

【Title】 Law of the People's Republic of China on Administrative Penalty[已被修订]
【法规标题】 中华人民共和国行政处罚法 [Revised]

Date issued: 03-17-1996
Effective date: 10-01-1996
Issuing authority: National People's Congress
Area of law: Government Affairs

发布日期: 1996-03-17
生效日期: 1996-10-01
发布部门: 全国人民代表大会
类别: 机关工作

*注：本篇法规已被《全国人民代表大会常务委
员会关于[修改部分法律的决定](#)》
（发布日期：2009年8月27日 实施
日期：2009年8月27日）修改

ORDER OF THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF
CHINA
No. 63

The Law of the People's Republic of China on Administrative Penalty,
adopted at the Fourth Session of the Eighth National People's Congress
of the People's Republic of China on March 17, 1996, is hereby
promulgated and shall enter into force as of October 1, 1996.

Jiang Zemin

President of the People's Republic of China

March 17, 1996

LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON ADMINISTRATIVE
PENALTY

(Adopted at the Fourth Session of the Eighth National People's Congress
on March 17, 1996, promulgated by Order No. 63 of the President of the
People's Republic of China on March 17, 1996, and effective as of
October 1, 1996)

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中华人民共和国主席令
(第六十三号)

《中华人民共和国行政处罚法》已
由中华人民共和国第八届全国人民代表
大会第四次会议于1996年3月17
日通过，现予公布，自1996年10
月1日起施行。

中华人民共和国主席 江泽民

1996年3月17日

中华人民共
和国行政处罚法
(1996年3月17日第八届
全国人民代表大会第四次会议通过)

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CHAPTER I GENERAL PROVISIONS

Article 1 Pursuant to the [Constitution](#), this Law is enacted for the purpose of standardizing creation and imposition of administrative penalty, ensuring and supervising the effective exercise of administration by administrative organs, safeguarding public interests and public order, and protecting the lawful rights and interests of citizens, legal persons and other organizations.

Article 2 Creation and imposing of administrative penalty shall be governed by this Law.

Article 3 Where administrative penalty needs to be imposed on citizens, legal persons or other organizations for their violations of the order of administration, it shall be prescribed by laws, rules or regulations pursuant to this Law and imposed by administrative organs in compliance with the procedure prescribed by this Law.

Administrative penalty that is not imposed in accordance with law or in compliance with legal procedures shall be invalid.

Article 4 Administrative penalty shall be imposed in adherence to the principles of fairness and openness.

Creation and imposition of administrative penalty shall be based on facts and shall be in correspondence with the facts, nature and seriousness of the violations of law and damage done to society.

Regulations on administrative penalty to be imposed for violations of law must be published; those which are not published shall not be taken as the basis for administrative penalty.

Article 5 In imposing administrative penalty and setting to rights illegal acts, penalty shall be combined with education, so that citizens, legal persons and other organizations shall become aware of the importance of observing law.

Article 6 Citizens, legal persons and other organizations on whom administrative penalty is imposed by administration organs shall have the right to state their cases and the right to defend themselves; those who refuse to accept administrative penalty shall have the right to apply for administrative reconsideration or bring an administrative lawsuit in accordance with law.

Citizens, legal persons and other organizations that have suffered damage due to administrative penalty imposed by administrative organs in violation of law shall have the right to demand compensation in accordance with law.

Article 7 Citizens, legal persons and other organizations that are subjected to administrative penalty because of their violations of law shall,

第一章 总则

第一条 为了规范行政处罚的设定和实施，保障和监督行政机关有效实施行政管理，维护公共利益和社会秩序，保护公民、法人或者其他组织的合法权益，根据[宪法](#)，制定本法。

第二条 行政处罚的设定和实施，适用本法。

第三条 公民、法人或者其他组织违反行政管理秩序的行为，应当给予行政处罚的，依照本法由法律、法规或者规章规定，并由行政机关依照本法规定的程序实施。

没有法定依据或者不遵守法定程序的，行政处罚无效。

第四条 行政处罚遵循公正、公开的原则。

设定和实施行政处罚必须以事实为依据，与违法行为的事实、性质、情节以及社会危害程度相当。

对违法行为给予行政处罚的规定必须公布；未经公布的，不得作为行政处罚的依据。

第五条 实施行政处罚，纠正违法行为，应当坚持处罚与教育相结合，教育公民、法人或者其他组织自觉守法。

第六条 公民、法人或者其他组织对行政机关所给予的行政处罚，享有陈述权、申辩权；对行政处罚不服的，有权依法申请行政复议或者提起行政诉讼。

公民、法人或者其他组织因行政机关违法给予行政处罚受到损害的，有权依法提出赔偿要求。

第七条 公民、法人或者其他组织因违法受到行政处罚，其违法行为对他

in accordance with law, bear civil liability for damage done to others by their illegal acts.

Where an illegal act constitutes a crime, criminal responsibility shall be investigated in accordance with law; no administrative penalty shall be imposed in place of criminal penalty.

CHAPTER II TYPES AND CREATION OF ADMINISTRATIVE PENALTY

Article 8 Types of administrative penalty shall include:

- (1) disciplinary warning;
- (2) fine;
- (3) confiscation of illegal gains or confiscation of unlawful property or things of value;
- (4) ordering for suspension of production or business;
- (5) temporary suspension or rescission of permit or temporary suspension or rescission of license;
- (6) administrative detention; and
- (7) others as prescribed by laws and administrative rules and regulations.

Article 9 Different types of administrative penalty may be created by law. Administrative penalty involving restriction of freedom of person shall only be created by law.

Article 10 Administrative penalties, with the exception of restricting freedom of person, may be created by administrative rules and regulations.

Where it is necessary to formulate specific provisions, in administrative rules and regulations, regarding violations of law for which administrative penalties have been formulated in laws, it must be done within the limits of the acts subject to administrative penalty and the types and range of such penalty as prescribed by laws.

Article 11 Administrative penalties, with the exception of restriction of freedom of person and rescission of business license of an enterprise, may be created in local regulations.

Where it is necessary to formulate specific provisions, in local regulations, regarding violations of law for which administrative penalties have been formulated in laws and administrative rules and regulations, it must be done within the limits of the acts subject to administrative penalty and the types and range of such penalty as prescribed by laws and administrative rules and regulations.

Article 12 The ministries and commissions under the State Council may, in the rules they enact, formulate specific provisions within the limits of the

人造成损害的，应当依法承担民事责任。

违法行为构成犯罪的，应当依法追究刑事责任，不得以行政处罚代替刑事处罚。

第二章 行政处罚的种类和设定

第八条 行政处罚的种类：

- (一) 警告；
- (二) 罚款；
- (三) 没收违法所得、没收非法财物；
- (四) 责令停产停业；
- (五) 暂扣或者吊销许可证、暂扣或者吊销执照；
- (六) 行政拘留；
- (七) 法律、行政法规规定的其他行政处罚。

第九条 法律可以设定各种行政处罚。

限制人身自由的行政处罚，只能由法律设定。

第十条 行政法规可以设定除限制人身自由以外的行政处罚。

法律对违法行为已经作出行政处罚规定，行政法规需要作出具体规定的，必须在法律规定的给予行政处罚的行为、种类和幅度的范围内规定。

第十一条 地方性法规可以设定除限制人身自由、吊销企业营业执照以外的行政处罚。

法律、行政法规对违法行为已经作出行政处罚规定，地方性法规需要作出具体规定的，必须在法律、行政法规规定的给予行政处罚的行为、种类和幅度的范围内规定。

第十二条 国务院部、委员会制定的规章可以在法律、行政法规规定的给

acts subject to administrative penalty and the types and range of such penalty as prescribed by laws and administrative rules and regulations. With regard to violations of administration order against which no laws or administrative rules and regulations have been enacted, the ministries and commissions under the State Council may create administrative penalty of disciplinary warning or a certain amount of fine in the rules they enact, as stipulated in the preceding paragraph. The specific amounts of fine shall be laid down by the State Council.

The State Council may authorize the departments directly under it that have the power of administrative penalty to formulate provisions on administrative penalty in accordance with the first and second paragraph of this Article.

Article 13 The people's governments of provinces, autonomous regions, and municipalities directly under the Central Government, of the cities where the people's governments of provinces and autonomous regions are located, and of the larger cities approved as such by the State Council may, within the limits of the acts subject to administrative penalty and the types and range of such penalty as prescribed by laws and regulations, formulate specific provisions in the rules they enact.

With regard to violations of administration order against which no laws or regulations have been enacted, the people's governments may create administrative penalty of disciplinary warning or certain amount of fine in the rules they enact, as stipulated in the preceding paragraph. The specific amounts of fine shall be laid down by the standing committees of the people's congresses of provinces, autonomous regions, and municipalities directly under the Central Government.

Article 14 No administrative penalties shall be created in any other regulatory documents in addition to the ones as stipulated in Articles 9, 10, 11, 12 and 13 of this Law.

CHAPTER III ORGANS IMPOSING ADMINISTRATIVE PENALTY

Article 15 Administrative penalty shall be imposed by administrative organs that have the power of administrative penalty within the scope of their statutory functions and powers.

Article 16 The State Council or the people's government of a province, autonomous region or municipality directly under the Central Government that is empowered by the State Council may decide to have an administrative organ exercise other administrative organs' power of administrative penalty. However, the power of administrative penalty involving restriction of freedom of person shall only be exercised by the public security organs.

予行政处罚的行为、种类和幅度的范围内作出具体规定。

尚未制定法律、行政法规的，前款规定的国务院部、委员会制定的规章对违反行政管理秩序的行为，可以设定警告或者一定数量罚款的行政处罚。罚款的限额由国务院规定。

国务院可以授权具有行政处罚权的直属机构依照本条第一款、第二款的规定，规定行政处罚。

第十三条 省、自治区、直辖市人民政府和省、自治区人民政府所在地的市人民政府以及经国务院批准的较大的市人民政府制定的规章可以在法律、法规规定的给予行政处罚的行为、种类和幅度的范围内作出具体规定。

尚未制定法律、法规的，前款规定的人民政府制定的规章对违反行政管理秩序的行为，可以设定警告或者一定数量罚款的行政处罚。罚款的限额由省、自治区、直辖市人民代表大会常务委员会规定。

第十四条 除本法第九条、第十条、第十一条、第十二条以及第十三条的规定外，其他规范性文件不得设定行政处罚。

第三章 行政处罚的实施机关

第十五条 行政处罚由具有行政处罚权的行政机关在法定职权范围内实施。

第十六条 国务院或者经国务院授权的省、自治区、直辖市人民政府可以决定一个行政机关行使有关行政机关的行政处罚权，但限制人身自由的行政处罚权只能由公安机关行使。

Article 17 Organizations that are authorized by laws and regulations to exercise the power of administering public affairs may impose administrative penalty within the scope of their powers as authorized by law.

Article 18 In accordance with the provisions of laws, regulations or rules, an administrative organ may, within the scope of its powers as prescribed by law, entrust an organization that meets the conditions stipulated in Article 19 of this Law with imposing administrative penalty. An administrative organ may not entrust other organizations or individuals with imposing administrative penalty.

The entrusting administrative organ shall be responsible for supervising the imposition of administrative penalty by the entrusted organization and shall bear legal responsibility for the consequences of the imposition. The entrusted organization shall, within the scope of authorization, impose administrative penalty in the name of the entrusting administrative organ, and may not further entrust any other organization or individual with imposing the administrative penalty.

Article 19 The organization to be entrusted shall meet the following conditions:

- (1) to be an institution in charge of public affairs established in accordance with law;
- (2) to be staffed with personnel who are familiar with relevant laws, regulations and rules and are experienced in the work; and
- (3) to have the conditions for organizing and conducting the technical tests or technical appraisal that are needed for testing or appraising illegal acts.

CHAPTER IV JURISDICTION AND APPLICATION OF ADMINISTRATIVE PENALTY

Article 20 Administrative penalty shall come under the jurisdiction of an administrative organ having the power of administrative penalty of a local people's government at or above the county level in the place where the illegal act is committed, except as otherwise prescribed by laws or administrative rules and regulations.

Article 21 If a dispute arises over jurisdiction between administrative organs, the matter shall be reported to their common administrative organ at the next higher level for designation of jurisdiction.

Article 22 If an illegal act constitutes a crime, the administrative organ must transfer the case to a judicial organ for investigation of criminal responsibility according to law.

Article 23 When enforcing an administrative penalty, the administrative

第十七条 法律、法规授权的具有管理公共事务职能的组织可以在法定授权范围内实施行政处罚。

第十八条 行政机关依照法律、法规或者规章的规定，可以在其法定权限内委托符合本法第十九条规定条件的组织实施行政处罚。行政机关不得委托其他组织或者个人实施行政处罚。

委托行政机关对受委托的组织实施行政处罚的行为应当负责监督，并对该行为的后果承担法律责任。

受委托组织在委托范围内，以委托行政机关名义实施行政处罚；不得再委托其他任何组织或者个人实施行政处罚。

第十九条 受委托组织必须符合以下条件：

- （一）依法成立的管理公共事务的事业组织；
- （二）具有熟悉有关法律、法规、规章和业务的工作人员；
- （三）对违法行为需要进行技术检查或者技术鉴定的，应当有条件组织进行相应的技术检查或者技术鉴定。

第四章 行政处罚的管辖和适用

第二十条 行政处罚由违法行为发生地的县级以上地方人民政府具有行政处罚权的行政机关管辖。法律、行政法规另有规定的除外。

第二十一条 对管辖发生争议的，报请共同的上一级行政机关指定管辖。

第二十二条 违法行为构成犯罪的，行政机关必须将案件移送司法机关，依法追究刑事责任。

第二十三条 行政机关实施行政处

organ shall order the party to put right his illegal acts or to do so within a time limit.

Article 24 For the same illegal act committed by a party, the party shall not be given an administrative penalty of fine for more than once.

Article 25 If a person under the age of 14 commits an illegal act, no administrative penalty shall be imposed on him, but his guardian shall be ordered to discipline and educate him; if a person who has reached the age of 14 but not the age of 18 commits an illegal act, a lighter or mitigated administrative penalty shall be imposed on him.

Article 26 If a mental patient commits an illegal act at a time when he is unable to recognize or cannot control his own conduct, no administrative penalty shall be imposed on him, but his guardian shall be ordered to keep him under close surveillance and arrange for his medical treatment. Administrative penalty shall be imposed on a person whose mental illness is of an intermittent nature and who commits an illegal act when he is in a normal mental state.

Article 27 A party shall be given a lighter or mitigated administrative penalty in accordance with law, if:

- (1) he has taken the initiative to eliminate or lessen the harmful consequences occasioned by his illegal act;
- (2) he has been coerced by another to commit the illegal act;
- (3) he has performed meritorious deeds when working in coordination with administrative organs to investigate violations of law; or
- (4) he is under other circumstances for which he shall be given a lighter or mitigated administrative penalty in accordance with law.

Where a person commits a minor illegal act, promptly puts it right and causes no harmful consequences, no administrative penalty shall be imposed on him.

Article 28 If an illegal act constitutes a crime, for which a People's Court sentences him to criminal detention or fixed-term imprisonment, and if an administrative organ has already imposed administrative detention on the party, the length of detention shall be made the same as the term of imprisonment in accordance with law.

If an illegal act constitutes a crime, for which a People's Court imposes a fine on the party, and if an administrative organ has already done so, the amount of the fine imposed by the latter shall be made the same as that by the former.

Article 29 Where an illegal act is not discovered within two years of its commission, administrative penalty shall no longer be imposed, except as

罚时，应当责令当事人改正或者限期改正违法行为。

第二十四条 对当事人的同一个违法行为，不得给予两次以上罚款的行政处罚。

第二十五条 不满十四周岁的人有违法行为的，不予行政处罚，责令监护人加以管教；已满十四周岁不满十八周岁的人有违法行为的，从轻或者减轻行政处罚。

第二十六条 精神病人在不能辨认或者不能控制自己行为时有违法行为的，不予行政处罚，但应当责令其监护人严加看管和治疗。间歇性精神病人在精神正常时有违法行为的，应当给予行政处罚。

第二十七条 当事人有下列情形之一的，应当依法从轻或者减轻行政处罚：

- （一）主动消除或者减轻违法行为危害后果的；
- （二）受他人胁迫有违法行为的；
- （三）配合行政机关查处违法行为有立功表现的；
- （四）其他依法从轻或者减轻行政处罚的。

违法行为轻微并及时纠正，没有造成危害后果的，不予行政处罚。

第二十八条 违法行为构成犯罪，人民法院判处拘役或者有期徒刑时，行政机关已经给予当事人行政拘留的，应当依法折抵相应刑期。

违法行为构成犯罪，人民法院判处罚金时，行政机关已经给予当事人罚款的，应当折抵相应罚金。

第二十九条 违法行为在二年内未被发现的，不再给予行政处罚。法律另

otherwise prescribed by law.

The period of time prescribed in the preceding paragraph shall be counted from the date the illegal act is committed; if the act is of a continual or continuous nature, it shall be counted from the date the act is terminated.

CHAPTER V DECISION ON AN ADMINISTRATIVE PENALTY

Article 30 Where citizens, legal persons or other organizations violate administration order and should be given administrative penalty according to law, administrative organs must ascertain facts; if the facts about the violations are not clear, no administrative penalty shall be imposed.

Article 31 Before deciding to impose administrative penalties, administrative organs shall notify the parties of the facts, grounds and basis according to which the administrative penalties are to be decided on and shall notify the parties of the rights that they enjoy in accordance with law.

Article 32 The parties shall have the right to state their cases and to defend themselves. Administrative organs shall fully heed the opinions of the parties and shall reexamine the facts, grounds and evidence put forward by the parties; if the facts, grounds and evidence put forward by the parties are established, the administrative organs shall accept them. Administrative organs shall not impose heavier penalties on the parties just because the parties have tried to defend themselves.

SECTION 1 SUMMARY PROCEDURE

Article 33 If the facts about a violation of law are well-attested and there are legal basis and if, the citizen involved is to be fined not more than 50 yuan or the legal person or other organization involved is to be fined not more than 1,000 yuan or a disciplinary warning is to be given, such administrative penalty may be decided on the spot. The party shall carry out the decision on administrative penalty in accordance with the provisions of Articles 46, 47 and 48 of this Law.

Article 34 If a law-enforcing officer decides to impose administrative penalty on the spot, he shall show the party his identification papers for law enforcement, fill out an established and coded form of decision for administrative penalty. The form of decision for administrative penalty shall be given to the party on the spot.

In the form of decision for administrative penalty as stipulated in the preceding paragraph shall be clearly recorded the illegal act committed by the party, the basis for administrative penalty, the amount of fine, the time and place, and the title of the administrative organ. Such form shall also

有规定的除外。

前款规定的期限，从违法行为发生之日起计算；违法行为有连续或者继续状态的，从行为终了之日起计算。

第五章 行政处罚的决定

第三十条 公民、法人或者其他组织违反行政管理秩序的行为，依法应当给予行政处罚的，行政机关必须查明事实；违法事实不清的，不得给予行政处罚。

第三十一条 行政机关在作出行政处罚决定之前，应当告知当事人作出行政处罚决定的事实、理由及依据，并告知当事人依法享有的权利。

第三十二条 当事人有权进行陈述和申辩。行政机关必须充分听取当事人的意见，对当事人提出的事实、理由和证据，应当进行复核；当事人提出的事实、理由或者证据成立的，行政机关应当采纳。

行政机关不得因当事人申辩而加重处罚。

第一节 简易程序

第三十三条 违法事实确凿并有法定依据，对公民处以五十元以下、对法人或者其他组织处以一千元以下罚款或者警告的行政处罚的，可以当场作出行政处罚决定。当事人应当依照本法第四十六条、第四十七条、第四十八条的规定履行行政处罚决定。

第三十四条 执法人员当场作出行政处罚决定的，应当向当事人出示执法身份证件，填写预定格式、编有号码的行政处罚决定书。行政处罚决定书应当当场交付当事人。

前款规定的行政处罚决定书应当载明当事人的违法行为、行政处罚依据、罚款数额、时间、地点以及行政机关名称，并由执法人员签名或者盖章。

be signed or sealed by the law-enforcing officer.

Law-enforcing officers must submit their decisions on administrative penalty made on the spot to the administrative organs where they belong for the record.

Article 35 If a party refuses to accept the decision on administrative penalty made on the spot, he may apply for administrative reconsideration or bring an administrative lawsuit in accordance with law.

SECTION 2 ORDINARY PROCEDURE

Article 36 Except for the administrative penalties which may be imposed on the spot as provided in Article 33 of this Law, administrative organs, when discovering that citizens, legal persons or other organizations have committed acts for which administrative penalty should be imposed according to law, shall conduct investigation in a comprehensive, objective and fair manner and collect relevant evidence; when necessary, they may conduct inspection in accordance with the provisions of laws and regulations.

Article 37 When administrative organs conduct investigations or inspections, there shall be not less than two law-enforcing officers, who shall show their identification papers to the party or other persons concerned. The party and other persons concerned shall truthfully answer the questions and assist in the investigation or inspection; they may not obstruct such investigation or inspection. Written record shall be made for the inquiry or inspection.

When collecting evidence, administrative organs may obtain evidence through sampling; under circumstances where there is a likelihood that the evidence may be destroyed or lost, or difficult to obtain later, administrative organs may, with the approval of their leading members, first register the evidence for preservation and shall make a timely decision on its disposition within seven days. During this period of time, the party and other persons concerned may not destroy or transfer the evidence.

If a law-enforcing officer shares a direct interest with the party, he shall withdraw.

Article 38 After an investigation has been concluded, leading members of an administrative organ shall examine the results of the investigation and make the following decisions in light of different circumstances:

- (1) to impose administrative penalty where an illegal act has really been committed and for which administrative penalty should be imposed, in light of the seriousness and the specific circumstances of the case;
- (2) to impose no administrative penalty where an illegal act is minor and which may be exempted from administrative penalty according to law;

执法人员当场作出的行政处罚决定，必须报所属行政机关备案。

第三十五条 当事人对当场作出的行政处罚决定不服的，可以依法申请行政复议或者提起行政诉讼。

第二节 一般程序

第三十六条 除本法第三十三条规定的可以当场作出的行政处罚外，行政机关发现公民、法人或者其他组织有依法应当给予行政处罚的行为的，必须全面、客观、公正地调查，收集有关证据；必要时，依照法律、法规的规定，可以进行检查。

第三十七条 行政机关在调查或者进行检查时，执法人员不得少于两人，并应当向当事人或者有关人员出示证件。当事人或者有关人员应当如实回答询问，并协助调查或者检查，不得阻挠。询问或者检查应当制作笔录。

行政机关在收集证据时，可以采取抽样取证的方法；在证据可能灭失或者以后难以取得的情况下，经行政机关负责人批准，可以先行登记保存，并应当在七日内及时作出处理决定，在此期间，当事人或者有关人员不得销毁或者转移证据。

执法人员与当事人有直接利害关系的，应当回避。

第三十八条 调查终结，行政机关负责人应当对调查结果进行审查，根据不同情况，分别作出如下决定：

（一）确有应受行政处罚的违法行为的，根据情节轻重及具体情况，作出行政处罚决定；

（二）违法行为轻微，依法可以不予行政处罚的，不予行政处罚；

(3) to impose no administrative penalty where the facts about an illegal act are not established; or

(4) to transfer the case to a judicial organ where an illegal act constitutes a crime.

Before imposing a heavier administrative penalty for an illegal act which is of a complicated or grave nature, the leading members of an administrative organ shall make a collective decision through discussion.

Article 39 To impose administrative penalty according to the provisions of Article 38 of this Law, an administrative organ shall fill out form of decision for administrative penalty. The following particulars shall be clearly recorded in a form of decision for administrative penalty:

- (1) name, or title, and address of the party;
- (2) facts and evidence for the violation of law, regulations or rules;
- (3) type of and basis for administrative penalty;
- (4) manner of and time limit for enforcement of administrative penalty;
- (5) channel and time limit for applying for administrative reconsideration or bringing an administrative lawsuit if the party refuses to accept the decision on administrative penalty; and
- (6) title of the administrative organ that makes the decision on administrative penalty and the date on which the decision is made.

To the form of decision for administrative penalty must be affixed the seal of the administrative organ that makes the decision on administrative penalty.

Article 40 The form of decision for administrative penalty shall be given to the party on the spot after announcement of the decision; if the party is not present, the administrative organ shall, within seven days, serve the form of decision for administrative penalty on the party in accordance with the relevant provisions of the [Civil Procedure Law](#).

Article 41 If, before making a decision on administrative penalty, an administrative organ or its law-enforcing officer, fails to notify, as stipulated in Articles 31 and 32 of this Law, the party of the facts about the violation, grounds and basis on which the administrative penalty is imposed, or refuses to heed the party's statement and self-defense, the decision on administrative penalty shall be invalid, except that the party relinquishes the right to make a statement or to defend himself.

SECTION 3 PROCEDURE OF HEARING

Article 42 An administrative organ, before making a decision on administrative penalty that involves ordering for suspension of production or business, rescission of business permit or license or imposition of a

(三) 违法事实不能成立的, 不得给予行政处罚;

(四) 违法行为已构成犯罪的, 移送司法机关。

对情节复杂或者重大违法行为给予较重的行政处罚, 行政机关的负责人应当集体讨论决定。

第三十九条 行政机关依照本法第三十八条的规定给予行政处罚, 应当制作行政处罚决定书。行政处罚决定书应当载明下列事项:

(一) 当事人的姓名或者名称、地址;

(二) 违反法律、法规或者规章的事实和证据;

(三) 行政处罚的种类和依据;

(四) 行政处罚的履行方式和期限;

(五) 不服行政处罚决定, 申请行政复议或者提起行政诉讼的途径和期限;

(六) 作出行政处罚决定的行政机关名称和作出决定的日期。

行政处罚决定书必须盖有作出行政处罚决定的行政机关的印章。

第四十条 行政处罚决定书应当在宣告后当场交付当事人; 当事人不在场的, 行政机关应当在七日内依照[民事诉讼法](#)的有关规定, 将行政处罚决定书送达当事人。

第四十一条 行政机关及其执法人员在作出行政处罚决定之前, 不依照本法第三十一条、第三十二条的规定向当事人告知给予行政处罚的事实、理由和依据, 或者拒绝听取当事人的陈述、申辩, 行政处罚决定不能成立; 当事人放弃陈述或者申辩权利的除外。

第三节 听证程序

第四十二条 行政机关作出责令停产停业、吊销许可证或者执照、较大数额罚款等行政处罚决定之前, 应当告知

comparatively large amount of fine, shall notify the party that he has the right to request a hearing; if the party requests a hearing, the administrative organ shall arrange for the hearing. The party shall not bear the expenses for the hearing arranged by the administrative organ.

The hearing shall be arranged according to the following procedure:

(1) To request a hearing, the party shall do it within three days after being notified by the administrative organ;

(2) The administrative organ shall, seven days before the hearing is held, notify the party of the time and place for the hearing;

(3) The hearing shall be held openly, except where State secrets, business secrets or private affairs are involved;

(4) The hearing shall be presided over by a person other than the investigator of the case designated by the administrative organ; if the party believes that the person has a direct interest in the current case, he shall have the right to apply for the person's withdrawal;

(5) The party may participate in the hearing in person, or he may entrust one or two persons to act on his behalf;

(6) The investigator shall, when the hearing is conducted, put forward the facts about the violations of law committed by the party, the evidence and recommendation for administrative penalty; the party may defend himself and make cross-examination; and

(7) Written record shall be made for the hearing; the written record shall be shown to the party for checking, and when the party acknowledges that the record is free of error, he shall sign or affix

If the party has objection to the administrative penalty that involves restriction of freedom of person, the relevant provisions of [Regulations on Administrative Penalties for Public Security](#) shall apply.

Article 43 When a hearing is concluded, the administrative organ shall make a decision in accordance with the provisions of Article 38 of this Law.

CHAPTER VI ENFORCEMENT OF ADMINISTRATIVE PENALTY

Article 44 After a decision on administrative penalty has been made in accordance with law, the party shall carry it out within the time limit set by the decision on administrative penalty.

Article 45 If the party refuses to accept the decision on administrative penalty and applies for administrative reconsideration or brings an administrative lawsuit, enforcement of the administrative penalty shall not be suspended, except as otherwise prescribed by law.

Article 46 The administrative organ that makes the decision on a fine shall be separated from the organ that collects the fine.
Except for circumstances under which fines shall be collected on the spot

当事人有要求举行听证的权利;当事人要求听证的,行政机关应当组织听证。当事人不承担行政机关组织听证的费用。听证依照以下程序组织:

(一)当事人要求听证的,应当在行政机关告知后三日内提出;

(二)行政机关应当在听证的七日前,通知当事人举行听证的时间、地点;

(三)除涉及国家秘密、商业秘密或者个人隐私外,听证公开举行;

(四)听证由行政机关指定的非本案调查人员主持;当事人认为主持人与本案有直接利害关系的,有权申请回避;

(五)当事人可以亲自参加听证,也可以委托一至二人代理;

(六)举行听证时,调查人员提出当事人违法的事实、证据和行政处罚建议;当事人进行申辩和质证;

(七)听证应当制作笔录;笔录应当交当事人审核无误后签字或者盖章。

当事人对限制人身自由的行政处罚有异议的,依照[治安管理处罚条例](#)有关规定执行。

第四十三条 听证结束后,行政机关依照本法第三十八条的规定,作出决定。

第六章 行政处罚的执行

第四十四条 行政处罚决定依法作出后,当事人应当在行政处罚决定的期限内,予以履行。

第四十五条 当事人对行政处罚决定不服申请行政复议或者提起行政诉讼的,行政处罚不停止执行,法律另有规定的除外。

第四十六条 作出罚款决定的行政机关应当与收缴罚款的机构分离。

除依照本法第四十七条、第四十八

according to the provisions of Articles 47 and 48 of this Law, no administrative organs that make the decision on administrative penalty or their law-enforcing officers shall collect fines themselves.

The parties shall, within 15 days from the date they receive the forms of decision for administrative penalty, pay the fines to the banks as designated. The banks shall accept the fines and turn them over directly to the State Treasury.

Article 47 If a decision on administrative penalty is made on the spot in accordance with the provisions of Article 33 of this Law, law enforcing officers may collect fines on the spot under one of the following circumstances:

- (1) The fines imposed according to law is not more than 20 yuan; or
- (2) It is difficult to carry out the decision if the fine is not collected on the spot.

Article 48 If, after a decision on fine is made by an administrative organ or its law-enforcing officers in accordance with the provisions of Article 33 or Article 38 of this Law, it is really difficult for the party in the area which is outlying, on water or not easily accessible to pay the fine to the bank as designated, the administrative organ or its law-enforcing officers may, upon the request of the party, collect the fine on the spot.

Article 49 Where fines are collected on the spot by an administrative organ or its law-enforcing officers, the parties shall be given receipts for the fines as are uniformly made and issued by finance departments of provinces, autonomous regions or municipalities directly under the Central Government; if such receipts are not given, the parties shall have the right to refuse to pay the fines.

Article 50 Fines collected by law-enforcing officers on the spot shall be turned over to administrative organs within two days from the date the fines are collected; fines collected on the spot on water shall be turned over to administrative organs within two days from the date of landing; the administrative organs shall, within two days, deliver the fines over to the banks as designated.

Article 51 If the parties fail to carry out the decision on administrative penalty within the time limit, the administrative organ that made the decision on administrative penalty may adopt the following measures:

- (1) to impose an additional fine at the rate of 3% of the amount of the fine per day;
- (2) in accordance with law, to sell by auction the sealed up or seized property or things of value or to transfer the frozen deposits to offset the fine; and

条的规定当场收缴的罚款外，作出行政处罚决定的行政机关及其执法人员不得自行收缴罚款。

当事人应当自收到行政处罚决定书之日起十五日内，到指定的银行缴纳罚款。银行应当收受罚款，并将罚款直接上缴国库。

第四十七条 依照本法第三十三条的规定当场作出行政处罚决定，有下列情形之一的，执法人员可以当场收缴罚款：

- （一）依法给予二十元以下的罚款的；
- （二）不当场收缴事后难以执行的。

第四十八条 在边远、水上、交通不便地区，行政机关及其执法人员依照本法第三十三条、第三十八条的规定作出罚款决定后，当事人向指定的银行缴纳罚款确有困难，经当事人提出，行政机关及其执法人员可以当场收缴罚款。

第四十九条 行政机关及其执法人员当场收缴罚款的，必须向当事人出具省、自治区、直辖市财政部门统一制发的罚款收据；不出具财政部门统一制发的罚款收缴的，当事人有权拒绝缴纳罚款。

第五十条 执法人员当场收缴的罚款，应当自收缴罚款之日起二日内，交至行政机关；在水上当场收缴的罚款，应当自抵岸之日起二日内交至行政机关；行政机关应当在二日内将罚款缴付指定的银行。

第五十一条 当事人逾期不履行行政处罚决定的，作出行政处罚决定的行政机关可以采取下列措施：

- （一）到期不缴纳罚款的，每日按罚款数额的百分之三加处罚款；
- （二）根据法律规定，将查封、扣押的财物拍卖或者将冻结的存款划拨抵缴罚款；

(3) to apply to a People's Court for compulsory enforcement.

Article 52 If the parties truly have financial difficulties and need to postpone payment of the fines or pay them in installments, payment may be put off for the time being or made in installments after the parties have applied to and obtained approval of the administrative organs.

Article 53 With the exception of the confiscated articles or goods that should be destroyed in accordance with law, the illegal property or things of value that have been confiscated according to law shall be sold by public auction in accordance with the regulations of the State or shall be disposed of in accordance with relevant State regulations. Fines, confiscated illegal gains or money obtained from sale by auction of the confiscated illegal property or things of value shall be turned over to the State Treasury in full, and no administrative organs or individuals may, in any manner, withhold, or share these out privately, or do so in disguised form; no finance department shall, in any manner, give the back to the administrative organs that decided to impose the fines or give them back the illegal gains they confiscated or the money they obtained from sale by auction of the confiscated illegal property or things of value.

Article 54 Administrative organs shall establish a sound supervisory system for administrative penalty. People's governments at or above the county level shall exercise stricter supervision and inspection of administrative penalty.

A citizen, a legal person or other organization shall have the right to make an appeal or accusation against an administrative penalty imposed by an administrative organ. The administrative organ shall carefully examine the appeal or accusation, and when it finds that the administrative penalty is wrong, it shall take the initiative to correct it.

CHAPTER VII LEGAL RESPONSIBILITY

Article 55 If an administrative organ imposes an administrative penalty in any of the following manners, it shall be ordered by the administrative organ at the higher level or a relevant department to make correction, and administrative sanctions may, in accordance with law, be imposed upon the persons who are directly in charge and other persons who are directly responsible for the offense:

- (1) without statutory basis for administrative penalty;
- (2) by altering the types and range of administrative penalty, without authorization;
- (3) in violation of the legal procedure for administrative penalty; or
- (4) in violation of the provisions of Article 18 of this Law concerning entrusting an organization with imposition of administrative penalty.

(三) 申请人民法院强制执行。

第五十二条 当事人确有经济困难，需要延期或者分期缴纳罚款的，经当事人申请和行政机关批准，可以暂缓或者分期缴纳。

第五十三条 除依法应当予以销毁的物品外，依法没收的非法财物必须按照国家规定公开拍卖或者按照国家有关规定处理。

罚款、没收违法所得或者没收非法财物拍卖的款项，必须全部上缴国库，任何行政机关或者个人不得以任何形式截留、私分或者变相私分；财政部门不得以任何形式向作出行政处罚决定的行政机关返还罚款、没收的违法所得或者返还没收非法财物的拍卖款项。

第五十四条 行政机关应当建立健全对行政处罚的监督制度。县级以上人民政府应当加强对行政处罚的监督检查。

公民、法人或者其他组织对行政机关作出的行政处罚，有权申诉或者检举；行政机关应当认真审查，发现行政处罚有错误的，应当主动改正。

第七章 法律责任

第五十五条 行政机关实施行政处罚，有下列情形之一的，由上级行政机关或者有关部门责令改正，可以对直接负责的主管人员和其他直接责任人员依法给予行政处分：

- (一) 没有法定的行政处罚依据的；
- (二) 擅自改变行政处罚种类、幅度的；
- (三) 违反法定的行政处罚程序的；
- (四) 违反本法第十八条关于委托处罚的规定的。

Article 56 If administrative organs, when imposing penalties on the parties, do not use the documents for fines and confiscation of property or things of value, or use the documents for fines and confiscation of property or things of value that are prepared and issued by non- statutory departments, the parties shall have the right to refuse to accept the penalties and the right to accuse them. The administrative organs at higher levels or relevant departments shall confiscate and destroy the illegal documents in use and shall, in accordance with law, impose administrative sanctions upon the persons who are directly in charge and other persons who are directly responsible for the offense.

Article 57 If administrative organs, in violation of the provisions of Article 46 of this Law, collect fines themselves, if finance departments, in violation of the provisions of Article 53 of this Law, give back to administrative organs fines or money obtained from sale by auction of confiscated illegal property or things of value, the administrative organs at higher levels or relevant departments shall order them to make correction and shall, in accordance with law, impose administrative sanctions upon the persons who are directly in charge and other persons who are directly responsible for the offense.

Article 58 The fines, confiscated illegal gains or property or things of value that are withheld, shared out privately or done so in disguised form by administrative organs shall be recovered by finance departments or relevant departments, the persons who are directly in charge and other persons who are directly responsible for the offense shall be given administrative sanctions according to law; if the offense is serious enough to constitute a crime, criminal responsibility shall be investigated in accordance with law.

If law-enforcing officers, taking advantage of their functions, ask for or accept other person's property or things of value or take into their own possession fines they have collected and, if the offense constitutes a crime, they shall be investigated for criminal responsibility in accordance with law; if the offense is of a minor nature and does not constitute a crime, administrative sanctions shall be imposed upon them in accordance with law.

Article 59 If administrative organs use or destroy the property or things of value they have seized and thus cause losses to the parties, they shall give compensation to the parties according to law, and administrative sanctions shall, in accordance with law, be imposed upon the persons who are directly in charge and other persons who are directly responsible for the offense.

Article 60 If administrative organs violate law when enforcing measures of inspection or execution and thus inflict damage on the person or property

第五十六条 行政机关对当事人进行处罚不使用罚款、没收财物单据或者使用非法定部门制发的罚款、没收财物单据的，当事人有权拒绝处罚，并有权予以检举。上级行政机关或者有关部门对使用的非法单据予以收缴销毁，对直接负责的主管人员和其他直接责任人员依法给予行政处分。

第五十七条 行政机关违反本法第四十六条的规定自行收缴罚款的，财政部门违反本法第五十三条的规定向行政机关返还罚款或者拍卖款项的，由上级行政机关或者有关部门责令改正，对直接负责的主管人员和其他直接责任人员依法给予行政处分。

第五十八条 行政机关将罚款、没收的违法所得或者财物截留、私分或者变相私分的，由财政部门或者有关部门予以追缴，对直接负责的主管人员和其他直接责任人员依法给予行政处分；情节严重构成犯罪的，依法追究刑事责任。

执法人员利用职务上的便利，索取或者收受他人财物、收缴罚款据为己有，构成犯罪的，依法追究刑事责任；情节轻微不构成犯罪的，依法给予行政处分。

第五十九条 行政机关使用或者损毁扣押的财物，对当事人造成损失的，应当依法予以赔偿，对直接负责的主管人员和其他直接责任人员依法给予行政处分。

第六十条 行政机关违法实行检查措施或者执行措施，给公民人身或者财

of citizens or cause losses to legal persons or other organizations, they shall be liable for compensation according to law, and the persons who are directly in charge and other persons who are directly responsible for the offense shall be given administrative sanctions in accordance with law; if the offence is serious enough to constitute a crime, criminal responsibility shall be investigated according to law.

Article 61 If administrative organs, for the purpose of seeking departmental gain, do not transfer cases to judicial organs for investigation of criminal responsibility as they should do in accordance with law but impose administrative penalty in place of criminal penalty, the administrative organs at higher levels or relevant departments shall order them to make correction; if they refuse to do so, administrative sanctions shall be imposed upon the persons who are directly in charge; persons who practise irregularities for personal gain, cover up or connive at violations of law shall be investigated for criminal responsibility by applying mutatis mutandis the provisions of [Article 188](#) of the [Criminal Law](#).

Article 62 If illegal acts that should be checked and punished are not checked and punished due to dereliction of duty by law-enforcing officers, and thus damaging the lawful rights and interests of citizens, legal persons and other organizations, public interests and public order, the persons who are directly in charge and other persons who are directly responsible for the offense shall be given administrative sanctions in accordance with law; if the violation is serious enough to constitute a crime, criminal responsibility shall be investigated according to law.

CHAPTER VIII SUPPLEMENTARY PROVISIONS

Article 63 Specific measures for implementing the provisions of Article 46 of this Law concerning separation of the organs that make the decision on imposing fines from the organs that collect fines shall be formulated by the State Council.

Article 64 This Law shall be implemented as of October 1, 1996. Provisions regarding administrative penalty in the regulations and rules, enacted before the promulgation of this Law, that do not comply with the provisions of this Law shall be amended in accordance with the provisions of this Law from the date of promulgation of this Law, and such amendment shall be finished before December 31, 1997.

产造成损害、给法人或者其他组织造成损失的，应当依法予以赔偿，对直接负责的主管人员和其他直接责任人员依法给予行政处分；情节严重构成犯罪的，依法追究刑事责任。

第六十一条 行政机关为牟取本单位私利，对应当依法移交司法机关追究刑事责任的不移交，以行政处罚代替刑罚，由上级行政机关或者有关部门责令纠正；拒不纠正的，对直接负责的主管人员给予行政处分；徇私舞弊、包庇纵容违法行为的，比照[刑法第一百八十八条](#)的规定追究刑事责任。

第六十二条 执法人员玩忽职守，对应当予以制止和处罚的违法行为不予制止、处罚，致使公民、法人或者其他组织的合法权益、公共利益和社会秩序遭受损害的，对直接负责的主管人员和其他直接责任人员依法给予行政处分；情节严重构成犯罪的，依法追究刑事责任。

第八章 附则

第六十三条 本法第四十六条罚款决定与罚款收缴分离的规定，由国务院制定具体实施办法。

第六十四条 本法自1996年10月1日起施行。

本法公布前制定的法规和规章关于行政处罚的规定与本法不符合的，应当自本法公布之日起，依照本法规定予以修订，在1997年12月31日前修订完毕。

附：[刑法](#)有关条文

第一百八十八条 司法工作人员徇私舞弊，对明知是无罪的人而使他受追诉、对明知是有罪的人而故意包庇不使他受追诉，或者故意颠倒黑白做枉法裁判的，处五年以下有期徒刑、拘役或者剥夺政治权利；情节特别严重的，处五年以上有期徒刑。

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