

LOGIC EXPANSION AND OPTIMIZATION APPROACH OF CHINA'S ADMINISTRATIVE LICENSING ITEM LIST SYSTEM

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I. INTRODUCTION

With the continuous deepening of China's reform of 'streamlining administration, delegating power, strengthening regulation, and improving services', innovations have been constantly made in the technical aspects of administrative approval system reform. In early 2022, the General Office of the State Council issued the *Notice on the Comprehensive Implementation of List Management for Administrative Licensing Items* (hereinafter referred to as the Notice) and the *List of Administrative Licensing Items Set by Laws, Administrative Regulations, and Decisions of the State Council of 2022* (hereinafter referred to as the List). For the first time, these documents, in the form of State Council archives, established China's list management system for administrative licensing items with items as the basic unit (hereinafter referred to as the licensing item list system). This system requires leading agencies at all levels of administrative review and reform to comprehensively review and confirm the administrative licensing items implemented by the government under the principle of statutory powers and responsibilities, and incorporate them into the list, listing relevant item names, competent authorities, implementing agencies, establishment and implementation basis, delegation situations, and other elements. It also requires relevant government departments at all levels to formulate implementation regulations for each administrative licensing item on the list, specifying licensing conditions, application materials, approval procedures, and other contents. The core purpose is to clarify the specific content of administrative agencies' licensing power, understand the basic facts of administrative licensing items, strengthen the standardization and normalization of the implementation of items on the list, and prevent the establishment of licensing items outside the list or the illegal implementation of licenses.

After nearly two years of implementation and construction, governments at all levels in various provinces, cities, and counties have basically

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completed the compilation of their respective administrative licensing item lists and updated them to the 2024 or 2025 version.¹ Corresponding local government regulations have been further formulated based on the Notice.² It can be said that the infrastructure construction of the list management system for administrative licensing items in China has been basically completed. However, as an innovative regulatory approach that runs through the entire process of license establishment, implementation, and supervision in the field of administrative licensing management, the licensing item list system still lacks sufficient practical verification and faces certain tensions with the complex existing institutional norms. Therefore, in order to ensure the smooth and effective operation of the licensing item list system and the realization of its institutional effects, it is necessary to further improve it from the perspectives of construction and coordination within the legal framework. This paper intends to analyze and elaborate on the reform significance and institutional logic of the licensing item list system from the perspective of administrative law, with the basic framework of ‘list compilation—license practice (law enforcement)—institutional safeguard’. Additionally, it will reflect on the problems faced by this system in practice. Finally, optimization solutions will be proposed from the perspectives of procedural law and organizational law, aiming to provide some improvement ideas for the development of the licensing item list system and the next steps in administrative approval system reform.

II. REFORM LOGIC OF THE LIST MANAGEMENT SYSTEM FOR ADMINISTRATIVE LICENSING ITEMS

The list management system for administrative licensing items is essentially a self-revolution that revolves around regulating government administrative licensing powers in an introspective manner. On the one hand, it reflects the evolution from a negative list regulating market entities to a positive list standardizing government licensing power. On the other hand, it also signifies a refined transformation in administrative licensing management techniques from being based on power to being based on items as the fundamental unit.

1 For example, on January 8, 2025, the People’s Government of Zhejiang Province issued the *List of Administrative Licensing Items in Zhejiang Province of 2024*. On March 25, 2025, the People’s Government of Shaanxi Province released the *List of Administrative Licensing Items in Shaanxi Province of 2024*. On January 8, 2025, the People’s Government of She County promulgated the *List of Administrative Licensing Items in She County of 2025*.

2 For example, on September 26, 2023, the People’s Government of Shandong Province issued the *Management Measures for the List of Administrative Licensing Items in Shandong Province*.

In terms of the application orientation, 'licensing items' and 'licensing item lists' belong to two distinct concepts with clear differences in institutional purposes. Specifically, administrative licensing constitutes an important measure and coercive means for the government to directly manage economic activities and social affairs by setting limits beforehand. For market entities, the content above the list, including industries, sectors, and operations, is generally prohibited and must be implemented after obtaining a license, while the space outside the list represents their freedom of operation. Therefore, licensing items are 'negative' regulatory content targeting market entities. As for the list itself, serving as the carrier of licensing items, it consolidates and summarizes the licensing items confirmed by legislation and embodies them centrally, possessing independent functional value. The institutional objective of the list is to understand the basics of administrative licensing items through 'positive' enumeration, clarify the implementation and responsible entities of each licensing item, and prevent administrative authorities from using uncertain legal concepts in legislation during the licensing process or expanding the scope of licensing items through general authorizations, thereby increasing the conditions for licensing implementation. Therefore, the primary role played by the current list is to regulate and constrain government administrative licensing powers through a positive list.

In terms of the presentation format, administrative licensing has transformed from a broad-based power list to a precise item list. Looking back at history, the list system originated from the *Several Opinions on Implementing the System of Administrative Law Enforcement Responsibility* issued by the General Office of the State Council in 2005. This document clearly defines enforcement responsibilities from three aspects: sorting out the legal basis for enforcement, delegating enforcement powers, and determining enforcement responsibilities. It requires departments with administrative law enforcement qualifications (including organizations granted administrative law enforcement powers by laws and regulations) to publish the sorted legal basis appropriately to the public after distributing it to relevant enforcement departments. Since then, the form of administrative licensing list based on 'power' as the basic unit was established. However, in practice, the power list model struggled to effectively adapt to the complex, specific, and variable adjustments in licensing implementation methods. It also failed to standardize the approach to sorting and dividing permissions for licensing content.³ In response to these issues, the Notice and the List

3 Zheng Juntian, Gao Yuanying & Gu Qing, *The Practice and Improvement of the Construction of the Local Government Power List System*, 2 Chinese Public Administration 6, 8 (2016).

established the list management system for administrative licensing items, with items rather than power as the basic unit. This system has significantly reduced the interpretative space for administrative licensing. Additionally, the licensing item list system explicitly prohibits any form of implicit licensing behavior outside the list that imposes pre-approval obligations on administrative counterparts for specific activities. It can be said that the transition from a power list to an item list not only refines the scope of administrative licensing within the list but also implements the institutional goal of ‘no licensing outside the list’.

Today’s licensing item list system follows the institutional logic of ‘formulating the administrative licensing item list—implementing and supervising administrative licenses according to the list—ensuring the implementation of the list’. It further expands and deepens in two aspects based on the existing administrative licensing management system. On the one hand, it strengthens the standardization, normalization, and facilitation of administrative licensing implementation within the list to regulate discretion in administrative licensing implementation, making the operation of administrative licensing powers more transparent and predictable. On the other hand, based on the list, it clarifies the regulatory responsibilities of licensing items, identifies key regulatory areas, improves regulatory rules and standards, and enhances regulatory efficiency.

During the compilation of the licensing item list, the leading agencies at all levels of administrative review and reform must ensure the comprehensive coverage and dynamic adjustment of licensing items within their scope of responsibilities. This is not only the fundamental prerequisite for establishing a nationwide coordinated, hierarchically responsible, uniformly itemized, and clearly defined administrative licensing item system but also the basic guarantee for the effective functioning of the licensing item list. Without an accurate and comprehensive licensing item list, subsequent discussions on standardized and regulated implementation of licenses, as well as precise and differentiated supervision, will become infeasible. In response, the Notice specifically designed a two-way linkage mechanism. On the one hand, when laws, regulations, or rules are proposed to establish or adjust licenses, it requires input from the relevant leading agencies at the same level for administrative review and reform. This facilitates decision-making based on a comprehensive and accurate understanding of the current landscape of administrative licensing items, ensuring the scientific setting and adjustment of administrative licenses. On the other hand, adjustments to the lists at all levels should be made promptly before the formal implementation of new administrative licenses to

prevent the content of the list from lagging behind and failing to fully cover administrative management practices.⁴ This two-way linkage mechanism can strengthen the connection between the list and legislation to some extent but also faces the challenge of insufficient practical feedback on legislation, which will be discussed in detail in the following sections.

During the licensing enforcement phase, the licensing item list system focuses on implementing and supervising licenses. On the one hand, it requires the formulation of implementation regulations for each item based on 'items', specifying essential elements such as licensing conditions, application materials, and intermediary services. On the other hand, it mandates a clear identification of regulatory bodies for each item within the list, developing regulatory rules and standards for each item or specific area. The basic approach is to enhance the standardization and normalization of administrative licensing implementation and supervision by clarifying key elements. This aims to ensure uniform management and standard processing of the same administrative licensing item across different regions and levels. In terms of both licensing implementation and supervision, the reform emphasizes the formulation of 'standards' and 'rules', with the underlying logic being based on the fundamental concept of administrative self-restraint. This approach establishes discretion standards for licensing implementation and supervision, delineates the levels of authority of administrative agencies, provides normative bases, and publicizes these standards to society for public oversight. This process safeguards the rights of applicants and guides market entities to form reasonable and stable expectations.

In terms of institutional safeguards, the Notice emphasizes strengthening organizational leadership, supervision, and accountability. At the macro level, it requires the State Council's Administrative Examination and Approval Reform Office (hereinafter referred to as the Administrative Reform Office) to enhance guidance, coordination, and supervision of the list management for administrative licensing items in various regions and departments, and summarize and promote typical experience and practices in a timely manner. At the micro level, it requires the leading agencies at all levels for administrative review and reform to enhance dynamic evaluation and comprehensive supervision of the implementation of administrative licensing item lists. It is evident that the Notice aims to establish an internal supervision system that spans the national, provincial, municipal, and county levels to ensure consistency and coherence in governance and administration.

4 Zhao Peng, *Why Comprehensively Implement the List Management of Administrative Licensing Items?*, Study Times, March 30, 2022, at A3.

The leading agencies at all levels for administrative review and reform are explicitly designated as the supervisory bodies for administrative licensing enforcement. This integration streamlines internal oversight bodies, enhances organizational institutionalization, and rigorously supervises responsibilities, thereby motivating positive administrative self-restraint.

III. PRIMARY ISSUES IN THE PRACTICE OF LIST MANAGEMENT FOR ADMINISTRATIVE LICENSING ITEMS

Innovations in the list management system for administrative licensing items have undoubtedly played a positive role in regulating administrative power, enhancing regulatory efficiency, stimulating market vitality, fostering social creativity, solidifying reform achievements, optimizing business environment, and promoting high-quality economic and social development. However, as the fundamental framework for the future of the administrative licensing management system, there is still room for improvement in issues such as connecting practice with legislation, formulating implementation standards and regulatory rules, and constructing internal supervision systems.

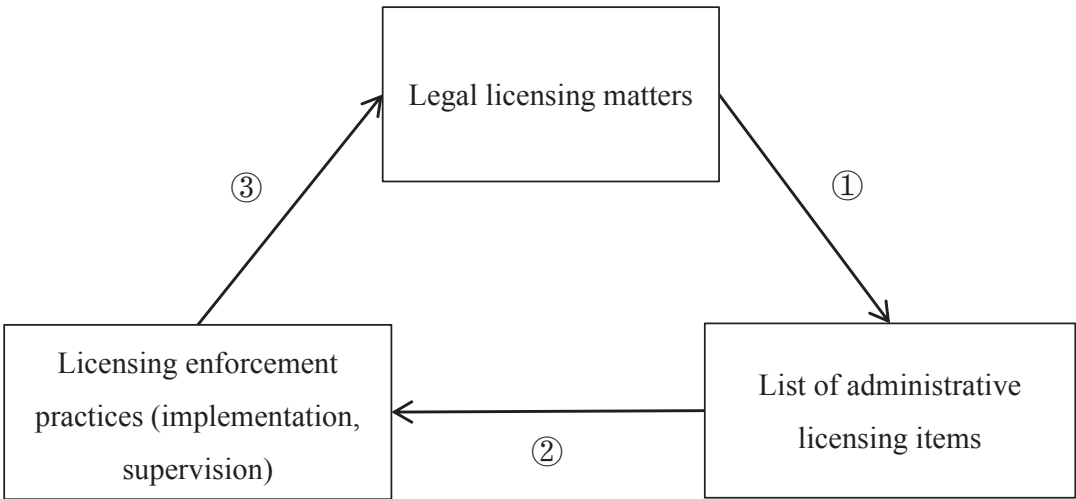
A. Insufficient Interaction Between Administrative Licensing Practices and Legislation

The list itself does not have the function of setting or adjusting licensing items. It organizes and integrates statutory licenses systematically for public disclosure.⁵ It is precisely due to this technical characteristic that the construction of the administrative licensing item list system to a certain extent overlooks its bridging role between licensing practices and legislation. The deconstruction of the list management system for administrative licensing items reveals that it mainly consists of two aspects: ‘list compilation’ and ‘licensing enforcement practices’ (See Figure 1). The former involves the State Council’s Administrative Reform Office and leading agencies at all levels organizing existing statutory licenses and compiling the list (process 1). The latter involves relevant administrative agencies and organizations authorized by laws, regulations, and rules implementing and supervising specific licensing enforcement practices based on the list (process 2). However, from a systemic perspective, this system is not just a one-way process at the level of necessity (process 1+process 2). It is a cyclical

5 Wang Kewen, *The Legal Issues in Establishing the Administrative Examination and Approval Power List*, 1 China Legal Science 89, 89 (2017).

process that includes feedback from practice to legislation (process 3) (process 1+process 2+process 3). System construction should pay attention to the list’s active optimization role in setting and adjusting licensing items in legislation while serving as an administrative licensing management tool.

Figure 1: The Operating Mechanism Diagram of the Administrative Licensing Item List System



From existing practical experiences, within the context of the ‘streamlining administration and delegating power’ reforms guided by the concept of ‘regulatory easing’, licensing items have been continuously reduced and weakened. However, this ‘regulatory easing’ has not fully achieved the expected governance effects and social responses.⁶ Instead, it has led to the fluctuation in the number of administrative licensing items due to the fact that the reduction of licensing items has mostly been carried out through episodic reforms.⁷

The establishment and adjustment of licensing items should be conducted through legislation, which not only requires comprehensive deliberation and opinion gathering beforehand but also necessitates evaluation and testing by practice afterward to ensure normative scientific and practical effectiveness. The Notice establishes a two-way linkage mechanism and sets forth procedural requirements such as ‘judicial administrative departments

6 Ma Huaide, *Achievements, Problems, and Suggestions for the Reform of the Administrative Approval System*, 3 *Journal of Chinese Academy of Governance* 14, 15 (2016).
7 Shen Kui, *A New Approach to Overcoming the Difficulties in the Reform of the Administrative Approval System*, 2 *Chinese Journal of Law* 20, 23 (2014).

must solicit opinions from the administrative examination and approval reform agencies while reviewing draft laws, regulations, and rules for the establishment or adjustment of administrative licenses.’ Nevertheless, it does not further specify the procedures and effects of the administrative examination and approval reform agencies to raise objections, which may pose a challenge to the implementation of the system. Moreover, opinions are sought from the administrative review and reform agencies when legal regulations have already been decided on adjustments. The administrative examination and approval reform agencies need a more dedicated channel at the institutional level to proactively provide feedback on licensing practices and legislative opinions.

*B. Inadequacy of Discretion Criteria for
Formulating Implementation Norms for Licensing*

Administrative licensing typically deals with matters with external impacts and certain risks, involving significant interests of the parties involved as well as the broader society. Therefore, it is crucial to set standardized and regulated discretion criteria for licensing implementation to limit and plan discretion spaces, thus preventing arbitrary administrative decisions. In this regard, the Notice requires the development of implementation norms for each administrative licensing item listed, aiming to achieve uniform management and standard processing of the same item across different regions and levels during the 14th Five-Year Plan period. The concept of ‘licensing implementation norms’ encompasses elements such as licensing conditions, application materials, intermediary services, approval procedures, time limits, fees, licensing documents, and quantity restrictions, among others. These norms effectively constrain administrative agencies in licensing implementation, forming a practical constraint known as ‘licensing discretion criteria’ in theory. However, the discretion criteria have not been established as a legal duty of administrative agencies. The lack of fundamental guidelines and regulations for the scale and basis of discretion criteria formulation may lead to these norms either becoming a gateway for adding licensing conditions or exacerbating regional differences in licensing practices.

Firstly, discretion criteria exhibit characteristics of ‘detailed circumstances’ and ‘standardized effects’, which involve the standardization of legal requirements and legal effects.⁸ Unlike punitive administrative actions, where

⁸ Xiong Zhanglin, *Reflection and Reconstruction of Discretionary Standards System for Non-Administrative Penalty*, 6 Law Review 34, 37 (2019).

there is space for 'standardized effects', administrative licensing essentially involves a binary choice between granting or denying a license, thereby emphasizing the importance of 'detailed circumstances' in setting discretion criteria, with a focus on the level of detail in statutory licensing requirements. Within the framework of the 'dualism of discretion', detailed circumstances are inherently legal issues that require interpreting numerous uncertain legal concepts in legal texts, making it more challenging than standardizing effects.

Secondly, article 18 of the *Administrative Licensing Law* stipulates that 'in the establishment of an administrative license, the implementing organ, conditions, procedures, and time limit shall be specified.' However, many implementation conditions for administrative licenses need to be further specified in legislative practice. Therefore, the reform calls for the primary purpose of formulating licensing implementation norms to elaborate on the conditions in legal norms and to allocate the discretion space of administrative agencies reasonably when implementing licenses. However, some 'licensing implementation norms' may involve repeated relevant legal norms, which shall be further elaborated on or explained to regulate the implementation of licensing rights.

Thirdly, it is important to note that achieving uniformity among norms with different territorial scopes but similar subject scopes is challenging.⁹ Given the vast expanse of China, the elements and standards of licensing implementation vary to a certain extent. While the goal of reform is to achieve national uniform management, it is difficult for different regions to precisely balance discretion within licensing implementation norms without further guidance and regulations. However, if interpretations of legal requirements are too detailed, it may be challenging to achieve uniformity among regions. Conversely, overly broad interpretations may render the standards too general to be applicable.

Overall, formulating licensing implementation norms is a highly complex technical task that is still in the exploratory stage. Therefore, exploring licensing implementation norms of discretion criteria from legal and technical perspectives raises important questions that to what extent legal requirements should be detailed and how uniformity can be achieved in the formulation of implementation norms for the same licensing items across different regions. These issues are crucial topics in the ongoing development of the administrative licensing item list system.

9 HANS KELSEN, GENERAL THEORY OF LAW AND STATE, at 336 (Encyclopedia of China Publishing House, 1995).

C. Necessity of a Unified Supervision System to Safeguard Institutional Operation

The effective operation of any system relies on a scientifically sound supervisory framework. Proper supervision and checks will ensure the effective implementation of the administrative licensing system.¹⁰ The list management system for administrative licensing items spans the entire process from list compilation to enforcement practices, incorporating numerous innovative reform measures. Its smooth and effective operation necessitates a robust and systematic supervisory mechanism. It is essential in the process of reform to recognize that licensing implementation norms, regulatory rules and standards, and other innovative reform initiatives are tools that enhance the quality and efficiency of licensing practices. The key to ensuring these tools effectively fulfill their purposes lies in effective supervision. To ensure efficient and orderly supervisory work, it is crucial to have clear identification of the supervisory entities.

The Notice mandates that the State Council's Administrative Reform Office strengthen guidance, coordination, and supervision of the list management for administrative licensing items across regions and departments. It also emphasizes that leading agencies at all levels responsible for administrative reform should enhance dynamic evaluation and full-term supervision of the implementation of administrative licensing item lists. The State Council's Administrative Reform Office and leading agencies at various levels are designated as the supervisory bodies for the implementation of the list.

The implementation of the administrative licensing item list is composed of administrative enforcement actions, where administrative authorities grant licenses based on the list and norms and conduct administrative inspections according to regulatory rules and standards. Therefore, internal supervision of this process involves two systems: vertical and horizontal systems, involving general and specific aspects. Vertical supervision refers to hierarchical supervision by higher administrative authorities over lower-level administrative agencies based on authorization under administrative licensing laws, often manifested as departmental oversight.¹¹ Horizontal general supervision, in practice, appears as an 'interdepartmental relationship', typically carried out by the government's judicial administrative departments

10 WANG YONGQING, *ADMINISTRATIVE LICENSING LAW TUTORIAL*, at 204 (China Legal Publishing House, 2011).

11 Ye Bifeng, *Behavioral Law Mechanism Functioning in Lieu of Administrative Organization Law*, 7 *Social Sciences in China* 109, 111 (2017).

or legal departments at the local level as specified in local regulations. Given the unique and crucial nature of administrative approval system reform, various levels of government have established specialized offices or groups within departments such as the Office of Administrative Approval Reform and Administrative Service Departments to comprehensively lead relevant work, including supervising administrative licensing enforcement. This special supervision outside the general administrative enforcement oversight system is explicitly recognized in the Notice. Consequently, from the current regulatory perspective, there are issues of multi-layered supervision in administrative licensing enforcement.

Traditionally, supervisory agencies have been responsible for general administrative enforcement oversight. However, with the deepening of the reform of the national supervisory system, changes have occurred in the previous power supervision system. Supervisory agencies have been separated from the administrative system, and the *Administrative Supervision Law* was repealed with the implementation of the *Supervision Law* in 2018. Subsequently, in practice, judicial administrative departments have often been designated as the administrative enforcement oversight agencies of local governments. The *Plan on Building the Rule of Law in China (2020-2025)* issued by the Central Committee of the Communist Party of China in 2021 proposed to strengthen the construction of a four-level comprehensive administrative enforcement coordination and supervision system at the provincial, municipal, county, and township levels. The judicial administrative departments are the main entities responsible for constructing this system and have established specialized administrative enforcement coordination and supervision agencies internally.¹² Although it appears that judicial administrative agencies have been defined as the main bodies for internal administrative enforcement oversight, the revised *Administrative Licensing Law* in 2019 still retains provisions allowing supervisory agencies, besides higher-level administrative authorities, to order administrative agencies to rectify illegal behaviors. This provision opens the door for supervisory committees to exercise oversight authority.¹³ Therefore, at least at the regulatory level, there is controversy surrounding the statutory general administrative enforcement oversight bodies.

In addition, regarding the special supervisory body for licensing

12 Qin Qianhong & Chen Jiaxun, *On the Establishment of Formal Supervision Organ in the External Supervision of Administrative Law Enforcement*, 1 *Administrative Law Review* 50, 51 (2022).

13 Articles 72, 74, 75, and 77 of the *Administrative Licensing Law of the People's Republic of China*.

enforcement, there is no consensus on which specific department within various levels of government in different regions shall serve as the leading group for administrative reform. Looking at the development of institutions, the State Council's Administrative Reform Office at the central level, as the coordinating body responsible for overall administrative reform nationwide, was originally named the 'Office of the Leading Group for Administrative Examination and Approval System Reform' and was established in 2001 within the Ministry of Supervision as a deliberative and coordinating body. The working group was disbanded in 2008, and its related responsibilities were transferred to the Ministry of Supervision and other departments. In June 2013, the State Council decided to transfer the leadership of the administrative examination and approval system reform from the Ministry of Supervision to the State Commission Office of Public Sectors Reform, and the State Council's Administrative Reform Office was placed within the State Commission Office of Public Sectors Reform. Following the organizational reforms in 2018, the State Council's Administrative Reform Office was then placed under the General Office of the State Council, with the Government Function Transformation Office of the General Office of the State Council overseeing the coordination of the State Council's Administrative Reform Office, responsible for its operations.

It is evident that the vertical supervision aspect of the supervisory system ensures the smooth and effective operation of the list management for administrative licensing items. However, the identification of the horizontal supervisory bodies needs further clarification. On the one hand, there is an overlap of responsibilities between general administrative enforcement oversight bodies and leading groups for administrative reform. On the other hand, there is confusion in the establishment of the leading groups for administrative reform. These two issues require resolution based on existing legal provisions and relevant administrative rules through systematic and coordinated arrangements.

IV. OPTIMIZATION DIRECTIONS FOR THE LIST MANAGEMENT SYSTEM FOR ADMINISTRATIVE LICENSING ITEMS

A. Activating and Improving the Administrative Licensing Feedback and Evaluation Mechanism

With the development and changes in society, the establishment and the implementation of licenses also require constant adjustments to

prevent the administrative licenses established by the law from losing their necessity and rationality.¹⁴ Some emerging social issues may require the addition or adjustment of licenses for regulation. This undoubtedly places higher demands on administrative licensing legislation and emphasizes the importance of maintaining a close connection and resonance between practice and legislation. Therefore, we should not unilaterally interpret the compilation and implementation of administrative licensing item lists as a one-way translation and implementation process of legislation. Instead, we should focus on the proactive evaluation and feedback function that it can provide for legislative adjustments. In other words, as a systematic presentation of statutory licensing and fundamental guidance for licensing practices, the compilation and adjustment of administrative licensing item lists is a long-term and dynamic process that represents ongoing work without a definitive endpoint.¹⁵ Therefore, activating and enhancing the feedback and evaluation mechanism of licensing practices for legislative adjustments is crucial to forming a closed-loop system logic and ensuring the vitality of the system. This process promotes timely and reasonable modifications and adjustments to administrative licensing legislation and administrative licensing item lists.

In fact, the *Administrative Licensing Law* has long established the administrative licensing evaluation system and made clear provisions in article 20, requiring the authorities responsible for setting and implementing licenses to regularly evaluate the administrative licenses they established and enforced. However, this provision has been in a 'dormant' state for two main reasons. Firstly, in terms of its setup, the legislative evaluation of the licensing setting authorities has been stipulated as a statutory obligation. Namely, 'the authorities responsible for setting administrative licenses should regularly evaluate the administrative licenses they establish.' The evaluation of the enforcement authorities, however, is only stipulated as 'the authorities responsible for enforcing administrative licenses may timely evaluate the implementation status and necessity of the already established administrative licenses.' The lack of mandatory requirements has made the connection between local and departmental interests and administrative licensing power more pronounced. The enforcement authorities lack sufficient internal drive and initiative to conduct evaluations of license implementation. They are reluctant to proactively 'cede power' by evaluating and providing feedback

¹⁴ Wang Kewen, *supra* note 5, 94.

¹⁵ *Id.*, 89.

on the necessity and rationality of certain licensing items.¹⁶ Secondly, laws and regulations have not clearly defined the evaluation procedures, elements, and standards for the enforcement authorities, potentially leading to the idleness of the evaluation mechanism.

In this regard, this article suggests that by strengthening the implementation of the two-way linkage mechanism established in the Notice through the revision of the *Administrative Licensing Law*, the dormant licensing evaluation mechanism can be activated to enhance the interaction between practice and regulation. Firstly, considering that the enforcement authorities directly participate in license implementation management and are better positioned to assess the necessity, effectiveness, and rationality of current licenses in social governance, they should serve as a primary bridge between administrative licensing legislation and dynamic social practices. In the next revision of the *Administrative Licensing Law*, lessons can be drawn from the practices of various regions. The enforcement authorities' evaluation of licenses should be mandated as a statutory obligation, with corresponding legal responsibilities being imposed when necessary. Additionally, the legislation should clarify the specific evaluation criteria and elements in the evaluation process, requiring the enforcement authorities to comprehensively evaluate licensing items based on specific criteria and elements within designated time frames, and ultimately report their opinions to the licensing setting authorities and leading administrative reform agencies through established procedures. Secondly, the administrative reform agencies at all levels, as the entities responsible for list compilation, assessment, and supervision of implementation, as well as the leading coordinating bodies of other list supervisory departments, are in a position to grasp the practical situations of licensing items and provide more comprehensive practical guidance for legislation. As the administrative reform agencies are not the entities responsible for license implementation and lack the authority to enforce licenses, they can objectively assess the continuation and adjustments of licenses, thereby addressing subjective and inertial issues in license evaluation by enforcement authorities. Therefore, these agencies should be granted more proactive evaluation powers, and dedicated channels for providing legislative feedback should be established, thus truly realizing the institutional value of the two-way linkage mechanism.

16 Xiong Zhanglin, *supra* note 8, 39.

B. Scientific Construction of Licensing Implementation Norms from Legal and Technical Perspectives

The standardization of license implementation is not only a benchmark of discretion in theoretical concepts but also a new regulatory tool oriented towards government reform and innovation. Therefore, to address the issues of concretization and standardization and achieve systematic and scientific construction, a balance between theory and practice is needed. On the one hand, it is essential to clarify the nature and characteristics of license implementation standards from a legal basis. On the other hand, it is crucial to alleviate practical dilemmas in license implementation from a pragmatic standpoint.

First and foremost, it should be understood that the formulation of legal requirements in license implementation standards must be relatively concrete. Derived from administrative discretion, the benchmark of discretion is a form of self-regulation and self-revolution within the administrative sphere. Specifically, in the context of licensing discretion standards, it is a general provision made by the administrative license examination authority regarding the conditions and standards of administrative licenses set by the legislative body. By establishing and publishing review standards and concretizing these criteria, self-restraint is imposed on administrative licensing discretion to ensure fairness and justice in administrative licensing, and to ensure that applicants have appropriate expectations for the application results.¹⁷ From the perspective of administrative self-regulation, the development of license implementation standards can be seen as a form of administrative self-initiated action. However, this self-restraint can also be justified by constitutional principles. Article 33(2) of the *Constitution*, which mandates equality before the law, indirectly imposes obligations on administrative authorities to ensure the consistency of administration, limit arbitrary actions, and uphold the obligations of equality and justice. Under the umbrella of the *Constitution*, administrative authorities shall adhere to the principles of equal treatment and protection of legitimate expectations in administrative legal relationships with individuals.¹⁸

Furthermore, from the nature and characteristics of discretion standards, they represent a method by which administrative authorities exercise discretionary power, without possessing legal authorization or a legal

17 Song Hualin, *A Preliminary Study on the Theory of Administrative Licensing Review Benchmarks: Taking the Field of Domestic Route Operation Licensing as an Example*, 5 Zhejiang Academic Journal 152, 152 (2010).

18 Wang Guisong, *The Setting and Application of Administrative Discretion Benchmarks*, 3 ECUPL Journal 65, 68 (2016).

status.¹⁹ While they may have practical binding force, the legal binding force is in question. Therefore, administrative authorities are not bound by legal obligations in their discretion in individual cases and may deviate from discretion standards to make different discretionary decisions under certain conditions. However, it is generally acknowledged that the application of discretion standards should follow the principle of ‘compliance as the norm, deviation as the exception’.²⁰ The primary function of discretion standards is to plan and compress the administrative discretion space, but this compression does not eliminate discretion space entirely. It still allows administrative authorities to have a certain degree of judgment and discretion in balancing various factors during the processing of individual cases. After all, legislative authorization of administrative discretion is aimed at achieving favorable discretionary outcomes, specifically in the pursuit of justice in individual cases.²¹ Consequently, there exists an inherent tension between administrative authorities and individuals regarding discretion standards. That is to say, the clearer and more specific the discretion standards are, the better it is for individuals, while broader and more abstract discretion standards are more conducive to flexible discretion by administrative authorities. However, based on the concept of a service-oriented government and the spirit of administrative law that restricts public power to safeguard citizens’ rights, the degree of elaboration of legal requirements in license implementation standards must inevitably lean towards prioritizing the protection of individuals on the balance scale.

The formulation of license implementation standards must adhere to two fundamental principles. First, they must not introduce license conditions that exceed higher-level regulations. Second, they must avoid lazy discretion and mechanical replication of higher-level regulatory content, and instead focus on detailed elaboration and explanation of statutory license conditions as much as possible. Specifically, for licensing matters where corresponding conditions are stipulated by legal norms, the license implementation standards need to comprehensively and dynamically review these conditions and provide necessary explanations. This process also involves integrating possible license conditions from different standards, which, on the one hand, facilitates the work of public officials in license enforcement and, on the other hand, provides more detailed guidance for administrative

19 *Id.*, 70.

20 Xiong Zhanglin, *On the Exemption Clause of Discretion Benchmark*, 3 *Studies in Law and Business* 50, 57 (2019).

21 KENNETH CULP DAVIS, *DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY*, at 4 (Luo Haocai ed., The Commercial Press, 2009).

applicants, thereby improving the predictability of license outcomes. In cases where legal norms have vague or generic license conditions, the license implementation standards must play a mediating role between abstract license conditions in legislation and specific license review practices,²² actively refining them within the scope of statutory license conditions. Of course, this refinement is not unlimited but should fall within the scope of 'reasonable interpretation'. In many judicial cases, disputes often arise between individuals and administrative authorities over the specificity of license conditions outlined in regulatory documents. Courts often adopt a stance of 'reasonable interpretation', requiring that the elaboration aligns with 'logical reasoning' or 'logical necessity'. The former refers to whether there is a rational connection between specific provisions and statutory license conditions on a general rational level. The latter refers to logical connections such as subordination or progression between specific provisions and the interpreted license conditions.²³ On this basis, the formulation of license implementation standards can draw on these standards to refine the implementation conditions of statutory licenses item by item.

Secondly, even with the establishment of refinement standards based on reasonable interpretation, the formulation of license implementation standards still allows for discretion. Therefore, to promote the unified construction of license implementation standards nationwide and prevent excessive refinement or broadening of discretion standards, it is beneficial to categorize licensing matters based on certain standards. This approach facilitates setting differentiated levels of refinement in discretion standards, ensuring that different types of matters have varying levels of refinement in discretion standards. As administrative licensing is one of the most important regulatory tools for risky matters, the content and standards of licensing are often linked to the risk associated with the licensing matters. Therefore, categorizing licensing matters based on the risk of harm to public interests serves as a reasonable typological approach.

For low-risk and routine licensing matters, the discretion space should be minimized as much as possible by setting specific discretion standards to enhance the predictability of administrative licenses for individuals. Conversely, for significant matters involving emerging technologies, national security, and high-risk issues due to insufficient understanding, it is advisable to maintain a suitable level of discretion and focus on prudence,

22 Wang Taigao, *On Administrative License Conditions*, 2 Administrative Law Review 65, 67 (2007).

23 CHEN XINGLIANG, *ONTOLOGICAL CRIMINAL LAW*, at 28 (China Renmin University Press, 2017).

scientific rigor, and flexibility, rather than predictability. This typological setting of discretion standards within the framework of a list management system for licensing items can effectively promote consistent management and processing of the same matters with the same elements and standards across different regions. In summary, routine matters do not vary significantly across regions. Given their routine nature and low risk, it is relatively easy to achieve the harmonization and unification of some differences when necessary. Therefore, setting discretion standards in a detailed manner not only enhances predictability for individuals but also showcases the technical advantages of discretion standards without impeding nationwide reform. On the other hand, for high-risk significant matters, setting relatively broad discretion standards can provide more leeway for discretion in various regions, allowing them to consider various special factors and make decisions that best suit their local conditions. This approach can greatly accommodate regional differences and promote ‘consistent management of the same elements and standards for the same matters across different regions’. Therefore, the next step in reform should involve strengthening the inclusion of relevant provisions on license implementation standards in the revision of the *Administrative Licensing Law*. This should entail systematic standardization of the setting process, standards, and methods, as well as transparency and public disclosure of license implementation standards.

It is important to note that the degree of specificity in setting discretion standards cannot lead to a precise conclusion, as the act of setting discretion standards is an administrative discretion in itself. Looking at legislative examples from both domestic and international contexts, the *Japanese Administrative Procedure Act* requires that ‘administrative agencies, in establishing review standards, shall make them as concrete as possible in light of the nature of the particular permission, etc. in question.’²⁴ Existing local regulations in China, such as the *Administrative Procedure Regulations of Shandong Province* and the *Administrative Procedure Regulations of Ningxia Hui Autonomous Region*, stipulate that ‘the standards, conditions, types, scope, methods, and time limits of administrative discretion should be reasonably detailed and quantified.’²⁵ The terms ‘as concrete as possible’ in Japan and ‘reasonable’ in China both represent value concepts with interpretative space. When administrative authorities set discretion standards

24 Article 5 of the *Japanese Administrative Procedure Act*.

25 Article 59 of the *Administrative Procedure Regulations of Shandong Province* and article 32 of the *Administrative Procedure Regulations of Ningxia Hui Autonomous Region*.

in accordance with the law, they must provide a lawful, purposeful, and policy-oriented interpretation of these concepts.²⁶ Therefore, whether the setting of discretion standards tends to be refined or broad, it must meet the basic requirements of the rule of law in its content. Administrative authorities need to provide thorough explanations of legal requirements, consider the nature of the licensing matters and statutory elements, further weigh the interests of individuals, third parties, and public welfare, and establish license implementation standards based on administrative practices and the principle of proportionality.

Lastly, to ensure the substantive legality of license implementation standards, and considering that such standards often appear in the form of regulatory documents, they should be included in record review beyond incidental judicial review. This inclusion should be within the scope of record review, where peer-level governments conduct supervisory reviews of the legality and reasonableness of these standards within the statutory deadline, following relevant legal standards and procedures.²⁷ This measure aims to safeguard the effective functioning of regulatory license implementation within the framework of the rule of law.

C. Unified and Systematic Construction of Internal Administrative Supervisory Bodies

Given the long-term, complex, and significant nature of the implementation of the list management system for administrative licensing items, it is necessary to eliminate the overlapping supervision and inconsistency in the designation of supervisory bodies for license enforcement. Emphasizing the special status of license practices in reform, it is essential to establish a dedicated internal supervision system that integrates vertically and horizontally to ensure the coherence and seamless coordination of policies.

In fact, the conditions for the unified supervision of general administrative law enforcement bodies in various regions are already in place.²⁸ Although the current effective norms for administrative law enforcement supervision still retain the supervisory authority of government legal departments, as early as

26 Zhang Shuo, *Methodological Reconstruction of Specific Administrative Interpretation Based on Legal Policy Theory*, 5 Henan Social Sciences 68, 72 (2022).

27 Wang Kai, *A Review on Normative Files in Recording*, 11 Zhejiang Social Sciences 11, 13 (2010).

28 See article 5 of the *Regulations of Guangdong Province on the Supervision of Administrative Law Enforcement*; article 4 of the *Regulations of Inner Mongolia Autonomous Region on the Supervision of Administrative Law Enforcement*; article 5 of the *Regulations of Hebei Province on the Supervision of Administrative Law Enforcement*.

March 2018, the First Session of the 13th National People's Congress passed the *State Council Institutional Reform Plan*. The plan stipulated: 'integrating the responsibilities of the Ministry of Justice and the State Council's Legislative Affairs Office, reorganizing the Ministry of Justice as a constituent department of the State Council, and abolishing the State Council's Legislative Affairs Office.'²⁹ Furthermore, in accordance with the provisions of the *Plan on Deepening the Reform of Party and State Institutions* passed at the Third Plenary Session of the 19th Central Committee of the Communist Party of China, which states that 'all local institutional reform tasks will be basically completed by the end of March 2019.' Many regions have already completed the integration of government legal institutions with counterpart judicial administrative agencies. Additionally, at the central level, the Ministry of Justice explicitly affirmed the position of judicial administrative departments as the supervisory bodies for administrative law enforcement in 2022. Therefore, at the current juncture, the horizontal supervisory bodies for the implementation of administrative licensing lists are limited to the government's administrative justice departments and the leading institutions for judicial reform.

Throughout China's organizational reform, the fundamental principle has been to streamline and enhance efficiency. The *Decision of the Central Committee of the Communist Party of China on Deepening the Reform of Party and State Institutions* has further emphasized the need to 'optimize the establishment and functional allocation of the Party and state institutions, and adhere to the principle that one department shall coordinate one category of matters in principle, and one department shall be responsible for one specific matter in principle'. This is aimed at establishing a streamlined organizational structure with a clear delineation of powers and responsibilities. Therefore, when it comes to setting supervisory bodies in the field of administrative license enforcement, it is imperative to continue implementing the principles of organizational reform. This involves specifying the responsible departments to avoid drawbacks such as functional overlaps and multiple management within administrative institutions.

This article suggests that the leading institution for judicial reform should serve as the primary department responsible for supervising administrative license enforcement while maintaining the coordinating role of judicial administrative agencies at a macro level. Currently, although the organization

29 Huang Xuexian & Li Lingyun, *Integration of Government Legal Institutions with the Former Judicial Administrative Organs: Causes, Dilemmas, and Resolutions*, 2 *Journal of Soochow University (Law Edition)* 57, 60 (2019).

and establishment of leading institutions for judicial reform vary at different levels and in different regions, sound leading institutions for judicial reform have been established from the top administrative level of the State Council to grassroots county-level governments. Furthermore, the supervision of the implementation of administrative licensing item lists is just one aspect of their responsibilities. These institutions are also engaged in tasks such as compiling lists, dynamically adjusting them, and providing feedback on draft opinions to judicial administrative departments. Therefore, compared to assigning the supervision responsibilities of the implementation of administrative licensing item lists to judicial administrative agencies, the leading institutions for judicial reform are better positioned to integrate supervision work with other relevant reform tasks, embedding them into the overall reform plan. Additionally, designating judicial administrative agencies as the supervisory body may pose neutrality challenges in certain situations, especially when these agencies also act as entities responsible for license implementation. For example, when it comes to licensing matters such as granting permission for lawyers to practice or change practice locations, and establishing, modifying, or deregistering law firms, judicial administrative agencies may face inherent conflicts as both 'players' and 'referees' in the process.

While considering the recognition of the supervisory authority of judicial administrative agencies in central policy documents and their leading role in administrative legislation and administrative review, it is not advisable to completely exclude them from supervising license enforcement. In the next phase of reform, efforts could be made to strengthen the coordination of judicial administrative agencies with the leading institutions for judicial reform in legislation related to licensing and administrative license review cases, indirectly enhancing their supervisory role in license enforcement and avoiding overlaps and conflicts with the leading institutions for judicial reform.

When constructing a specific framework of the leading institutions for judicial reform, emphasis should be placed on the independence and professionalism required by the supervisory bodies for administrative license enforcement. The members of supervisory bodies often consist of government officials,³⁰ various relevant supervisory departments, and leaders of administrative agencies. Therefore, to overcome the potential institutional challenges, it may be considered to establish specialized Administrative Approval Reform Committees under the central, provincial, or municipal

30 Zhang Jie, *A New Solution to the Reform of the Administrative Examination and Approval*, 5 Journal of Henan University of Economics and Law 33, 35 (2015).

governments. This committee could be defined as an institution directly subordinate to governments at all levels, rather than a legal entity. Its composition should include experts from the fields of administration, academia, and non-governmental organizations with rich experience, research capabilities, and good reputations to ensure its independence and professionalism.

V. FROM ‘LESS REGULATION’ TO ‘BETTER REGULATION’: RESHAPING THE CONCEPT OF ADMINISTRATIVE APPROVAL SYSTEM REFORM

Administrative approval reform has been ongoing in China for many years, with the underlying value concept of ‘regulatory easing’ deeply rooted in its foundation. The emergence and development of this concept have been influenced by policies such as reform and opening up, streamlining administration and delegating power, and optimizing the business environment, with a distinct objective of driving economic development and enhancing social productivity. However, it is essential to clarify that the issues that administrative licensing needs to address include not solely economic issues but also various social issues such as ecological environment, and food and drug safety, among others. Therefore, the adjustment of administrative licensing items should not only focus on reduction but also consider expansion. The assessment of the effectiveness of administrative approval system reform should not be based solely on the reduction in the number of licensing items. It should be dynamically adjusted based on practical considerations.

Administrative licensing, as a crucial tool to regulate private social relations through public power, should aim to maximize social value. The essence of ‘social value fundamentally stems from the value pursuit in the process of public exercise of rights, and its change originates from the consciousness shift in the exercise of public rights.’³¹ Therefore, the addition, reduction, and adjustment of administrative licensing items should be guided by the dynamic values of the public, rather than merely focusing on cutting and relaxing regulations. In essence, ensuring governmental governance capacity and safeguarding the health, safety, and living environment of citizens are not limited to reducing the number of licenses or pursuing ‘less regulation’, but should focus on the quality of regulations to promote

31 Peng Tao, *Improvement of the Administrative Licensing Supervision Model*, 2 Governance Studies 122, 126 (2019).

economic and social development.³² Since the beginning of the approval system reform in China, the State Council has highlighted that ‘the main goal of administrative approval system reform is to establish an administrative approval system that is compatible with the socialist market economy system. The effectiveness of administrative approval system reform should not only be measured by the reduction in the number of approval projects, but more importantly by whether the reform has achieved institutional innovation.’³³ Based on the current practice of administrative license management, approval reform should address new issues arising from social development and the objective demand for new licenses for effective social governance (such as the public’s desire to increase licenses for addressing environmental pollution issues). The next step in reform should reshape the concept, shifting from focusing on quantity to quality, and transitioning from ‘less regulation’ to ‘better regulation’.³⁴

Through thorough analysis, it can be observed that the system of managing lists of licensing items has keenly targeted some of the challenges in the reform of the administrative approval system, attempting to address existing issues through a series of innovative measures. However, despite a good awareness of these issues, continuous progress in reform is still required in a legalistic and meticulous manner to truly resolve underlying problems.

Looking at the current reform measures, the two-way linkage mechanism strengthens the connection between legislation and practice, ensuring the flexibility of dynamic adjustments to the list. However, there is still a need for further reform to promote active feedback from practice to legislation and the establishment of a normalized and standardized license evaluation mechanism. The development of ‘norms for license implementation’ and ‘regulatory standard rules’ holds significant importance in regulating the implementation and supervision of the items in the list, delineating the discretion space of administrative agencies, and enhancing the predictability of license enforcement by administrative counterparts. Nonetheless, the establishment of norms for license implementation and regulatory standard rules as a benchmark for discretion faces complex issues in specific settings, such as interpretation methods, level of detail, and standardization across

32 MA HUAIDE, RESEARCH ON FRONTIER ISSUES IN ADMINISTRATIVE LAW, at 242 (China University of Political Science and Law Press, 2018).

33 *State Council Holds a Meeting on Administrative Approval System Reform*, Legal Daily, October 25, 2001.

34 THE OXFORD HANDBOOK OF REGULATION, at 7 (Robert Baldwin, Martin Cave & Martin Lodge eds., Oxford University Press, 2013).

different regions, necessitating a legal basis and guidance for setting discretion benchmarks. While the leadership of the State Council's Leading Group for Judicial Reform and the leading institutions for judicial reform in various regions oversee the implementation of the list of licensing items, aiming to establish an internal supervision system, this has led to a jurisdictional overlap with existing administrative law enforcement supervisory bodies, namely government judicial administrative departments. Therefore, a reasonable solution is required to resolve this issue.

Overall, the system of managing lists of licensing items has introduced numerous innovations, but these measures and designs require further refinement and polishing. The activation and optimization of the license evaluation mechanism need to be based on the revisions to the *Administrative Licensing Law*. The development and improvement of norms for license implementation and regulatory standard rules are closely tied to the provisions and guidance on discretion benchmarks in administrative procedural law. The delineation of powers between judicial administrative agencies and leading institutions for judicial reform also needs to start with organizational law, effectively aligning institutions with the inherent logic of the law. Only through coordinated efforts with other reform measures can the optimization of the administrative licensing system achieve the deepening of the reform of 'streamlining administration, delegating power, and strengthening regulation', enhance the business environment, and advance the reform effect of constructing a governmental governance system with clear responsibilities and lawful administration.

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