidden to copy and paste or transfer language from a higher level document, using one document to "implement" another. Where it is truly necessary to formulate a administrative regulatory document, the focus must be on actual results and on relevance and operability, and the text must be strictly controlled to ensure that the policy measure is stated in terms that are rigorous, concise and accurate.

## **II. Regulate the formulation and issuance procedures and ensure legality and effectiveness**

(3) Strict formulation and issuance procedures. Administrative regulatory documents must be formulated and issued strictly in accordance with statutory procedures and significant administrative regulatory documents must strictly go through assessment and appraisal, public solicitation of opinions, legality review, collective deliberation and decision and public issuance. The management of formulation and issuance procedures must be strengthened, work mechanisms improved, work procedures perfected and the regulated and orderly formulation and issuance work ensured.

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<sup>3</sup> Publicly available lists to inform the public of each government department's powers and responsibilities.

(4) Serious assessment and appraisal. The comprehensive appraisal of the necessity, feasibility and reasonableness of the formulation and issuance of administrative regulatory documents is an important precondition for their legality and effectiveness. When drafting administrative regulatory documents, one must assess the anticipated effect and possible impact of the relevant administrative measures, and consider such matters as whether the document complies with laws, regulations and national policies, whether it complies with socialist core values, and whether it meets the requirements for fair competition review. Experts from relevant fields must be organized to conduct an appraisal of administrative regulatory documents with relatively strong specialized or technical contents. The conclusions of the assessments and appraisals must be clearly stated in the explanation of the draft document and shall be an important basis for the formulation and issuance of documents.

(5) Widely solicit opinions. Except when they must be kept confidential, administrative regulatory documents that involve the vital interests of the public or have a major impact on the rights and obligations of citizens, legal persons and other organizations must be disclosed to society to solicit opinions. The drafting department may publish materials such as the draft documents and their explanations through government websites, press conferences, newspapers, magazines, radio and television, and other methods that facilitate the public to know about the draft, and clearly indicate the methods and deadlines for the submission of opinions. For documents that involve the adjustment of major interests of the public, the drafting department must conduct in-depth investigations and studies, utilizing forums, appraisal meetings and site visits to fully listen to opinions from all parties, especially the opinions of stakeholders. A feedback mechanism for opinions and consultations shall be established, and the reasons for not adopting relatively widely-held opinions and recommendations must be explained at the time of publication.

(6) Strict review and checking. Establishing a mechanism for reviewing the legality of administrative regulatory documents with complete procedures, consistent powers and responsibilities, and inter-connected and efficient operation is an important guarantee for doing a good job of legality review work. Drafting departments must promptly submit the examination draft and related materials to the general office of the formulating organ and the department responsible for legality review, and ensure the completeness and standardization of the materials. The general office of the formulating organ must review such matters as whether the drafting department strictly followed the stipulated drafting procedures, whether it conducted assessment and appraisal, and whether it solicited opinions widely. The department of the formulating organ responsible for legality review must determine whether the main body, procedures, and relevant contents of the document comply with laws, regulations and rules, and carry out a timely legality review. A draft document that has not undergone legality review, or was found to not be in conformity with the law, may not be submitted for collective deliberation.

(7) Adhere to collective deliberation. When formulating administrative regulatory documents, a collective research and discussion system must be implemented to prevent unlawful decision-making, arbitrary decision-making and “captain’s call”<sup>4</sup> decision-making.

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<sup>4</sup> “拍脑袋,” explained as “a decision made by a political or business leader without consultation with colleagues”. See, “Australia makes 'captain's call' on best words of 2015,” *China Daily*, January 22, 2016, at: [http://language.chinadaily.com.cn/2016-01/22/content\\_23199229.htm](http://language.chinadaily.com.cn/2016-01/22/content_23199229.htm).

Administrative regulatory documents formulated by the local people's governments at various levels must be deliberated and decided by the governmental executive or plenary meeting at the same level, and administrative regulatory documents formulated by governmental departments must be deliberated and decided by a meeting of the department's general office. Collective deliberation shall fully promote democracy and ensure that participants at the meeting fully express their opinions, and the collective discussion situation and decision must be truthfully recorded, with different opinions truthfully set forth.

(8) Timely public issuance. After administrative regulatory documents have been adopted through deliberation or approved, the formulating organs shall uniformly register, number, print and publicly issue them to society in a timely manner, through such channels as government bulletins, government websites, government affairs new media, newspapers, radio, television and public notice columns. They may not be issued and implemented in the form of internal documents. Unpublished administrative regulatory documents may not be used as the basis for administrative management. Regarding administrative regulatory documents involving the vital interests of the public and a high degree of social attention, and that might impact the government's image, the drafting departments must do a good job of assessing the timing, strengthen public opinion collection after publication of the document, analyze and handle the matter in a timely manner, and proactively respond to concerns and provide explanations through such means as press conferences, media interviews and expert interpretations, making full use of government websites, social media, etc. to strengthen communication and interaction with the public. The people's governments at or above the county level shall gradually construct an administrative regulatory document information platform for their authoritative issuance, information sharing and dynamic updating, and carry out standardization, refinement and dynamic management of such documents using big data and other technical means.

### **III. Strengthen supervision and inspection and strictly pursue accountability**

(9) Improve responsibility mechanisms. Supervision and inspection by local people's governments at all levels of their subordinate departments, by higher-level people's governments of lower-level people's governments and by various departments with respect to the formulation and issuance of administrative regulatory documents shall be strengthened. Investigation and punishment must be intensified when violations of the lawful rights and interests of citizens, legal persons and other organizations, and injury to the government's image and credibility, are discovered, and the liability of leading cadres and directly responsible personnel shall be pursued in accordance with discipline and law. Localities and departments that have frequent problems and cause serious consequences must be urged to reform through interviews or special supervision, and they shall be publicly exposed when necessary.

(10) Enhance recording supervision. Improve the system for supervising the recording of administrative regulatory documents, so that when there are documents, they must be recorded; when they are recorded, they must be reviewed; and when there are errors, they must be corrected. The formulating organ shall promptly submit the documents for recording in accordance with stipulated procedures and time limits and proactively accept supervision. Administrative regulatory documents formulated by local people's governments at or below the provincial level shall be reported to the people's government at the next higher level and the

standing committee of the people's congress at the corresponding level for recording. Administrative regulatory documents formulated by departments of the local people's governments shall be reported to the people's government at the same level for recording. Administrative regulatory documents jointly formulated by two or more departments of a local people's government shall be submitted by the lead department for recording. For departments that implement vertical management, administrative regulatory documents formulated by the subordinate departments shall be reported to the departments in charge at the next higher level for recording and simultaneously copied to the people's governments at the same level as the document formulating organ. The departments of local people's governments responsible for recording and review shall strengthen supervision over recording and handle illegal documents in a timely manner, and they may use appropriate methods to report problems discovered during review. The mechanism for the dynamic cleanup of administrative regulatory documents shall be improved, and the administrative regulatory documents of one's own region and departments shall be promptly cleaned up in accordance with the requirements for comprehensive deepening of reforms and comprehensive law-based governance and the needs of economic and social development, as well as the situation regarding the formulation, revision, and repeal of superior law and higher-level documents. The power of social supervision shall be fully utilized to improve the system of review of administrative regulatory documents recommended by citizens, legal persons and other organizations. Collaboration and cooperation among party committees, people's congresses, government and other organizations with recording work systems shall be strengthened, and a linkage mechanism for recording and review shall be established. The establishment of a working linkage mechanism with the people's courts and the people's procuratorates shall be explored, to promote joint efforts between administrative supervision and judicial supervision to promptly discover and correct illegal documents.

(11) Strengthen supervision and assessment. The management system for formulating and issuing administrative regulatory documents shall be improved, and the role of the government's supervision mechanism given full play, to bring administrative regulatory document formulation, supervision and management work into the content of rule of law government construction, and include it in law-based administration assessments, to be listed in the indicator system for evaluating rule of law government construction. A system for situational supervision and reporting shall be established, whereby work that is well implemented shall be reported with praise, and work that is implemented poorly shall be reported with criticism.

All regions and departments shall, as required, step up self-examination and self-correction regarding the documents of their own region and departments, and promptly correct problems that are discovered, such as "bizarre" documents that violate laws, regulations and national policies or infringe on the lawful rights and interests of the public, and impose strict accountability in accordance with relevant provisions for those that create serious impacts. During the process of institutional reforms, it is important to do a good job of linking the cleanup and implementation of administrative regulatory documents. Newly formed government departments or those whose responsibilities have been adjusted must clean up the administrative regulatory documents that they are responsible for implementing. If documents need to be revised, they shall be promptly revised; if they do not need to be revised, departments must do a good job of the linking work, continuing to implement the documents to ensure the performance of duties in accordance with law.

All regions and departments shall timely inform the Ministry of Justice about the implementation of this Circular and significant issues encountered during the work.

State Council General Office  
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