

[Changes from 1st Revision Draft highlighted in yellow]

Administrative Reconsideration Law of the People's Republic of China (Revision Draft) (Second Review Draft)

Chapter I General Provisions

Article 1 This Law is formulated pursuant to the Constitution in order to prevent and correct unlawful¹ or improper² administrative acts, protect the lawful rights and interests of citizens, legal persons and other organizations, supervise³ and safeguard the exercise of power by administrative organs in accordance with the law, give full play to the role of administrative reconsideration as the main channel for resolving administrative disputes, and promote construction of a rule of law government.

Article 2 This Law shall apply to citizens, legal persons or other organizations that consider that their lawful rights and interests have been violated by an administrative act of an administrative organ and apply to an administrative reconsideration organ for administrative reconsideration, and to the handling of administrative reconsideration cases by administrative reconsideration organs.

The administrative acts mentioned in the preceding paragraph include administrative acts of organizations authorized by laws, regulations, and rules.⁴

Article 3 Administrative reconsideration work shall uphold the leadership of the Communist Party of China.

Administrative reconsideration organs should, when performing administrative reconsideration duties, adhere to the principles of lawfulness, impartiality, openness, efficiency, convenience, and for the people,⁵ insist on correcting mistakes, and ensure correct implementation of laws and regulations.

Article 4 The people's governments at all levels at or above the county level and other administrative organs that perform administrative reconsideration duties in accordance with this Law are “administrative reconsideration organs.”⁶

The offices that handle administrative reconsideration matters of administrative reconsideration organs are administrative reconsideration offices.⁷ Administrative reconsideration offices shall

¹ 违法, also translated as illegal.

² 不当

³ 监督

⁴ Language moved from Article 10, concluding paragraph.

⁵ 为民

⁶ 机关

⁷ 机构

concurrently organize the handling of matters involving administrative response to litigation⁸ by administrative reconsideration organs.

Administrative reconsideration organs should strengthen leadership over administrative reconsideration work. Higher-level administrative reconsideration offices shall guide and supervise⁹ the administrative reconsideration work of lower-level administrative reconsideration offices.

Article 5¹⁰ Administrative reconsideration organs may, when handling an administrative reconsideration case, conduct mediation.

Mediation should be based on the principles of lawfulness and voluntary participation, and must not harm national interests, the societal public interest or the lawful rights and interests of others, and may not violate the compulsory provisions of laws and regulations.

Article 6 The state shall establish a specialized and professional contingent of administrative reconsideration personnel.

Personnel of administrative reconsideration organs who undertake administrative reconsideration work for the first time should have passed the national uniform legal profession qualification examination, obtained the legal profession qualification, and received uniform preparatory training.

The State Council administrative reconsideration office should, together with relevant departments, formulate professional standards for administrative reconsideration and strengthen the assessment and management of administrative reconsideration personnel.

Article 7 Administrative reconsideration organs should ensure that the staffing of the administrative reconsideration offices is suitable for their assumed mission, improve the professional quality of administrative reconsideration personnel, and ensure the premises, equipment and other facilities for handling cases accord with work requirements. The people's governments at the county level and above should include the expenses for administrative reconsideration work in their budgets.

Article 8 Administrative reconsideration organs should strengthen informatization construction and use modern information technology to facilitate citizens, legal persons or other organizations to apply for and participate in administrative reconsideration and improve work quality and efficiency.

Article 9 Entities¹¹ and individuals that make notable achievements in administrative reconsideration work shall be commended and rewarded in accordance with relevant state provisions.

⁸ 应诉

⁹ 监督

¹⁰ Art. 34 of First Draft.

¹¹ 单位

Article 10 If citizens, legal persons or other organizations refuse to accept an administrative reconsideration decision, they may, in accordance with the provisions of the Administrative Litigation Law of the People's Republic of China, institute administrative litigation in a people's court, except where the law stipulates that the administrative decision shall be the final adjudication.

Chapter II Applying for Administrative Reconsideration

Section 1 Scope of Administrative Reconsideration

Article 11 Citizens, legal persons, or other organizations may, in accordance with this Law, apply for administrative reconsideration under any of the following circumstances:

- (1) They refuse to accept an administrative punishment decision made by an administrative organ;
- (2) They refuse to accept a decision on a compulsory administrative measure or compulsory administrative enforcement made by an administrative organ;
- (3) They apply for an administrative license, and the administrative organ rejects it or fails to reply within the legally prescribed period, or they refuse to accept a different decision on administrative licensing made by an administrative organ;
- (4) They refuse to accept a decision confirming ownership of or the right to utilize natural resources made by an administrative organ;
- (5) They refuse to accept a decision on expropriation or requisition¹² or a related decision on compensation made by an administrative organ;
- (6) They consider that an administrative organ violated their business autonomy or contracted rights to operate rural land, or rights to operate rural land;
- (7) They consider that an administrative organ abused its administrative power to eliminate or restrict competition;
- (8) They consider that an administrative organ unlawfully raised funds or apportioned expenses or unlawfully required performance of other obligations;
- (9) They consider that an administrative organ refused to perform or, failed to perform in accordance with the law, as requested, statutory duties to protect lawful rights and interests, such as the rights of the person, property rights, the right to receive education, and other lawful rights and interests, or did not respond;

¹² 征收, 征用

(10) They consider that an administrative organ failed to pay in accordance with the law a pension, social insurance benefits, minimum living allowance or other social security that they applied for in accordance with law;

(11) They consider that an administrative organ failed to conclude or fulfill an administrative agreement in accordance with the law, or perform as agreed, or unlawfully modified or terminated an administrative agreement such as a government franchise agreement or land and housing expropriation compensation¹³ agreement;

(12) They consider that an administrative organ violated their lawful rights and interests in government information disclosure work;

(13) They refuse to accept a compensation¹⁴ decision made by an administrative organ;

(14) They consider that other administrative acts of an administrative organ violated their lawful rights and interests.

Article 12 The following matters do not fall within the scope of administrative reconsideration:

(1) Actions taken by the state such as in national defense and foreign affairs;

(2) Administrative regulations, rules or regulatory documents¹⁵ such as decisions and orders with general binding force that were formulated and issued by administrative organs;

(3) Decisions by administrative organs concerning rewards, punishments, appointments and dismissals of administrative organ staff members;

(4) Mediation of civil disputes made by administrative organs.

Article 13 When applying for administrative reconsideration of administrative acts, citizens, legal persons or other organizations that consider the following regulatory documents, on which an administrative organ's administrative act was based, to be unlawful may concurrently apply for the administrative reconsideration organ to review such regulatory documents:¹⁶

(1) Regulatory documents of State Council departments;

(2) Regulatory documents of the local people's governments at or above the county level and their work departments;

¹³ 征收补偿

¹⁴ 赔偿

¹⁵ 规范性文件

¹⁶ See, Jamie P. Horsley, China's Central Government Seeks to Rein in Regulatory Documents, *The Regulatory Review*, May 7, 2019, <https://www.theregview.org/2019/05/07/horsley-china-central-government-rein-regulatory-documents/>.

- (3) Regulatory documents of the people's governments of townships¹⁷ and towns;
- (4) Regulatory documents of organizations authorized by laws, regulations and rules.

The regulatory documents set forth in the preceding paragraph do not include rules.¹⁸ The examination of rules shall be handled according to¹⁹ relevant laws and administrative regulations.

Section 2 Participants in Administrative Reconsideration

Article 14 Citizens, legal persons or other organizations that apply for administrative reconsideration in accordance with this Law are applicants.

Where citizens who have the right to apply for administrative reconsideration are deceased, their close relatives may apply for administrative reconsideration. Where citizens who have the right to apply for administrative reconsideration are incompetent or have limited capacity for civil conduct, their legal representative may apply for administrative reconsideration on their behalf. Where legal persons or other organizations that have the right to apply for administrative reconsideration are terminated, the legal person or other organization that succeeds to their rights may apply for administrative reconsideration.

Article 15 If there are a large number of applicants for the same administrative reconsideration case, the applicants may elect a representative to participate in the administrative reconsideration.

A representative's participation in administrative reconsideration shall be effective for the applicants that they represent. However, to change the request for administrative reconsideration, withdraw an application for administrative reconsideration **or acknowledge a third party's request**, the representative shall obtain the consent of the applicants that they represent.

Article 16 Citizens, legal persons or other organizations other than an applicant that have an interest in administrative acts or the outcome of cases for which administrative reconsideration is requested may apply to participate in the administrative reconsideration as a third party, or shall be notified by administrative reconsideration offices to participate in the administrative reconsideration as a third party.

The failure of a third party to participate in an administrative reconsideration shall not affect the adjudication²⁰ of the administrative reconsideration case.

¹⁷ 乡, sometimes translated as village(s), but those are not administrative jurisdictions, which townships are..

¹⁸ 规章, meaning legislative rules issued by State Council departments or local people's governments

¹⁹ 依照

²⁰ 审理, also translated as to hear or try a case, mostly associated with judicial or court cases. Translator is still trying to decide how to translate this term in the administrative reconsideration context. In the U.S., administrative law judges try cases, and state-level hearing officers may conduct administrative adjudication or hearings, e.g., by the Office of Adjudications of the CT Department of Energy and Environmental Protection.

Article 17 Applicants and third parties may entrust participation in administrative reconsideration to one or two agents.

Applicants and third parties entrusting an agent should submit to the administrative reconsideration offices a power of attorney and the identification of the entrusting party and the entrusted party. The power of attorney should specify the entrusted matters, authority and time limit. Applicants or third parties that change or terminate the authority of an agent should notify the administrative reconsideration offices in writing.

Article 18 When administrative reconsideration applicants that meet the conditions stipulated in the Legal Aid Law apply for legal aid, legal aid institutions should provide them with legal aid in accordance with the law.

Article 19 When citizens, legal persons or other organizations refuse to accept an administrative act and apply for administrative reconsideration, the administrative organ or the organization authorized by laws, regulations and rules that took the administrative act shall be the respondent.

When the administrative act was taken by two or more administrative organs in their joint names, the administrative organs jointly conducting the administrative act shall be the respondents.

When the administrative act was taken by an organization entrusted by an administrative organ, the entrusting administrative organ shall be the respondent.

When the administrative organ that took the administrative act is abolished or its functions are modified, the administrative organ that succeeds to such functions shall be the respondent.

Section 3 Filing Applications

Article 20 Citizens, legal persons or other organizations that consider that an administrative act violated their lawful rights and interests may file an administrative reconsideration application within 60 days from the date they know or should have known of such administrative act, except when the time limit stipulated by law exceeds 60 days.

If the statutory application time limit is delayed due to force majeure or other appropriate reason, the application time limit shall continue to be calculated from the date the obstacle is removed.

If, when taking an administrative act, administrative organs fail to notify citizens, legal persons or other organizations of the right to apply for administrative reconsideration, the administrative reconsideration organ or the application time limit, the application time limit shall be counted from the date on which the citizens, legal persons or other organizations know or should have known of their administrative reconsideration rights, the administrative reconsideration organ and the application time limit. However, the period during which the administrative act is known or should have been known may not exceed a maximum of one year.

Article 21 Administrative reconsideration organs shall not accept any administrative reconsideration application filed over 20 years from the date an administrative act relating to real

estate property is taken, or any other application filed over five years from the date the administrative act is taken.

Article 22 Applicants may apply for administrative reconsideration in writing; where it is difficult to apply in writing, they also may apply orally.

Where applications are made in writing, the administrative reconsideration applications may be submitted by mail or through the Internet channels designated by the administrative reconsideration organs, or administrative reconsideration applications may be submitted in person.

Where applications are made orally, the administrative reconsideration organs shall record on the spot the basic situation of the applicant, the administrative reconsideration claims, and the main facts, grounds and time based on which the administrative reconsideration application is made.

Applicants that refuse to accept two or more administrative acts should apply for separate administrative reconsiderations.

Article 23 Under any of the following circumstances, applicants should first apply to the administrative reconsideration organ for administrative reconsideration, and if they refuse to accept the administrative reconsideration decision, may then in accordance with the law institute administrative litigation in a people's court:

- (1) Refusing to accept an administrative punishment decision made on the spot;
- (2) Refusing to accept a decision made by an administrative organ that violates the ownership or utilization right of natural resources that has already been obtained in accordance with the law;
- (3) Where an administrative organ is considered to have failed to perform its statutory duties as stipulated in Article 11 of this Law;
- (4) Other circumstances under which administrative reconsideration applications should be filed with the administrative reconsideration organ first as stipulated in laws and regulations.

Section 4 Jurisdiction over Administrative Reconsideration

Article 24 The local people's governments at or above the county level shall have jurisdiction over the following administrative reconsideration cases:

- (1) Refusing to accept an administrative act taken by a work department of the people's government at the same level;
- (2) Refusing to accept an administrative act taken by a people's government at the next lower level;

(3) Refusing to accept an administrative act taken by a dispatched organ²¹ established in accordance with the law by a people's government at the same level;

(4) Refusing to accept an administrative act taken by an organization authorized by laws, regulations and rules that is managed by the people's government at the same level or by its work departments;

(5) Refusing to accept an administrative act taken in its own name based on the provisions of laws, regulations or rules by a dispatched organ that was established in accordance with the law by a work department of the people's government at the same level.

In addition to the provisions of the preceding paragraph, the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall at the same time have jurisdiction over administrative reconsideration cases in which applicants refuse to accept the administrative acts taken by their own organs.

The dispatched organs established in accordance with the law by the people's governments of provinces and autonomous regions shall exercise jurisdiction over relevant administrative reconsideration cases with reference to the jurisdictional authority of the people's governments at the districted city level.

Article 25 State Council departments shall have jurisdiction over the following administrative reconsideration cases:

(1) Refusing to accept an administrative act taken by such departments.

(2) Refusing to accept an administrative act taken in their own name based on the provisions of laws, administrative regulations or departmental rules by a dispatched organ that was established by such departments in accordance with the law.

(3) Refusing to accept an administrative act taken by an organization authorized by laws, administrative regulations or departmental rules that is managed by such departments.

Article 26 Applicants that refuse to accept an administrative reconsideration decision made by the people's government of a province, autonomous region or municipality directly under the Central Government in accordance with the provisions of paragraph 2 of Article 24 of this Law or by a State Council department in accordance with the provisions of item 1 of Article 25 of this Law may institute administrative litigation in a people's court; they may also apply to the State Council for a ruling,²² and the State Council shall render a final ruling based on the provisions of this Law.

Article 27 Applicants that refuse to accept an administrative act of an administrative organ implementing vertical leadership such as customs, finance, and foreign exchange administration

²¹ 派出机关

²² 裁决

or of taxation or state security organs shall apply for administrative reconsideration to the department in charge at the next higher level.

Article 28 Where citizens, legal persons or other organizations apply for administrative reconsideration and the administrative reconsideration organ has already accepted the application in accordance with the law, no administrative litigation may be instituted during the administrative reconsideration period.

If citizens, legal persons, or other organizations have instituted administrative litigation in a people's court, and the people's court has already accepted it in accordance with the law, no application for administrative reconsideration may be filed.

Chapter III Acceptance of Administrative Reconsideration

Article 29 Administrative reconsideration organs should examine administrative reconsideration applications within five days of receiving them, and accept applications that comply with the following provisions:

- (1) There is a specific applicant and a respondent that comply with the provisions of this Law;
- (2) The applicant has an interest in the administrative act **for which administrative reconsideration has been requested**;
- (3) There is a specific request²³ and reasons for administrative reconsideration;
- (4) It is filed within the statutory time limit for application;
- (5) It falls within the scope of administrative reconsideration provided in this Law;
- (6) It falls within the scope of jurisdiction of such organ;
- (7) The administrative reconsideration organ has never accepted an administrative reconsideration application filed by the applicant for the same administrative act, and no people's court has ever accepted an administrative litigation instituted by the applicant for the same administrative act.

Administrative reconsideration organs should decide within the time limit for examination to reject an administrative reconsideration application that does not comply with the provisions of the preceding paragraph and explain the reasons; and if it does not fall within the scope of jurisdiction of such organs, they should in the decision rejecting the application **further inform the applicant of administrative reconsideration organs that do have jurisdiction.**

²³ 请求

If administrative reconsideration organs fail to make a decision to reject an application before the time limit for examination expires, the application shall be considered accepted from the day the time limit for examination expires.

Article 30 If administrative reconsideration application materials are incomplete or unclear, and it is impossible to judge whether the administrative reconsideration application complies with the provisions of paragraph one of Article 29, of this Law, administrative reconsideration organs should notify applicants in writing within five days from the date applications are received to make supplements and corrections. Notices on supplements and corrections should specify once only²⁴ the items to be supplemented and corrected.

Applicants should submit the supplementary and corrected materials within 10 days from the day the notice of supplements and corrections is received. If there are justifiable reasons why supplements and corrections cannot be provided on time, administrative reconsideration organs may extend a reasonable time limit for supplements and corrections. Where no supplements or corrections are made within the prescribed time limit without justified reasons, applicants shall be considered to have abandoned the administrative reconsideration application and the matter shall be recorded in the file.²⁵

After receiving supplementary and corrected materials, administrative reconsideration organs shall handle them in accordance with the provisions of Article 29 of this Law.

Article 31 If, after accepting an administrative reconsideration application, administrative reconsideration organs discover that the administrative reconsideration application does not comply with the provisions of paragraph one of Article 29 of this Law, they should decide to reject the application and explain the reasons.

Article 32 Where relevant laws and regulations stipulate that citizens, legal persons or other organizations should first apply to an administrative reconsideration organ for administrative reconsideration and then institute administrative litigation in a people's court where they refuse to accept the administrative reconsideration decision, and the administrative reconsideration organ refuses to accept or rejects the application or fails to reply upon expiry of the time limit for administrative reconsideration, citizens, legal persons or other organizations may, from the day they receive the written decision or within 15 days of expiry of the time limit for administrative reconsideration, institute administrative litigation in a people's court.

Article 33 Where citizens legal persons or other organizations file administrative reconsideration applications in accordance with the law, and the administrative reconsideration organ refuses to accept the application or rejects the application without justifiable reasons, or fails to reply within the time limit for administrative reconsideration after the application has been accepted, applicants have the right to report²⁶ to the next higher-level administrative organ, and the administrative organ at the next higher level should order it to take corrective action; if

²⁴ 一次性

²⁵ 记录在案

²⁶ 反映

necessary, the administrative organ at the next higher level may also directly accept the application.

Chapter IV Administrative Reconsideration Adjudication

Section 1 General Provisions

Article 34 Administrative reconsideration organs shall, after accepting an administrative reconsideration application, conduct adjudication under the general or summary procedure in accordance with this Law.

Article 35 Administrative reconsideration organs shall adjudicate administrative reconsideration cases in accordance with laws, regulations and rules.

When adjudicating administrative reconsideration cases of ethnic autonomous areas, administrative reconsideration organs shall concurrently follow the autonomous regulations and separate regulations of the ethnic autonomous area.

Article 36 Administrative reconsideration shall be suspended during the administrative reconsideration period under any of the following circumstances:

- (1) A natural person who is the applicant dies, and their close relatives have not yet decided whether to participate in the administrative reconsideration;
- (2) A natural person who is the applicant has lost the ability to participate in the administrative reconsideration, and no statutory agent²⁷ has been determined to participate in the administrative reconsideration;
- (3) The whereabouts of a natural person who is the applicant is unknown;
- (4) The legal person or other organization that is the applicant is terminated, and the successor to its rights and obligations has not been determined;
- (5) The applicant or respondent is unable to participate in the administrative reconsideration due to *force majeure* or other justifiable reasons;
- (6) Where mediation or conciliation is being conducted in accordance with the provisions of this Law, and the applicant and respondent agree to suspend it;
- (7) The case involves an application of law issue and requires interpretation or confirmation by an organ with authority;
- (8) The adjudication of the case must be based on the outcome of the adjudication of another case, but such case has not been concluded;

²⁷ 法定代理人

(9) The case falls under the circumstances provided for in Article 53 or 54 of this Law;

(10) Other circumstances requiring suspension of the administrative reconsideration.

After the reasons for suspension of administrative reconsideration are eliminated, adjudication of the administrative reconsideration case shall be resumed in a timely manner.

Administrative reconsideration organs should notify the parties in writing of the suspension or resumption of adjudicating an administrative reconsideration case.

Article 37 If administrative reconsideration organs suspend administrative reconsideration without justifiable reasons during the administrative reconsideration period, the administrative organs at the next higher level should order them to resume adjudication; if necessary, the administrative organs at the next higher level may directly adjudicate such cases.

Article 38 Administrative reconsideration organs shall decide to terminate administrative reconsideration during the administrative reconsideration period under any of the following circumstances:

(1) The applicant withdraws the administrative reconsideration application, and the administrative reconsideration office approves the withdrawal;

(2) A natural person who is the applicant dies and there is no close relative or their close relative waives the right of administrative reconsideration;

(3) A legal person or other organization that is the applicant is terminated, and **there is no successor to its rights and obligations or** the successor to its rights and obligations waives the right of administrative reconsideration;

(4) After an applicant that refuses to accept an administrative detention or administrative coercion measure applies for administrative reconsideration, the administrative detention or administrative coercion measure is changed to criminal detention or a criminal coercive measure, because the same unlawful act of the applicant is suspected of constituting a crime;

(5) The administrative reconsideration is suspended in accordance with the provisions of subparagraphs (1), (2) and (4) of paragraph one of Article 36 of this Law, and the reasons for the suspension of the administrative reconsideration have not been eliminated within 60 days.

Article 39 During the administrative reconsideration period, execution of the administrative act shall not be halted;²⁸ provided that, execution of the administrative act should be halted under any of the following circumstances:

(1) The respondent considers that halting execution is necessary;

²⁸ 停止

- (2) The administrative reconsideration organ considers that halting execution is necessary;
- (3) The administrative reconsideration organ decides to halt execution at the request of the applicant **or a third party**, which request the administrative reconsideration organ considers to be reasonable.
- (4) Halting execution is required by laws, regulations or rules.

Section 2 Administrative Reconsideration Evidence

Article 40 Evidence for administrative reconsideration shall include:

- (1) documentary evidence;
- (2) physical evidence;
- (3) audio-visual materials;
- (4) electronic data;
- (5) witness testimony;
- (6) statements of the parties;
- (7) authentication opinions;
- (8) survey transcripts and on-site transcripts.

The above-listed evidence shall be verified²⁹ by administrative reconsideration offices before being used as a basis for determining³⁰ the facts of a case.

Article 41 Respondents shall bear the burden of proof for the lawfulness and propriety³¹ of an administrative act **taken by them**.

Under any of the following circumstances, applicants should provide evidence:

- (1) If they consider that the respondent has failed to perform statutory duties, they shall provide evidence that they have requested the respondent to perform the statutory duties, except where the respondent should proactively perform the statutory duties according to its authority or applicants are unable to provide it for justifiable reasons;

²⁹ 审查属实

³⁰ 认定

³¹ 适当性

(2) If they claim administrative compensation, applicants shall provide evidence of the damage caused by the administrative act's infringement, provided that if applicants are unable to provide evidence because of the respondent, the burden of proof shall be assumed by the respondent;

(3) Other circumstances under which applicants are required to provide evidence in accordance with the provision of laws and regulations.

Article 42 Administrative reconsideration **organs** shall have the authority to investigate and collect evidence and consult, copy and retrieve relevant **documents and materials** from relevant entities and individuals, and make inquiries of relevant personnel.

When conducting investigations and collecting evidence, there shall be not less than two administrative reconsideration personnel and they should show administrative reconsideration work certificates.

The entities and individuals under investigation and from which evidence is collected should positively cooperate with administrative reconsideration personnel in their work, and may not refuse cooperation or obstruct such work.

Article 43 During the administrative reconsideration period, respondents may not collect evidence from any applicant and other relevant entities or individuals on its own; evidence collected on its own shall not be used as the basis for determining the lawfulness **or propriety** of an administrative act.

During the administrative reconsideration period if applicants or third parties submit reasons or evidence that were not raised when the administrative act **for which administrative reconsideration has been requested** was taken, the respondent may, with the administrative reconsideration office's consent, supplement the evidence.

Article 44 During the administrative reconsideration period, applicants and third parties may, in accordance with provisions, consult and copy the written reply of respondents, the evidence of taking the administrative act, the basis and other relevant materials and, except under circumstances involving state secrets, commercial secrets and personal privacy or where they may endanger national security, public security, or social stability, administrative reconsideration offices should consent thereto.

Section 3 Ordinary Procedure

Article 45 Administrative reconsideration offices should send duplicates of written administrative reconsideration applications or photocopies of the transcripts of administrative reconsideration applications to respondents within seven days from the day administrative reconsideration applications are accepted. Respondents should submit written replies within 10 days from day they receive the duplicate of the written application or the photocopy of the application transcript, and submit the evidence, basis, and other relevant materials based on which the administrative act was taken.

Article 46 When adjudicating administrative reconsideration cases under ordinary procedures, administrative reconsideration offices should hear the opinions of the parties in person or through the Internet, telephone and other means, and record the opinions so heard in the file. If opinions cannot be heard due to reasons relating to the parties, the method of written review³² may be adopted.

Article 47 When adjudicating major, difficult or complex administrative reconsideration cases, administrative reconsideration offices should organize a hearing.

Where administrative reconsideration offices consider that a hearing is necessary, or applicants request a hearing, administrative reconsideration offices may organize a hearing.

Hearings shall be presided over by a single administrative reconsideration staff member, two or more administrative reconsideration staff members shall serve as hearing officers, and one recorder shall make the hearing transcript.³³

The responsible personnel of respondents should participate in hearings. If they are unable to attend, they should explain the reasons and entrust a corresponding staff member to participate.

Article 48 Where administrative reconsideration offices organize hearings, they should notify the parties in writing of the time and place of the hearing and the matters to be heard five days prior to the hearing.

An applicant's refusal to participate in a hearing without justifiable reasons shall be deemed to be a waiver of the right to a hearing.

Article 49 The people's governments at or above the county level should establish administrative reconsideration committees with participation by relevant government departments, experts and scholars to provide advisory opinions for handling administrative reconsideration cases, as well as conduct research on major matters and common issues in administrative reconsideration work, and put forward opinions and suggestions.

When adjudicating administrative reconsideration cases involving the following circumstances, administrative reconsideration offices should request administrative reconsideration committees to put forward advisory opinions:

- (1) The case is major, difficult or complicated;
- (2) Its professional or technical nature is relatively strong;
- (3) The applicant refuses to accept an administrative act of the people's government of a province, autonomous region, or municipality directly under the Central Government;

³² 书面审查

³³ 听证笔录

(4) Administrative reconsideration offices consider that it is necessary.

Administrative reconsideration offices should record advisory opinions of administrative reconsideration committees.

Section 4 Summary Procedure

Article 50 When adjudicating the following administrative reconsideration cases, administrative reconsideration organs may use the summary procedure if they consider that the facts are clear, the rights and obligations between the parties are clear, and the dispute is minor:

(1) The administrative act for which administrative reconsideration is requested was taken on the spot in accordance with the law;

(2) The administrative act for which administrative reconsideration is requested is a warning or a circulation of notice of criticism;

(3) The amount involved in the case is not more than 3,000 yuan;

(4) The case involves the disclosure of government information.

For administrative reconsideration cases other than those stipulated in the preceding paragraph, the summary procedure may be used with the consent of all parties.

Article 51 For cases that are adjudicated using the summary procedure, administrative reconsideration offices should send a duplicate of the written administrative reconsideration application or a photocopy of the administrative reconsideration application transcript to the respondent within three days from the date the administrative reconsideration application is accepted. Respondents should submit written replies within five days from the date they receive the duplicate of the written application or the photocopy of the application transcript, and submit the evidence, basis, and other relevant materials based on which the administrative act was taken.

Cases adjudicated using the summary procedure may be adjudicated in writing.

Article 52 During the adjudication process, if administrative reconsideration offices consider that the summary procedure is unsuitable for the case, they may switch to the ordinary adjudication procedure with the approval of the responsible personnel of the administrative reconsideration offices.

Section 5 Incidental Examination in Administrative Reconsideration

Article 53 When applying for administrative reconsideration, applicants shall, in accordance with the provisions of Article 13 of this Law, concurrently file an application for examination of relevant regulatory documents and, if administrative reconsideration organs have the authority, they shall handle the matter in accordance with the law within 30 days; if they do not have such

authority, they should, within seven days, transfer the matter to an administrative organ that does have the authority to handle it in accordance with the law.

Article 54 Where administrative reconsideration organs, when examining administrative acts taken by respondents, consider that the basis on which the administrative act was taken was unlawful, and if the administrative reconsideration organs have the authority, administrative reconsideration organs should handle the matter in accordance with the law within 30 days; if administrative reconsideration organs do not have such authority, they should transfer the case within seven days to a state organ with the authority to handle it in accordance with the law.

Article 55 If administrative reconsideration organs have the authority to handle the relevant regulatory documents or their basis in accordance with the provisions of Article 53 and Article 54 of this Law, the administrative reconsideration offices should, within three days from the date the administrative reconsideration is suspended, notify the formulating organ of the regulatory document or basis to submit a written reply on the lawfulness of the relevant clauses.³⁴ The formulating organ should submit a written reply and relevant evidentiary materials within 10 days from the date the written notice is received.

When administrative reconsideration offices consider it necessary, they may request the organs that formulated the regulatory documents or basis to explain the reasons in person, and the formulating organs should cooperate.

Article 56 If administrative reconsideration organs have the authority to handle the relevant regulatory document or basis in accordance with the provisions of Articles 53 and 54 of this Law and consider the relevant clauses to be lawful, they shall so notify together in the written administrative reconsideration decision; if they consider that a relevant clause exceeds [the formulating organ's] authority or violates superior law, they shall decide to halt implementation of such clause and order the formulating organ to take corrective action.

Article 57 Administrative organs or state organs that accept transfer in accordance with the provisions of Articles 53 and 54 of this Law should, within 60 days from the date the transfer was received, reply with the handling **opinions** to the transferring administrative reconsideration organ.

Chapter V Administrative Reconsideration Decisions

Article 58 When administrative reconsideration organs adjudicate administrative reconsideration cases in accordance with this Law, the administrative reconsideration offices shall examine the administrative acts, put forward opinions and, with the consent of the responsible personnel of the administrative reconsideration organs or after collective deliberation and adoption, make the administrative reconsideration decisions in the name of the administrative reconsideration organs.

³⁴ 条款

For administrative reconsideration cases that went through a hearing, administrative reconsideration organs should, on the basis of³⁵ the hearing transcript and the facts and evidence determined during the examination, make an administrative reconsideration decision according to this Law.

For administrative reconsideration cases submitted to an administrative reconsideration committee for advice, administrative reconsideration organs should take the advisory opinions as an important reference for making administrative reconsideration decisions.

Article 59³⁶ For administrative reconsideration cases adjudicated under the ordinary procedure, administrative reconsideration organs should make an administrative reconsideration decision within 60 days from the date the application is accepted, except where the law provides the time limit for administrative reconsideration is shorter than 60 days. Where the circumstances are complicated and an administrative reconsideration decision cannot be made within the prescribed time limit, it may be extended appropriately with the approval of the responsible personnel of the administrative reconsideration office, and the parties shall be notified in writing; provided that the extension period shall not exceed a maximum of 30 days.

For administrative reconsideration cases adjudicated under the summary procedure, administrative reconsideration organs should make an administrative reconsideration decision within 30 days from the date the application is accepted.

Article 60 If the facts based on which an administrative act is taken are determined to be clear, the evidence is conclusive,³⁷ the applicable basis is correct, the procedures are lawful, and the content is appropriate, administrative reconsideration organs shall decide to maintain the administrative act.

Article 61 Where administrative organs, after accepting an administrative reconsideration application where the applicant considers that the respondent has not performed statutory duties, finds that the respondent has no corresponding statutory duties or has performed the statutory duties before the application was accepted, they shall decide to reject the applicant's request for administrative reconsideration.

Article 62 If respondents fail to perform statutory duties, administrative reconsideration organs shall decide that the respondents shall perform such duties within a certain time limit.

Article 63 If an administrative act falls under any of the following circumstances, administrative reconsideration organs shall decide to modify³⁸ the administrative act:

(1) The facts are clear, the evidence is conclusive, the applicable basis is correct, and the procedure is lawful, but such the content is inappropriate;

³⁵ 根据

³⁶ Moved from 1st revised draft Article 71

³⁷ 确凿

³⁸ 变更

(2) The facts are clear, the evidence is conclusive and the procedure is lawful, but there was no correct applicable basis;

(3) If the facts are unclear and the evidence is insufficient, and the facts and evidence are clarified after investigation and evidence collection by the administrative reconsideration organ.

Administrative reconsideration organs may not make modification decisions that are more unfavorable to the applicant, unless a third party submits a request to the contrary.

Article 64 Where an administrative act falls under any of the following circumstances, administrative reconsideration organs shall decide to revoke³⁹ the administrative act in whole or in part and may order the respondent to take a new administrative act within a prescribed time limit:

(1) The main facts are unclear or the evidence is insufficient;

(2) It violates statutory procedures;

(3) The applicable basis is unlawful;

(4) It exceeds or abuses authority.

Where administrative reconsideration organs order a respondent to take a new administrative act, the respondent shall not take an administrative act identical or basically identical to the administrative act **for which administrative reconsideration has been requested** based on the same facts and reasons, except when administrative reconsideration organs decide to revoke the administrative act in whole or in part on the grounds of violating statutory procedures.

Article 65 If an administrative act falls under any of the following circumstances, administrative reconsideration organs shall not revoke the administrative act, but shall confirm that the administrative act was unlawful:

(1) An administrative act should be revoked according to the law, but the revocation would cause significant damage to the national interest or societal public interest;

(2) The administrative act procedures constituted a slight violation of law but did not have any actual impact on the applicant's rights.

If an administrative act falls under any of the following circumstances and does not need to be revoked or ordered to be performed, administrative reconsideration organs shall confirm that the administrative act is unlawful:

(1) An administrative act is unlawful, but does not involve revocable substance;

³⁹ 撤销

(2) A respondent modified the original unlawful administrative act, but the applicant still requests revocation or confirmation that the original administrative act was unlawful;

(3) A respondent has failed to perform or delayed performance of its statutory duties, but it is meaningless to order performance.

Article 66 If an administrative act has been taken by a party that lacks the qualifications of an administrative agency,⁴⁰ is baseless, or otherwise seriously and evidently violates the law, and the applicant applies to confirm that the administrative act is invalid, administrative reconsideration organs shall confirm such administrative act is invalid.

Article 67 If a respondent fails to submit a written reply, or submit evidence, the basis and other materials relevant to taking the administrative act in accordance with the provisions of Articles 45 and 51 of this Law, the administrative act shall be considered to be without evidence and baseless, and administrative reconsideration organs shall decide to revoke, in whole or in part, the administrative act, confirm the unlawfulness and invalidity of the administrative act, or decide the respondent shall perform within a certain time limit, except when the administrative act involves the lawful rights and interests of a third party, and the third party provides evidence.

Article 68 If a respondent does not conclude or perform an administrative agreement in accordance with the law, does not perform the agreement as agreed, or unlawfully modifies or terminates an administrative agreement, administrative reconsideration organs shall decide that the respondent shall be responsible for concluding or continuously performing [the agreement], adopting remedial measures or compensating for the losses in accordance with the law.

Where a respondent lawfully modified or terminated an administrative agreement, but no compensation was made in accordance with the law or the compensation is unreasonable, administrative reconsideration organs shall decide that the respondent shall make reasonable compensation in accordance with the law.

Article 69 If, when applying for administrative reconsideration, an applicant concurrently claims administrative compensation, and if administrative reconsideration organs should not award compensation according to the relevant provisions of the State Compensation Law of the People's Republic of China, they should concurrently decide when making the administrative reconsideration decision to reject the claim for administrative compensation; if compensation should be awarded in compliance with the relevant provisions of the State Compensation Law of the People's Republic of China, they should, when deciding to revoke or modify an administrative act, in whole or in part, or confirming that an administrative act is unlawful or invalid, concurrently decide the compensation that the respondent should make in accordance with the law; if an administrative act is confirmed to be unlawful, the respondent may further concurrently be ordered to adopt remedial measures.

Where an applicant does not request administrative compensation when applying for administrative reconsideration, administrative reconsideration organs should, when deciding to

⁴⁰ 主题

revoke or modify a fine in whole or in part, or to revoke or partially revoke administrative acts such as unlawful fund-raising, confiscating property, expropriation or requisition, apportioning expenses, and sealing up, seizing, or freezing property, concurrently order the respondent to return the property, remove⁴¹ measures of sealing up, seizing, or freezing the property, or compensate the corresponding cost.

Article 70 If the parties reach an agreement through mediation, administrative reconsideration organs should prepare an administrative reconsideration mediation document, which shall have legal effect when the signatures **or seals** of all parties and the seal of the administrative reconsideration organ are affixed thereto.

If no agreement is reached through mediation or one party changes its mind before the mediation document takes effect, administrative reconsideration organs should **examine the matter in accordance with law or** make a decision on administrative reconsideration in a timely manner.

Article 71 The parties may voluntarily reach a settlement⁴² before an administrative reconsideration decision is made, in which case the applicant shall withdraw the administrative reconsideration application from the administrative reconsideration office. The contents of a settlement may not harm the national interests, societal public interest or the lawful rights and interests of others, or violate the compulsory provisions of laws and regulations.

If the administrative reconsideration office approves withdrawal of the administrative reconsideration application and the administrative reconsideration organ decides to terminate the administrative reconsideration, the applicant may not submit any application for administrative reconsideration again on the basis of the same facts and reasons, except when an applicant is able to prove that the withdrawal of the administrative reconsideration application was contrary to their true wishes.

Article 72 When administrative reconsideration organs make administrative reconsideration decisions, they should prepare an administrative reconsideration decision document⁴³ and affix the **administrative reconsideration organ** seal thereto.

Administrative reconsideration decision documents are legally effective once served.⁴⁴

Article 73 If, during the process of adjudicating an administrative reconsideration case, administrative reconsideration organs find that the relevant administrative act of a respondent or another lower level administrative organ is unlawful or improper, it may issue a written administrative reconsideration opinion to the respondent or other administrative organ. The relevant organ should, within 60 days from the date it receives the written administrative reconsideration opinion, report the rectification of the relevant unlawful or improper administrative act to the administrative reconsideration organ

⁴¹ 解除

⁴² 和解

⁴³ 行政复议决定书

⁴⁴ 送达

Article 74 Respondents should perform administrative reconsideration decision documents, mediation documents and opinion documents.

If respondents fail to perform or delay performance of administrative reconsideration decision documents, mediation documents or opinion documents without justifiable reasons, administrative reconsideration organs or relevant administrative organs at the next higher level shall order the respondents to perform within the time limit; if the respondents still do not perform, administrative reconsideration organs or relevant higher-level administrative organs may conduct a regulatory interview with the responsible personnel of the respondents or circulate a notice of criticism.

Article 75 An applicant or a third party that fails to institute an action within the time limit and fails to perform an administrative reconsideration decision document or mediation document, or fails to perform an administrative reconsideration decision that is a final ruling shall be handled respectively according to the following provisions:

- (1) An administrative reconsideration decision document maintaining an administrative act shall be enforced compulsorily in accordance with the law by the administrative organ that took the administrative act, or be enforced compulsorily by a people's court upon application;
- (2) An administrative reconsideration decision document modifying an administrative act shall be enforced compulsorily in accordance with the law by the administrative reconsideration organ, or be enforced compulsorily by a people's court upon application;
- (3) An administrative reconsideration mediation document shall be enforced compulsorily in accordance with the law by the administrative reconsideration organ, or be enforced compulsorily by a people's court upon application.

Article 76 Administrative reconsideration organs should disclose administrative reconsideration decisions to the public based on the openness⁴⁵ of the administrative act for which the administrative reconsideration is requested and according to relevant state provisions.

All local people's governments at or above the county level should, when handling administrative reconsideration cases in which a work department of the people's government at the corresponding level is the respondent, simultaneously copy the legally effective administrative reconsideration decision document and opinion document to the respondent's department in charge at the next higher level.

Chapter VI Legal Liability

Article 77 Where administrative reconsideration organs do not perform their administrative reconsideration duties according to the provisions of this Law, the responsible leading personnel and other directly responsible personnel shall, in accordance with the law, be given sanctions such as warnings, demerits or major demerits; if they still do not take corrective action after

⁴⁵ 公开

urging by administrative organs with supervision⁴⁶ authority, if serious consequences were caused, they shall be given, in accordance with the law, sanctions such as demotion, removal from office, or dismissal.

Article 78 Staff members of administrative reconsideration organs who engage in favoritism and fraudulent practices or other malfeasance or dereliction of duty in the course of administrative reconsideration activities shall, in accordance with the law, be given sanctions such as warnings, demerits or major demerits; if the circumstances are serious, they shall be given in accordance with the law sanctions such as demotion, removal from office, or dismissal; if a crime is constituted, they shall be held criminally liable in accordance with the law.

Article 79 Where respondents, in violation of the provisions of this Law, do not reply in writing or do not provide evidence, the basis, or other materials relating to an administrative act, or obstruct or obstruct in disguised form citizens, legal persons or other organizations from applying for administrative reconsideration in accordance with the law, **the responsible leading personnel and other directly responsible personnel** shall be given in accordance with the law sanctions such as warnings, demerits or major demerits; anyone conducting retaliation shall be given in accordance with the law sanctions such as demotion, removal from office, or dismissal; if a crime is constituted, they shall be held criminally liable in accordance with the law.

Article 80 Where respondents do not perform or delay the performance of an administrative reconsideration decision document, mediation document or opinion document without justifiable reasons, the responsible leading personnel and other directly responsible personnel shall be given in accordance with the law sanctions such as warnings, demerits or major demerits; if they still refuse to perform after being ordered to perform, they shall be given in accordance with the law sanctions such as demotion, removal from office, or dismissal.

Article 81 Anyone who refuses or obstructs investigations and collecting evidence or intentionally **disrupts⁴⁷ administrative reconsideration work order** shall be given in accordance with the law sanctions or public security administration punishment; if a crime is constituted, they shall be held criminally liable in accordance with the law.

Article 82 If administrative organs and their staff members violate the provisions of this Law, administrative reconsideration **organs** may transfer the factual materials concerning the violation of law by the staff members to the supervision⁴⁸ organs or the organs or entities that appoint and remove public employees, and the supervision organs or organs or entities for appointment and removal of public employees should handle the matter in accordance with the law.

Article 83 If, during the process of adjudicating administrative reconsideration cases, administrative reconsideration organs finds clues indicating that public employees are suspected of corruption, bribery, dereliction of duty, malfeasance or other duty-related violations or duty-related crimes, they should transfer the cases to the supervision organs in accordance with

⁴⁶ 监督

⁴⁷ 扰乱

⁴⁸ 监察, meaning under the Chinese Communist Party Central Discipline Inspection Commission-State Supervision Commission.

relevant provisions, and the supervision organs shall conduct investigation and handle them in accordance with the law.

Chapter VII Supplementary Provisions

Article 84 Administrative reconsideration organs may not collect any fees from applicants for accepting administrative reconsideration applications.⁴⁹

Article 85 The calculation of the administrative reconsideration period and the service of administrative reconsideration documents shall be carried out according to the provisions of the Civil Procedure Law on time periods and service.

Provisions of this Law on “three days,” “five days” and “seven days” in relation to administrative reconsideration periods refer to workdays, excluding holidays.

Article 86 This Law shall apply where foreigners, stateless persons, or foreign organizations apply for administrative reconsideration in the People's Republic of China.

Article 87 This Law shall come into effect on MM DD, YY.

⁴⁹ Moved from 1st draft Article 6, para. 2.