

Provisions on the Procedures for the Making of Administrative Rules for Industry and Commerce
(Order No.34 [2008] of the State Administration for Industry and Commerce, September 1, 2008)

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Chapter I General Provisions

Article 1 To regulate the procedures for the making of administrative rules for industry and commerce, guaranteeing the quality of such rules, improving the rule-making efficiency and promoting the administration by law, these Provisions are formulated according to the Legislation Law of the People's Republic of China, the Regulation on the Procedures for the Making of Rules, the Regulation on the Archive-filing Regulations and Rules, and the Administrative Provisions on the Compilation and Publication of Laws and Regulations and in light of the actual situations in the making of administrative rules for industry and commerce.

Article 2 For the purpose of these Provisions, the term "administrative rules for industry and commerce" (hereinafter referred to as rules) refers to the regulatory documents which are made by the State Administration for Industry and Commerce (SAIC) in its own capacity according to the relevant laws, administrative regulations and the State Council's decisions or orders for the purpose of performing its duties of market regulation and administrative law enforcement, or jointly made by the SAIC and other relevant departments of the State Council in their respective

capacities, and promulgated in the form of an SAIC order.

Article 3 These Provisions apply to the project establishment, drafting, examination, deliberation, promulgation, archive-filing, interpretation, amendment, abolishment, compilation and translation of rules.

Article 4 The administrative rules for industry and commerce shall be formulated by the SAIC. Other regulatory documents formulated by the SAIC or the local administrations for industry and commerce may not conflict with the administrative rules of the SAIC.

Article 5 Rules are generally named “provisions”, “measures” or “detailed rules for implementation”, but may not be named “regulation”.

Article 6 The following principles shall be followed in the making of rules:

1. principle of unity of the national legal system;
2. principle of making rules according to the statutory functions and procedures;
3. principle of consistency between functions and responsibilities;
4. principle of protecting the lawful rights and interests of citizens, legal persons and other organizations; and
5. principle of safeguarding the legal discharge of functions by administrative organs.

Article 7 Rules shall be made in a scientific and democratic manner, and shall be well structured, complete in content, logically arranged, accurate in wording, concise in language and operable.

Article 8 The matters prescribed in the rules shall be those about implementing laws, regulations and the State Council’s relevant decisions or orders, and the contents may not contravene the superordinate laws.

Rules are made generally for the purpose of providing the details for implementing the administrative licenses, administrative penalties, administrative charges and administrative coercive measures as provided in the superordinate laws.

Rules shall be made where it is necessary to give a warning or impose a fine for a conduct in violation of the administrative order but there are no corresponding provisions in the current laws or administrative regulations.

Article 9 The Department of Laws and Regulations of the SAIC is the legal department of the SAIC (hereinafter referred to as the Legal Department), which shall be responsible for organizing the drafting, examination, archive-filing, interpretation, amendment, abolishment, compilation and translation of rules.

Chapter II Project Establishment and Planning

Article 10 The SAIC shall, depending on the performance of the national economy and the needs for market regulation, produce a rule-making work plan every three years and an annual rule-making work plan at the beginning of each year to determine the rule-making or amending projects.

Article 11 Where any internal body of the SAIC believes it necessary to make or amend certain rules, it shall file an application for project establishment with the Legal Department before December 15 of each year.

A project application shall describe the necessity and feasibility of making the rules, the basic ideas about making the rules, the major problems to solve, the major rules to establish, the drafting department, the person in charge of the project, the project entity, and the progress and time schedule of the project, etc.

Article 12 The Legal Department shall examine such applications, draft an annual rule-making work plan and, after having the comments of other internal bodies and the local administrations for industry and commerce, submit the plan to the executive meeting of the SAIC for deliberation and approval.

Article 13 An annual rule-making plan shall be put into effect. The Legal Department shall examine and urge the implementation of the plan and report the relevant situations to the higher authorities.

Article 14 An annual rule-making plan may be adjusted according to the actual situation. A rule-making project beyond the plan may be added into the plan upon the examination of the Legal Department and the consent of the SAIC leaders.

Chapter III Drafting

Article 15 The internal bodies of the SAIC shall be responsible for drafting the rules in their respective capacities. Where certain rules are complex and involve two or more internal bodies, the SAIC may determine one of them to take charge of the drafting work. Rules governing the general issues shall be drafted by the Legal Department, while for those of special importance, the SAIC shall form a special work group to take charge of the drafting work.

Article 16 The drafting department shall report the progress of the drafting work to the Legal Department in writing on a regular basis.

The drafting department shall finish the drafting work on schedule. If it cannot finish on schedule, it shall report the specific situation and reasons to the SAIC leaders and inform the Legal Department of the relevant information in writing.

Where a rule-making project is technically challenging and the time is pressing, the Legal Department may, upon the application of the drafting department, send special personnel to participate in the drafting work and provide expert advice.

Article 17 The drafting department is allowed to invite the local administrations for industry and commerce and the relevant entities, experts and research institutions to participate in the drafting work or delegate the drafting work to certain experts or organizations.

If the drafting department delegates the drafting to some experts or research institutions, it shall firstly get the approval of the SAIC leaders after consulting with the Legal Department.

Without approval, no drafting department may delegate the drafting work to any other entity or individual.

Article 18 In the processing of drafting rules, the drafting department may make legislative investigations and researches to find out the practical problems and absorb the good experiences home and abroad. A written report shall be made by the drafting department after making such investigations and researches.

If the rules to be drafted concern general issues, the drafting department shall hold a symposium to solicit the opinions of the relevant organs, organizations and the parties to be governed. If the rules concern key legal issues or the technical issues of a special field, the drafting department shall hold an argumentation to consult the opinions of experts or other professionals. If the rules directly concern any vital interest of citizens, legal persons and other organizations, and the related organs, organizations or citizens have significant differences in opinion, the drafting department shall publish the rules or hold a hearing to solicit the opinions of all circles of the society. Where a symposium, argumentation or hearing is held, the drafting department shall make a written report.

Article 19 If the rules to be drafted involve the functions of any other internal body of the SAIC or is closely related to any other department, the drafting department shall fully solicit the opinions of the related department and make active coordination efforts; and, if the coordination efforts fail, state the actual situation and reasons in the drafting explanation of the review version of the drafted rules.

If the rules to be drafted involve the functions of any local administration for industry and commerce or any relevant entity or is closely related to it, the drafting department shall fully solicit the opinions of the local administration or entity.

Article 20 If the rules to be drafted involve the functions of any other department of the State Council and it needs to consult the opinions of outsiders, or it needs to solicit the opinions of the relevant department of the Standing Committee of the NPC or the legislative department of the State Council, or it needs to make legislative coordination efforts, the Legal Department shall handle the situation jointly with the drafting department.

If the rules to be drafted by any other department of the State Council involve the functions of the SAIC or is closely related to the SAIC and it needs to have the comment of the SAIC, the

Legal Department shall handle the situation jointly with the relevant internal bodies.

Article 21 Newly drafted rules shall be consistent with the current rules. If the newly drafted rules are meant to replace the current rules, the name and number of the rules to be abolished and the regulatory documents formulated on the basis of the rules to be abolished shall be stated in the draft. If the newly drafted rules are meant to amend some contents of the current rules, the name, number and article or contents of the rules to be amended as well as the related regulatory documents shall be stated and listed in the draft.

Article 22 After the rules are drafted, the drafting department shall come out with a review version of the rules and a drafting explanation. The review version and the drafting explanation shall be filed with the Legal Department for examination upon the signature of the person-in-charge of the drafting department. If the rules are drafted by two or more departments, the signature of the persons-in-charge of these departments is required.

Article 23 When filing the review version of the drafted rules, the drafting department shall submit the following documents:

1. a report thereon;
2. the text of the review version and the electronic version thereof;
3. a drafting explanation and the electronic version thereof;
4. the laws, administrative regulations and State Council decisions or orders based on which the rules are drafted; and
5. other relevant materials, such as the opinions collected, investigation and research reports, minutes and reports of symposiums, argumentations and hearings, and the relevant home and abroad legislative materials.

Article 24 A drafting explanation shall cover:

1. the current status and major problems to be solved;
2. the guiding ideology and principles for drafting the rules;
3. the major measures provided in the rules and the legal basis thereof;
4. the adoption or handling of the solicited opinions; and

5. other matters that need to be explained.

Article 25 The review version of the drafted rules shall generally include:

1. the purpose and basis of the rules;
2. the scope of application;
3. the competent organ or department;
4. the principles for application;
5. the specific administrative measures and procedures;
6. the rights and obligations relationship between the administrative organ and the counterpart;
7. the legal responsibilities;
8. the date of effect; and
9. other contents required.

Article 26 If the review version of the drafted rules fails to meet the requirements of Article 23, 24 or 25 of these Provisions, the Legal Department may ask the drafting department to supplement the required materials within 15 days.

Chapter IV Examination

Article 27 The review version of the drafted rules shall be subject to the examination of the Legal Department, which shall take the following into consideration:

1. whether the principles provided in Article 6 of these Provisions have been followed in making the rules;
2. whether the statutory authority and procedural rules have been observed in making the rules;
3. whether the relevant provisions of the superordinate laws have been observed;
4. whether the rules are consistent with other relevant rules;

5. whether the different opinions of any related organ, department, organization or individual about the review version of the drafted rules have been correctly handled;
6. whether the technical requirements for legislation have been met; and
7. other contents subject to examination.

Article 28 The Legal Department may consult the opinions of the relevant departments about the review version of the rules in writing or send the review version of rules to the concerned organizations and experts for comment when necessary.

If there is any major problem in the contents of the review version, the Legal Department shall hold a symposium or argumentation with the presence of the organizations and experts concerned to solicit their opinions and make studies and argumentations about the problems.

If the contents of the review version directly concern the vital interests of any citizens, legal persons or other organizations, there are sharp differences in opinion and the drafting department did not publicize the rules or hold any hearing during the drafting process, the Legal Department may solicit the public opinions or hold a hearing upon the approval of the SAIC.

Article 29 Where any department or entity has different opinions about the major measures, management rules or division of power as involved in the review version of the rules, the Legal Department shall try to mediate in an effort to reach a consensus; if the mediation effort fails, the Legal Department shall describe the situation in the examination report and submit the report to the executive meeting of the SAIC for final decision.

Article 30 The Legal Department can postpone the review version of the rules or return it to the drafting department if:

1. the review version fails to follow the basic principles for making rules;
2. the conditions for making the rules are not mature enough;
3. the major rules established in the rules is controversial or lacks pragmatic basis;
4. the contents of the rules involve another department, but the drafting department fails to negotiate with that department;

5. there is any serious defect in the structure or contents of the rules;
6. the materials attached to the review version of the rules are incomplete;
7. the prescribed procedures are not observed; or
8. any other circumstances under which it is inappropriate to file the review version with the executive meeting of the SAIC for deliberation.

If, upon amendment, the postponed or returned review version satisfies the conditions for submitting for examination, the drafting department may file it again with the Legal Department according to the prescribed procedures.

Article 31 The Legal Department shall give its examination comments on the review version of rules after considering the opinions of all parties concerned. The drafting department shall, according to the examination opinions of the Legal Department, supplement and revise the review version of rules and form a draft of the rules.

The Legal Department shall examine the draft of the rules, come out with an examination report, file it with the competent director-in-charge of the drafting department and that of the Legal Department for approval, and submit it to the executive meeting of the SAIC for deliberation.

Chapter V Deliberation, Promulgation and Archive-filing

Article 32 Rules shall be subject to the deliberation and decision of the executive meeting of the SAIC.

When a draft of rules is being deliberated, the person-in-charge of the Legal Department shall explain the examination situation, while the person-in-charge of the drafting department shall explain the drafting situation.

Article 33 After a draft of rules is deliberated at the executive meeting of the SAIC, the Legal Department and the drafting department shall revise the draft according to the opinions given by the executive meeting and form an revised draft. The Legal Department shall then submit

the revised draft to the SAIC director for issuing the rules in the form of a SAIC order.

If a draft is dismissed by the executive meeting due to big differences in opinion, the drafting department shall, together with the Legal Department, the relevant internal bodies and the departments with different opinions, make a new mediation effort and hold discussions to form an revised draft according to the requirements of the executive meeting of the SAIC. Upon the examination of the Legal Department, the revised draft shall be submitted by the Legal Department to the executive meeting of the SAIC for deliberation again.

Article 34 Rules co-issued by the SAIC and another department of the State Council shall be cosigned by the SAIC and the department after the draft of the rules are adopted at the executive meeting of the SAIC and signed by the director of the SAIC for issuance.

Rules sponsored by another department of the State Council but co-issued by that department and the SAIC shall be subject to the examination of the Legal Department, adopted at the executive meeting of the SAIC, cosigned jointly by the director of the SAIC and the chief administrative officer of that department of the State Council, and then issued in the form of an order of the sponsoring department.

Article 35 An order by which rules are issued shall bear the name of the organ that makes the rules, the serial number, the name of the rules, the date of adoption, the date of effect, the signature of the director of the SAIC and the date of issuance.

Article 36 The Legal Department shall, within 20 days after the rules are promulgated, publish them on the SAIC website, China Industrial & Commercial News, or other medium convenient for the public to access to the rules.

Article 37 Rules shall come into force 30 days after the date of issuance, but some rules may come into force on the date of issuance if not immediately putting them in force would result in gross adverse effect or be a hindrance to the enforcement of the rules.

Article 38 The Legal Department shall, within 30 days after the rules are cosigned, handle the archive-filing formalities at the Legal Department of the State Council according to the Legislation Law and the Regulation on the Archive-filing of Regulations and Rules.

Chapter VI Interpretation, Amendment and Abolishment

Article 39 The power to interpret the rules shall remain with the SAIC. Neither the internal bodies of the SAIC nor the local administrations for industry and commerce have the power to interpret the rules. The SAIC shall interpret the rules if:

1. it needs to further clarify the meanings of certain provisions of the rules; or
2. new circumstances that have emerged after the rules are made require clarifying the basis of application of the rules.

A local administration for industry and commerce may file an application for interpreting rules level by level according to the relevant provisions on the handling of official documents. A citizen, legal person or other organization may make a proposal on interpreting rules to the SAIC.

An interpretation of rules shall generally drafted by the drafting department of the rules or the Legal Department. If it is drafted by the drafting department of the rules, the drafting department shall file the draft interpretation and a drafting explanation thereon with the Legal Department, which shall make comments according to the procedure for examining the review version of rules. The draft interpretations shall be submitted to the executive meeting of the SAIC for deliberation and then promulgated.

An interpretation of rules shall have the same legal force as the rules.

Article 40 Rules shall be amended if:

1. any law or administrative regulation based on which the rules are made is amended or abolished;
2. it is necessary to add or delete something as a result of the state policies or the actual situations;
3. the prescribed competent organ or enforcement organ changes;
4. a same matter is differently prescribed in two or more rules; or

5. other circumstances.

Article 41 Rules shall be abolished if:

1. the legislative basis of the rules no longer exists due to the amendment or abolishment of any law or administrative regulation based on which the rules are made;
2. the rules have been fully executed, or there is no need to continue executing it due to change of situations;
3. the new rules providing for the same matter have been issued and come into force;
4. the implementation period of the rules has expired; or
5. other circumstances.

Article 42 The power to propose the amendment or abolishment of the rules shall generally remain with the drafting department of the rules or the Legal Department. The drafting department shall consult the Legal Department, submit their comments to the higher authorities and then handle the relevant issues according to the rule-making provisions.

A revision of the rules shall be promulgated betimes after the rules are amended.

Chapter VII Sorting-out, Compilation and Translation

Article 43 The Legal Department shall, in the first season of each year, sort out the rules and regulatory documents issued by the administrations for industry and commerce in the previous year.

Article 44 The Legal Department shall, in the first half of each year, according to the Administrative Provisions on the Compilation and Publication of Laws and Regulations, finish compiling the Corpus of the Administrative Rules for Industry and Commerce of the last year on the basis of sorting out the administration regulations and regulatory documents. A Corpus of the Administrative Rules for Industry and Commerce shall include:

1. the laws and legal documents concerning industrial and commercial administration as deliberated and adopted by the NPC and the Standing Committee thereof;
2. the administrative regulations and legal documents concerning industrial and commercial administration as issued by the State Council;
3. the rules and regulatory documents issued by the SAIC or jointly issued with the relevant departments of the State Council;
4. the rules closely related to industrial and commercial administration as issued by the relevant departments of the State Council;
5. the judicial interpretation concerning industrial and commercial administration as issued by the judicial authorities; and
6. other documents that need to be included.

The corpuses of the administrative rules for industry and commerce compiled and published by the Legal Department of the SAIC are the official version. No organization or individual may publish any corpus of the administrative rules for industry and commerce in violation of the Administrative Provisions on the Compilation and Publication of Laws and Regulations.

Article 45 Where certain rules need to be translated into English, the drafting department shall make it clear in the drafting explanation or the Legal Department may make a translation proposal in the examination report submitted to the executive meeting of the SAIC, and the power to make a final decision thereon shall remain with the executive meeting of the SAIC.

The Legal Department shall be responsible for organizing the translation and proofreading of the rules with assistance from the drafting department and the foreign affairs department so as to form an official English version, and professional organizations or persons may be hired to advise when necessary.

The translation and proofreading of the rules shall be done within 90 days from the day of issuance of the rules.

Chapter VIII Supplementary Provisions

Article 46 The Legal Department shall be responsible for making legislative proposals on the relevant laws and administrative regulations to the State Council and filing the legislative planning and project proposals about the relevant laws and administrative regulations with the State Council on behalf of the SAIC.

The procedures for the SAIC to make a suggestion draft of the laws or administrative regulations upon the delegation of the State Council shall be analogically governed by these Provisions, while the Legal Department shall be responsible for organizing the drafting and coordination work.

The procedures for translating the administrative regulations drafted by the SAIC or those drafted by the SAIC as the principal drafting department and to be translated under the charge of the SAIC shall be analogically governed by Article 45 of these Provisions.

Article 47 The procedures for making the regulatory documents drafted by the internal bodies of the SAIC can be analogically governed by these Provisions upon the decision of the SAIC leaders.

The regulatory documents drafted by the internal bodies of the SAIC shall be filed with the Legal Department for archival purposes within 15 days from the date of issuance.

Article 48 For the funds for the making of rules, the relevant SAIC provisions shall apply.

Article 49 These Provisions shall come into force on October 1, 2008.