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China's New Regulations on Religion: A Small Step, Not a Great Leap, Forward

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A Small Step, Not a Great Leap, Forward

I. INTRODUCTION

The interaction of government and religion in China has long been a volatile situation. As the number of religious believers grows, the situation does not appear to be improving. While the Chinese constitution guarantees freedom of religious belief, the government of China maintains close supervision over religion and religious activities with a complex system of legal mechanisms and enforcement actions. As part of its larger program for social control, the government permits some religious liberties for authorized and supervised religions, and generally prohibits, represses, and prosecutes unauthorized groups. Simultaneously, China is making the transition from a “rule by law” society, where the government uses the law to rule and is itself above the law, to a “rule of law” society, where law binds all actors—governmental and individual.

The Chinese government recently issued new regulations governing religions and religious activities. The government asserted that these new regulations, which became effective March 1, 2005, are a “paradigm shift” and a “turning point” in religious affairs and will standardize disparate regional practice, provide more legal recourse for citizens whose rights have been violated, and generally “safeguard” religious freedom in China.


4. Rules Safeguard Religious Freedom in China, CHINA DAILY, Dec. 20, 2004, available at http://www.chinadaily.com.cn/english/doc/2004-12/20/content_401602.htm (“Zhang] also claimed the new approach would be a paradigm shift in China’s religious policy”); Zhang Jingyong, Chinese Consultative Body Chair Attends Religious Affairs Study Class, XINHUA, Jan. 26, 2005 (including a statement by Jia Qinglin that the regulations are “a turning point to further enhance the ability and level of managing religious affairs in accordance with law”); Zhang Xunmou, director of the Policy and Legal Department of the
This Comment analyzes these new regulations and argues that the new regulations are a step in the right direction toward the rule of law in China in that they provide more uniformity in the administration of religious regulations, clarify the interaction between religious bodies and government organs, give recourse to citizens whose religious liberties have been violated, harness the vagueness of the regulations to achieve flexibility in accommodating religion, omit some restrictive provisions found in previous regulations, and give additional legal protections in a few areas. Despite these improvements, the regulations are only a small step towards true religious freedom because they represent continuing strong state supervision of religion, do not protect nonsanctioned groups, provide punitive and possibly arbitrary penalties for noncompliance, leave interpretation of important yet vague provisions to bureaucratic discretion, and leave unanswered hosts of questions regarding other religious regulations and implementation issues. Unfortunately, whether the new regulations ensure religious freedom hinges on how government officials implement and interpret the regulations at the national, provincial, and local levels.\(^5\) In all, the regulations reflect a small step toward true religious freedom in China but no more.

Part II of this Comment gives a brief overview of law and policy in China and the structures that affect religious administration. Part III analyzes the improvements and shortcomings of the new regulations and includes a discussion of questions the regulations fail to answer. Part IV offers a brief conclusion and a look toward the future. The Appendix contains an English translation of the new regulations.\(^6\)

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5. After promulgating the initial regulations, the Religious Affairs Bureau usually issues detailed decrees for implementation.

6. Much has been written on the persecution of religious groups and individuals in China, and many publications and web sites detail discrimination, arrests, harassment, and other abuses against religious believers. Many of these allegations are troubling and undoubtedly true. This Comment, however, focuses only on the legal structures affecting religious administration and religious freedom in China. For more on the persecution of religious believers in China, see Amnesty International, http://web.amnesty.org/library/eng-chn/index; CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, ANNUAL REPORT 2004, (2004) available at http://www.cccc.gov/pages/annualRpt/annualRpt04/CECCAnnRpt2004.pdf [hereinafter CECC ANNUAL REPORT 2004]; China Aid Association,
II. A BRIEF OVERVIEW OF LAW, POLICY, AND RELIGIOUS ADMINISTRATION IN CHINA

Law does not exist in a vacuum, and the structures and history of religious administration in China give context and background to the new regulations. In China, the Communist Party heavily influences state decision making. The state, in turn, wields formal executive, legislative, and judicial power, as well as supervising the quasi-public religious associations. Various state organs closely monitor and supervise religious affairs. While the Party, government, and government-associated organizations at all levels are generally treated as a monolith, sometimes each body—and different levels of the same body—has different interests and motivations.

A. The Communist Party

The Communist Party of China (CPC or “Party”) is the “party in power” in China and has been since Mao Zedong consolidated power in 1949. The CPC provides the leadership in establishing policy, interpreting law, and enforcing regulations using state organs. The official Party doctrine regards control over religion as a short-term solution while awaiting religion’s eventual demise. The Party prefers to co-opt and harness religion rather than to fight it. Party members—who are required to espouse atheism—fill all major state offices.


7. See infra Part II.C.
11. Guanyu jin yi bu jiaqiang Makesi zhuyi wushenlun yanjiu he xuanchuan jiaoyu gongzu de tongzhi [Notice on Further Strengthening Marxist Atheism Research, Propaganda
B. State Structures

1. Constitution

While the CPC is the party in power, the state constitution is at least theoretically the supreme law of the land. Article 36 of China’s latest constitution, enacted in 1982, provides for “freedom of religious belief” and protects “normal religious activities,” although neither phrase is defined. Article 36 also prohibits individuals, organizations, and state organizations from compelling citizens to believe or to not believe in religion and from discriminating against citizens based on religious belief. Religious groups and activities must be free from “foreign domination,” though this term is also left undefined.

2. State Council, Religious Affairs Bureau, and Public Security Bureau

The most prominent organ of the state government is the State Council, which wields executive power by promulgating regulations, orders, and decrees such as the new regulations on religious affairs. Beneath the State Council are various administrative organs, including the Religious Affairs Bureau (RAB) and the Public Security Bureau.

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12. The CPC is mentioned several times in the preamble to the state constitution.
13. The full text of Article 36 is:

> Citizens of the People’s Republic of China enjoy freedom of religious belief. No state organ, public organization or individual may compel citizens to believe in, or not believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination.


14. The formal name for the national RAB is the “State Administration for Religious Affairs,” which supervises Religious Affairs Bureaus at the provincial and local levels. This Comment uses “RAB” throughout for simplicity. In the English translation of the new regulations, RABs are translated as “religious affairs department” or “religious administration department.”
The RAB is responsible for monitoring the five recognized religions, supervising the patriotic religious associations, crafting national religious regulations, overseeing regional RABs, fighting the spread of “cults,” and preventing “foreign domination” of religion. Since almost all RAB officials are also Party members, RAB officials are rarely religious believers; however, at the national level, RAB officials are often quite knowledgeable and sophisticated about religious beliefs and practices. At the provincial and especially at the local levels, RABs are sometimes merged with the bureau overseeing ethnic affairs, and some bureaucrats are less educated and sophisticated. Provincial RAB officials undergo periodic training to ensure some measure of standardization in administration, but decentralization and local control have led to a fair degree of disparity in implementing national policies on religion at the local levels. In addition, corruption is widespread at nearly every level.

Another organ under the State Council is the Public Security Bureau (PSB), which is charged with law enforcement. On all administrative levels, the PSBs are usually the organizations tasked with “cracking down” on unregistered and illegal groups. PSBs are part of local governments and are therefore subject to local pressures and prejudices. PSBs do not necessarily consult with RABs when they arrest members of “unregistered” religious groups.

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16. See infra Part II.C.
18. See CECC ANNUAL REPORT 2004, supra note 6, at 35 (“[T]here is less evidence that Party cadres at the local level can always easily untangle the theoretical knot of what is acceptable belief and practice. These ambiguities have led to ‘ideological confusion’ and may partially explain inconsistencies in the tolerance shown for religious practice in different parts of China. (citations omitted)).
19. Id.; see also CHAN & CARLSON, supra note 8, at 7.
20. See, e.g., Jason Kindopp, Policy Dilemmas in Church-State Relations, in GOD AND CAESAR IN CHINA, supra note 8, at 1, 6–7 (“Official corruption is endemic, consuming a staggering 13 to 17 percent of gross domestic product.”); CECC ANNUAL REPORT 2004, supra note 6, at 6–12 (detailing “rampant” corruption among government and Party officials).
3. Legislature and judiciary

The National People’s Congress (NPC) is nominally the state’s legislative arm, but because it meets only once a year (under the close supervision of the Party), it functions more as a rubber stamp than as a true deliberative body. Moreover, since the NPC votes only on the most important and far-reaching matters, the State Council is left to issue regulations that make up the bulk of law in China.\(^{21}\)

Article 126 of the constitution asserts the principle of judicial independence, yet judicial independence in China is more a future ideal than a fact.\(^{22}\) People’s Courts at national and lower levels report to their corresponding People’s Congresses,\(^{23}\) and the National People’s Congress is the final arbiter of statutory interpretation.\(^{24}\) China’s accession to the World Trade Organization (WTO) has prompted debate as to how to move from “rule by law” to “rule of law” and make China’s laws consistent with international standards of judicial independence, judicial review, transparency, and human rights.\(^{25}\) In China, legal scholars and the judiciary have become increasingly receptive to the concept of judicialization of the constitution, which would allow citizens to sue based on violations of constitutionally enshrined rights.\(^{26}\) Heretofore, the courts have not played a significant role in protecting religious liberties in China.

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21. Cao Jianming, *WTO and the Rule of Law in China*, 16 TEMPLE INT’L & COMP. L.J. 379, 388 (2002). Note that the new regulations are administrative regulations without the same force as a “law” passed by the NPC.

22. “The people’s courts exercise judicial power independently, in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual.” XIANFA art. 126 (1982).


and until the constitution is judicialized, religious believers theoretically have a constitutional right to “freedom of religious belief” but no judicial means to enforce that right.

C. Religions and Religious Associations

The government has differentiated four categories of religious groups: officially sanctioned religions, unregistered groups, “cults,” and “feudal superstitions.” China officially recognizes five religions: Buddhism, Catholicism, Daoism, Islam, and Protestantism. The government has established one or more government-controlled “patriotic” religious association to oversee and supervise each sanctioned religion and to ensure compliance with government-set parameters. These associations carry out their work in close cooperation with the government, and their leaders publicly echo the Party line. Unsurprisingly, leaders of the patriotic religious associations were gushing in their praise for the new regulations.

Groups belonging to the government-controlled patriotic religious associations are sanctioned as long as the groups stay within government-set parameters. Some unregistered (or nonsanctioned) religious organizations may have the tacit consent of local government officials to hold meetings; others may be banned and prosecuted by the Public Security Bureau. In some cases, the government deems an unregistered group especially dangerous and


28. For more on the Christian religious associations, see id., which includes English translations of fifteen documents issued by the religious associations. For case studies of how a religion interacts with its respective patriotic religious association, see Chan Shun-Hing & Lam Sui-ki, The Transformation and Development of Church-State Relations in Contemporary China: A Case Study of the Catholic Church, 3 CHING FENG 95, 121; Pik-wan Wong, Editor’s Introduction, CHINESE L. & GOV’T, Nov.–Dec. 2000, at 5.

labels it an “evil cult,” which could subject the group to intense persecution, repression, and ultimately extinction. Finally, folk religions and “feudal superstitions” are officially frowned upon but are rarely prosecuted unless the beliefs interfere with public order or safety.

D. A Brief History of Religious Administration and Prior Religious Regulations

Even before the Communists consolidated power in 1949, China had a long history of state oversight of religion through the imperial era. Since 1949 the state-religion dynamic has been anything but stable. Mao Zedong attempted first to co-opt religions using the patriotic religious associations and then moved to extinguish religion during the Cultural Revolution (1966–1976). After Deng Xiaoping consolidated power in the late 1970s, the state was less hostile towards religion than it had previously been, but still maintained close supervision over religion. The 1982 constitution and Document 19 both reflected a desire to co-opt religion and other social forces for the good of the Party and the state. Written as an internal Party document, Document 19 reflected the belief that religion could exist within Party- and state-set parameters rather than being extinguished immediately and that “patriotic” religious associations could harness and control religion.

30. For example, Falungong is a spiritual movement that began in China in the early 1990s. Interestingly, neither the government nor Falungong considers Falungong a religion: the government regards it as an illegal cult; Falungong generally regards itself as a spiritual movement. See Shiping Hua & Ming Xia, Guest Editors’ Introduction, CHINESE L. & GOVT., Nov.–Dec. 1999, at 8–10.

31. As described below, the new regulations govern the first set of officially sanctioned religions but do not provide any rights or protections for the other three groups.

32. For a somewhat longer history of religious administration in China, see CHAN & CARLSON, supra note 8, at 17–24. For an extensive history, see the essays in GOD AND CAESAR IN CHINA, supra note 8.


34. See, e.g., Richard Madsen, Catholic Conflict and Cooperation in the People’s Republic of China, in GOD AND CAESAR IN CHINA, supra note 8, at 93.

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After the Tiananmen Square uprising in 1989 and the fall of communism in eastern Europe, Chinese leaders became increasingly fearful of “foreign infiltration,” which fear was reflected both in the government’s treatment of religions and in Document 6, in which the government insisted on registering every religious body and site for religious activity. In 1994, the State Council issued Decrees 144 and 145, which created closer supervision, management, and registration requirements for sites of religious activities and for religious foreigners in China. These decrees clarified what activities would be considered acceptable but did not reflect dramatic shift in government policy. These decrees were followed by “Annual Inspection Procedures” in 1996 and “Implementing Rules” in 2000, both of which amplified state supervision over religion and more clearly delineated religious administration. In 1999, the rise of Falungong and mass demonstrations caused the government to crack down on many unrecognized religions, declaring them “cults” by legislative fiat and arresting organizers.

Provincial and local level governments have also issued regulations governing religious affairs since the late 1980s. Some of the first regulations were issued in Xinjiang, a western province with a heavily Muslim population, Tibet, with its Buddhist majority, and Guangdong, the province bordering Hong Kong and subject to many foreign influences. See, e.g., Xinjiang Uygur Autonomous Region: Temporary Rules for the Management of Venues of Religious Activities (1988); Xizang [Tibet] Autonomous Region: Temporary Measures for the Management of Religious Affairs (1991); and Guangdong Province: Provisions on the Administration and Management of Venues of Religious Activities (1988), in HUMAN RIGHTS WATCH, ASIA WATCH, FREEDOM OF RELIGION IN CHINA 30–35 (1992).

For instance, the 1995 Shanghai regulations were used as a model for many other provinces to follow, and the 2002 Beijing regulations showed an increasing level of sophistication. See Beijing Regulations on Religious Affairs, in Five Provincial Level Official Regulations on Religious Affairs, CHINESE L. & GOV’T, May–June 2003, at 49–54 [hereinafter Beijing Regulations]; Shanghai Regulations on Religious Affairs, in Five Provincial Level Official Regulations on Religious Affairs, CHINESE L. & GOV’T, May–June 2003, at 49–54 [hereinafter Shanghai Regulations].

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39. For instance, the 1995 Shanghai regulations were used as a model for many other provinces to follow, and the 2002 Beijing regulations showed an increasing level of sophistication. See Beijing Regulations on Religious Affairs, in Five Provincial Level Official Regulations on Religious Affairs, CHINESE L. & GOV’T, May–June 2003, at 49–54 [hereinafter Beijing Regulations]; Shanghai Regulations on Religious Affairs, in Five Provincial Level
indicated their desire since the late 1990s to have a national law on religion that would standardize provincial regulations and practices.\footnote{Rules Safeguard Religious Freedom in China, CHINA DAILY, Dec. 20, 2004, available at http://www.chinadaily.com.cn/english/doc/2004-12/20/content_401602.htm. The new regulations are administrative regulations issued by the State Council, which gives the regulations less legal force than a legislative law passed by the National People’s Congress.}

Despite the checkered history of the Chinese government’s action vis-à-vis religion, recent social developments and policy shifts indicate the government may be willing to exercise more flexibility in recognizing new religions. In December 2001, then-president Jiang Zemin gave a speech at the annual Religious Work Conference indicating that growth in religious believers should be expected following China’s entry into the WTO.\footnote{The full report of this Conference as well as the speech made by Jiang is published in Renmin Ribao [People’s Daily], Dec. 13, 2002. Subsequent commentating articles were published in the Party’s internal bulletin Tongxin [“Communication”], Jan. 2002, 1–20. For more on the effect of China’s WTO accession on religion, see Kim-Kwong Chan, China’s Socioeconomic Changes and Implications for the Religion-State Dynamic in China, 2004 BYU L. REV. 325; Pitman B. Potter, The Legal Implications of China’s Accession to the WTO, 167 CHINA Q. 592 (2003).} Recent intra-Party debates reveal a division of opinion on the future of China’s religious policy. Some argue that China should relax most of its controls over religion as it has over many portions of the economy to allow China to better integrate into the world order.\footnote{One of the most important articles was written by the current director-general of the RAB: Ye Xiaowen, Dui shehuizhuyi zongjiao wenti de  chongxin renshi shenke sikao [A Deep Reflection and a New Understanding of Religious Issues in Socialist Society], LILUN DONGTAI [THEORETICAL DYNAMICS], Jan. 10, 2003, at 1–12.} Others argue that the government should continue to suppress religion (with the goal of eventual eradication) in accordance with the communist theory of social progress.\footnote{See Ma Yuhong, Zai kuoda kaifang de xingshixia jianzhi duli sizhu ziban de yuanze [Uphold the Principle of Independent Self-Management under the Situation of Expanded Openness], LILUN DONGTAI [THEORETICAL DYNAMICS], May 30, 2003, at 24–28.}

As evidenced by the emphases on “long-term nature,” “mass nature,” and “complex nature” of religion, the current Party policy is somewhere in between these two extremes. The long-term nature recognizes, as did Document 19, that contrary to communist doctrinal pronouncements, religion will continue to exist

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indefinitely, and religion and society must “mutually adapt.” Similarly, the emphasis on mass nature recognizes that the sheer number of religious adherents in China makes dealing with religion a sensitive and politically potent issue. Finally, the complex nature of religion requires the Party to emphasize the legal and administrative underpinnings of religious policy. The independent (i.e., free from foreign influences) nature of religion must be emphasized, while nonsanctioned religions must be suppressed by the same legal and administrative means.

III. ANALYSIS OF THE NEW RELIGIOUS AFFAIRS REGULATIONS

A. Overview


Touted as “rules to safeguard religious freedom in China,” the new regulations are the first formal (and public) effort to revamp religious administration in China since 2000 and the first large-scale changes since 1994. The unfortunate reality is that the new
regulations retain strong state control over religion and do not provide for true religious freedom. The regulations do, however, clarify some of the roles of the state administrative apparatus in overseeing religious affairs, institute more specific procedures concerning how citizens whose rights have been violated obtain redress, and omit restrictive provisions contained in past regulations. Thus, the new regulations are in some respects an improvement upon past regulations, but the reality of continuing strong governmental oversight of religious affairs and the vague nature of many of the important provisions leaves a great deal of room for progress on both the legal and practical fronts.

The following analysis will discuss both the legal theory behind the various provisions and the practical effects of implementation. Part III.B analyzes the improvements in the new regulations. Part III.C discusses the shortcomings of the new regulations and how these hamper the efficacy of religious freedom in China. This discussion will demonstrate that the regulations reflect the regrettable reality that law in China is still used to protect the state from religion, rather than protecting religion from the state.

B. Improvements in the New Regulations

1. Interaction between religious groups and government organs

In an ideal world, the Chinese government would feel compelled to minimize administrative oversight over religion. Since that ideal is not realistic at this time, the regulations are an improvement by providing more predictability and clarification as to how religious groups and the government interact through the application and approval processes.

Article 7 permits religious bodies to publish religious reference publications if they comply with the “Regulations on Publications..."
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Administration” and do not contain any prohibited items. The regulations clarify what is and what is not acceptable, which is a slight improvement on past regulations.

Articles 8 and 9 set forth a procedure for approving institutes of religious education. The religious body must first apply to the provincial RAB where the institution will be located. The local RAB must approve or deny the application within thirty days and, if approved, forward the application to the national RAB, which has sixty days to approve or deny the application. The established procedures with time limits are much more organized than previous regulations, which left approval or denial to the discretion of local officials.

Article 22 requires preapproval for large-scale religious activities. Groups must apply for approval at least thirty days before an event is to be held, and the provincial RAB has fifteen days to approve or deny the application. The regulations do not indicate what activities qualify as “large-scale,” but they do specify that the activity would involve a group spanning more than one province and would require capacity beyond that of a normal site for religious activities. The regulations are a positive step by codifying the application process, imposing time limits on decision making, and allowing at least the theoretical possibility of large-scale religious activities.

Chapter V (articles 30–37) regulates the ownership, registration, transfer, and operation of religious property. As with the provisions covering religious bodies, sites, and personnel, the government seeks to maintain supervision and control of all property possessed and


53. Article 10 allows religious bodies to send individuals abroad for religious studies and allows foreigners to study religion in China. This seems to be a recognition that institutes of religious education in China are not training enough religious leaders to meet the burgeoning demand. Mickey Spiegel, Control and Containment in the Reform Era, in GOD AND CAESAR IN CHINA, supra note 8, at 40, 48.

54. Of course, if the religious group does not have a national or provincial religious body, it would not be able to establish an institute for religious education.

used by religious groups. Article 31 requires religious bodies to register land and buildings with the real estate department and land administration department. The local land administration department must solicit the views of the local RAB, which would seem to reflect sensitivity to religious interests in making land use decisions.

Article 33 provides for consultation with religious groups and the local RAB before demolishing religious sites to make way for city planning or construction projects. The regulations also acknowledge for the first time the government’s obligation to pay compensation for expropriated land at the “appraised market price.”

Article 37 details the procedures to be taken with regard to property if the registration for a religious body or religious site is terminated. The property is to be liquidated and then used for “undertakings that are commensurate with the purpose” of the religious site or body. The regulations do not, however, define “undertakings” or “commensurate,” explain the process of liquidation, or describe how to liquidate items that are unique or difficult to sell. The regulations do imply that property cannot be


57. The regulations do not, however, require the land administration department’s decision to actually take into account the RAB’s views when making the final decision.

58. This is a fortunate far cry from the Cultural Revolution (1966–1976), when thousands of temples, monasteries, churches, shrines, and mosques were destroyed by the Red Guards as “backward” and part of the Four Olds (old ideas, old culture, old customs, and old habits). See DONALD E. MACINNIS, RELIGION IN CHINA TODAY: POLICY AND PRACTICE (1989). The regulations do not describe, however, what occurs if the religious body does not agree with the demolition.

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taken by government and used for other purposes, thus deterring government officials from taking property for other uses.60

Article 41 lists six categories of violations of the regulations and three degrees of severity: not serious, “relatively serious,” and “serious.” This provision is a change from prior regulations by giving degrees of seriousness rather than a blanket penalty for all violations.61

The new regulations also indicate that some religious groups need only “report” or “report to be recorded,” rather than asking for formal permission before acting.62 Other actions require registration or a formal application for approval.63 While these differences may be more semantical than practical, they reflect a nuance not seen in prior regulations.

2. Administrative and legal recourse to citizens whose religious rights have been violated

China’s laws governing administrative procedure are still developing, and the new regulations reflect some of these developments. The Administrative Litigation Law (1990) gave citizens the right to appeal certain administrative decisions.64 The

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60. See also Land Law of the People’s Republic of China arts. 23, 27–31, 43–53; Larson, supra note 56.
61. Past regulations often gave a wide range of fines but left application to RAB cadres. See, e.g., Beijing Regulations, supra note 39, at art. 47 (stating that those holding unauthorized religious activities “shall be fined RMB 500–5,000”), art. 48 (explaining that those establishing unauthorized religious sites “shall be fined RMB 3,000–30,000”); Shanghai Regulations, supra note 39, at art. 55 (“[O]rganizers of the illegal religious activities may be fined [RMB] 1,000–50,000”).
62. Events that need to be “reported” (baogao) include: serious incidents at sites of religious activities (art. 23); and revenue, expenditures, receipts, and use of extraterritorial financial contributions (art. 36). Actions that need to be “reported to be recorded” (bei an) include: religious personnel certified by religious organizations (art. 27); the composition of management organization of sites of religious activities (art. 17); and assumption of and departure from leading posts of these sites (art. 28). I am grateful to Dr. James Tong, Professor of Political Science at UCLA, for making these insights.
63. “Registration” (deng ji) is required for the following: establishment, alteration, and termination of religious organizations (art. 6); and ownership and management of religious property (art. 27). An “application for approval” (shenqing pizhun) is required for establishment of institutes of religious education (art. 8); establishment, construction, and renovation of sites of religious activities (art. 22); and organization of large-scale religious activities (art. 22).
Administrative Punishment Law (1996) clarified the types of administrative penalties that could be enacted against individuals and groups. The Administrative Licensing Law (2004) provided time limits and clarified appellate procedures. Although China’s administrative law still lacks some of the procedural and due process protections found in other countries’ administrative procedure laws, the right to appeal administrative decisions—a right provided under the new regulations—is a significant right.

Article 46 gives potentially the broadest protections for aggrieved religious groups and individuals: the right of administrative reconsideration and appeal. The provisions are not, however, clear on the precise process to be followed or the standards for review. The aggrieved citizen or group must first apply for “administrative reconsideration,” implying that the administrative body must review its own decision. If an individual bureaucrat made the decision, it is unclear who undertakes the review—the original bureaucrat, an internal review board, the head of the agency, or the equivalent agency at a higher level (i.e., provincial instead of local, or national instead of provincial). The regulations also do not provide for a standard of review or deference: de novo review, reasonableness, etc. Regardless of these uncertainties, Article 46 clearly emphasizes the right of at least two appeals for a religious group or individual dissatisfied with an administrative decision.

Article 5 also requires governments at all levels to “coordinate the administration of religious affairs” and to “solicit the views” of religious bodies, sites, and individuals. Though not entirely clear, the plain language of the regulations would seem to give religious entities and individuals the right to be heard. However, the procedure for hearing, processing, and including these views is not discussed in the regulations, and due process in China is an evolving and fluid concept.

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67. The Chinese text could also be translated to read that governments must “listen to the ideas” of religious entities.

68. See Lin, supra note 25, at 205.
Other provisions protect religious believers from abuses by government officials and private citizens. Article 38 punishes RAB officials who abuse power, neglect duty, or otherwise commit crimes while administering religious affairs. 69 This provision should make it easier for the government to prosecute widespread corruption and incompetence 70 and also reflects, at least in theory, a voluntary check on the government’s power over religious administration. Article 39 assigns criminal and civil liability to anyone who “interferes” with religious activities. 71 It is unclear if the regulations establish a new crime of infringement of religious rights or if the provisions simply affirm the principle that both criminal and civil liability is possible when one interferes with religious activities.

3. Additional legal protections in a few areas

In addition to the administrative protections described above, the new regulations contain several other legal protections not contained in previous regulations. While these provisions do not individually guarantee religious freedom, they at the least indicate a desire by the government to give religious bodies and individuals slightly more latitude. For example, Article 35 permits religious bodies in China to receive financial support from foreign individuals and organizations—a possibility not acknowledged in previous religious regulations. Similarly, Article 10 allows foreign students to study at institutes of religious education. While both provisions are subject to unspecified “relevant provisions,” the theoretical possibility is a step forward toward religious freedom.

Furthermore, Article 21 permits sites of religious activities to compile and publish religious publications for internal use. Article 34

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70. See, e.g., CECC ANNUAL REPORT 2004, supra note 6, at 6–12 (detailing “rampant” corruption among government and Party officials); Jason Kindopp, Policy Dilemmas in Church-State Relations, in GOD AND CAESAR IN CHINA, supra note 8, at 6–7 (“Official corruption is endemic, consuming a staggering 13 to 17 percent of gross domestic product.”).

71. The Chinese text does not specifically say “anyone,” leaving it in the passive voice without a comparable English translation (an exact translation would be more like “Those who [or that which] compel[s] citizens to believe”). The fact that the national RAB chose to translate the provision as “anyone” may indicate the drafters’ intent. It is also unclear if an RAB official could be liable under both Article 38 and 39.
allows religious bodies and sites to “operate public undertakings.” Finally, Article 24 allows, with proper preapproval, construction of outdoor religious statues.

4. Vagueness and omissions in some areas could lead to flexibility

Vagueness and omissions are normally frowned upon in law, but in administration of the new religious regulations, this lack of specificity could lead to flexibility. The new regulations are replete with examples of how vagueness and omissions in the articles could allow religions to benefit from more religious freedom. Many prior regulations explicitly identified the five officially recognized religions of Buddhism, Catholicism, Daoism, Islam, and Protestantism. However, the new regulations do not mention any religions by name, which may indicate by negative implication that other religions may now be eligible for official recognition.

Several prior regulations prohibited individuals under eighteen years old from being “forced” to join a religion, which in practice generally forbade parents from teaching, converting, or otherwise passing their faith to their children. The new regulations are silent on the issue, leaving open the possibility that such practices might now be permitted.

Many prior regulations contained extensive provisions regulating contacts with foreign religious groups. The new regulations reiterate the general prohibition on being “subject to any foreign domination” but lack the intricate approval procedures for foreign contacts, visitors, and donations contained in prior regulations.

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72. This is understood to mean social service programs, though this is not defined.
73. See, e.g., Shanghai Regulations, supra note 39, at art. 3.
74. Religions that may now qualify for recognition include Judaism, various Orthodox churches, Hinduism, Seventh-Day Adventists, Jehovah’s Witnesses, and The Church of Jesus Christ of Latter-day Saints. The Orthodox Church planned to submit an application for recognition after the new regulations take effect on March 1, 2005 to test the government’s willingness to expand its list of recognized religions. Nailene Chou Wiest, Church Prayers May Be Answered: Beijing’s Orthodox Christians Hope They Have Marked Their Last Christmas at Home, S. CHINA MORNING POST, Jan. 8, 2005, at 6.
75. See Document 19, supra note 10, § 4 (“It will be absolutely forbidden to force anyone, particularly people under eighteen years of age, to become a member of a church, to become a Buddhist monk or nun, or to go to temples or monasteries to study Buddhist scripture.”).
76. See, e.g., Beijing Regulations, supra note 39, at arts. 37–42; Shanghai Regulations, supra note 39, at arts. 47–53.
77. Regulations, supra note 3, at art. 4.
The new regulations also do not contain the standard requirement contained in past regulations for groups to have a fixed worship location, a permanent leader, and a restricted geographic area, known as the “three designates” policy. Again, it is unclear whether this omission permits religious leaders to spread their teachings beyond their immediate geographic area, or if religious personnel need not be full-time professionals. But the option is open because the regulations do not expressly state the “three designates” requirement.

Finally, the very title of the regulations indicates a slight shift in thinking. Most prior national, provincial, and local regulations included “management” or “administration” in their titles. The title of the new regulations was simply “Regulations on Religious Affairs.”

5. Comprehensiveness and uniformity

One of the greatest practical effects of the new regulations is to replace the patchwork of prior national, provincial, and local regulations. This dizzying array of more than a hundred regulations at various levels subjected religious groups and individuals to differing, and sometimes conflicting, rights and obligations. While the legal status of these old regulations is uncertain after the passage of the new regulations, religious officials (and regulators) undoubtedly welcome any attempt at consistency and uniformity.

C. Shortcomings in the New Regulations

1. Continuing strong state control over religion

Despite some provisions in the new regulations that improve religious freedom, the regulations maintain the same essential
hierarchy of state over religion. In this regard, the new regulations fall short of providing freedom of religious belief and practice. The stated purposes and intent of the regulations as evidenced by the registration requirements for religious bodies and sites, the supervision of religious personnel and practice, and the discrimination against religious groups indicate that the new regulations intend to continue strong state control over religion.

a. Purposes and intent. Article 1 expresses the purposes behind the promulgation of the regulations. While previous national and regional regulations have contained various formulations of the purposes behind supervision of religious affairs, the new regulations include novel reasons for the regulations—reasons such as “maintaining harmony among and between religions” and “preserving social concord.” The regulations provide no guidance as to what “harmony” or “social concord” mean, or why those reasons justify regulation of religion.

Article 2 reiterates the principles of freedom of religious belief enshrined in the constitution, including freedom from compulsion to believe or not to believe in religion. Despite these textual ideals, however, the meaning of “forcing” someone to believe or not to believe depends on the interpretation and implementation of the article. For example, while proselytizing groups have been prosecuted under prior regulations for “forcing” or “compelling” individuals to believe, dogma hailing the virtues of atheism, including mandatory classes in public schools and articles in state-run media, are not considered “force.” Furthermore, Party members are required to declare their atheism. Thus, in a one-party state, anyone wishing to serve in government must at least be outwardly atheistic, which necessarily discriminates against religious believers and violates the text of the new regulations and the constitution.

Article 3 reveals the continuing problem of defining “normal” religious activity that runs through the recent history of religious

82. See, e.g., Decree No. 144, supra note 51; Decree No. 145, supra note 51; Beijing Regulations, supra note 39, at art. 1 (“This Statute is established . . . to protect people’s freedom of religious belief and administrate religious affairs according to the law.”); Shanghai Regulations, supra note 39, at art. 1 (“The Regulations are formulated . . . to protect people’s religious freedom, administrate religious affairs according to law, safeguard the unification of our country, the national solidarity, the social stability, and promote the socialist modernization drive.”).

83. XIANFA art. 36 (1982).
administration in China. If the new regulations (and the constitution) protect only “normal” religious activity, then the definition of “normal” is critical. Past practice indicates that government officials define “normal” on an ad-hoc basis.84 Article 3 also invokes the broad-ranging yet undefined “national interest” and “social or public interests” exception to prohibit any religious activity or expression.

b. Registration requirements for religious bodies and sites. The registration requirements for religious bodies and sites gives additional clarity compared to past regulations, but the new regulations retain the flavor of strong state supervision and desire to closely monitor and control religious organizations. Article 6 reiterates previous requirements that all religious bodies register with the government and comply with the “Regulations on Registration Administration of Associations.”85 Official registration in the past required approval of doctrine and leadership by one of the five “patriotic” religious associations; it is unclear if this requirement will continue. Religious groups must have a professional clergy, which essentially precludes religions with lay clergy, and must commit to teach their memberships to “uphold the leadership of the Chinese Communist Party, uphold socialism, [and] be patriotic.”86 Prior regulations have required groups to have “a fixed location for worship, a permanent responsible leader, and activities restricted to a given geographic area.”87 Naturally, this requirement proves difficult for groups that use lay leadership or are doctrinally required to evangelize or proselytize.88 It is unclear if the new regulations continue this requirement.

84. One scholar notes the rather circular nature of “normalcy” to the government: “In the jargon used most frequently, permitted activities are called ‘normal’ and those of which the Party disapproves may be called ‘illegal.’” ALAN HUNTER & KIM-KWONG CHAN, PROTESTANTISM IN CONTEMPORARY CHINA 50 (Duncan Forrester et al. eds., 1993).
85. See HUMAN RIGHTS WATCH, DANGEROUS MEDITATION: CHINA’S CAMPAIGN AGAINST FALUNGONG 103–04 (2002). The regulations might also be translated as “Regulations on Registration and Administration of Social Organizations.” Id.
86. Mickey Spiegel, Control and Containment in the Reform Era, in GOD AND CAESAR IN CHINA, supra note 8, at 40, 47.
87. Id. at 48. This is known as the “three designates” policy. Id.
Despite the registration requirements, many groups do not register with the government for still other reasons. For example, to apply for registration, a group must show that it has a requisite number of members to apply; if the government denies the application, however, the government may persecute the group for continuing to operate without registration. And since the membership list must be submitted to the governmental authorities during the registration process, leaders and lay members run the risk of increased harassment or surveillance. Furthermore, the government can still refuse registration to any group it chooses for whatever reason or no reason at all. Clearer provisions for accepting and rejecting applications for registration would give clarity and predictability.

Chapter III (articles 12–26) regulates sites for religious activities. Chinese officials are concerned about where, when, and how groups of individuals meet, especially groups of religious believers. All sites for religious activities, like all religious groups, must be registered with the government, and Articles 13 through 16 describe the application process. Groups have similar concerns in registering a site as they do with registering the group itself. If a group applies to build a site for religious activities or adapt an existing site and the government denies the application, local officials will likely monitor the site to ensure the group does not inappropriately use the site.

Furthermore, these articles have numerous ambiguities in the terminology. Article 14(2) imposes a frequency requirement on collective use of sites for religious activities but does not define “frequently” or “collective”—and never defines “religious activities.”

89. Id.
90. Decree No. 145, supra note 51, also covered sites of religious activities, but those regulations were specifically repealed in Article 48 of the new regulations. It is unclear if additional regulations governing sites of religious activities issued in 1996 (“Method for the Annual Inspection of Places of Religious Activity”) were also repealed.
91. Tens of thousands of Falungong protesters gathering outside government offices in Beijing in April 1999 raised alarm bells in the government as a threat to the Party’s organizational monopoly. While the government keeps statistics on “mass group incidents,” these numbers are not broken down by impetus (labor strikes, ethnic unrest, student demonstrations, corruption, etc.). Murray Scot Tanner, *China Rethinks Unrest*, 27 WASH. Q., 137, 137 (2004), available at http://www.twq.com/04summer/docs/04summer_tanner.pdf.
92. See supra Part III.B.2.
Likewise, the provisions do not define what constitutes “necessary funds” or what it means to be “rationally located without interfering with the normal production and livelihood of the neighboring units and residents.” Article 16 requires sites of religious activity to submit “formalities for alteration” whenever a site “changes any item registered,” but the regulation leaves unclear exactly what this requirement means.

c. Continued governmental supervision of religious personnel, doctrine, and practice. Chinese officials have long maintained close oversight of religious personnel, fearing that charismatic leaders will organize large-scale movements to challenge the Party and the state. Past regulations have stressed the need for patriotic religious associations to approve all religious leaders and to ensure they are closely supervised geographically and doctrinally. Similarly, past regulations have often ensured that religious doctrine and practice stay within government-set parameters. The new regulations do nothing to cure this obvious defect.

Article 27 requires patriotic religious associations to “determine qualified” religious leaders and register them with the local government. These requirements prohibit any form of itinerant preaching as well as ensure that local government officials can monitor religious leaders. Article 27 also specifies that Buddhist patriotic religious associations are to select Buddhist lamas; the national RAB must likewise preapprove Catholic bishops. Article 28 requires the relevant patriotic religious association to approve the change in leadership of a given religious body and report the change to the local government. These provisions have ramifications for

93. Regulations, supra note 3, at art. 14(4)–(5). See also id. at art. 9(6), which imposes a similar requirement on institutes for religious education. Again, what is “rationally located” is left to bureaucratic discretion and may be subject to “not in my backyard” lobbying.

94. The phrase could also be translated “change the registered content.” This could refer to the provisions in Article 14. It is not clear when a registered site would need to file an alteration notice.

95. Chinese perceptions of religion’s role in the fall of communism in Eastern Europe led to fears of “peaceful evolution,” where communist rule in China would be undermined by a host of economic and social pressures from abroad. CHAN & CARLSON, supra note 8, at 19.

96. See, e.g., Document 19, supra note 10; Decree 144, supra note 51, at art. 10; Regulations on Religious Affairs of the Province of Guangdong art. 25, in Beijing Regulations, supra note 39, at 63.

97. Both requirements are overt reactions to past events: the disputed reincarnation of the Panchen Lama in Buddhism in 1995 and a secret gathering of Catholic bishops in 1989.
religions that believe their leaders should be selected by internal procedures rather than by quasi-governmental agencies.

The text of Article 12 seems innocuous enough, yet it requires patriotic religious associations to vet all religious leaders and religious doctrine.\(^{98}\) While it seems logical that “the process of such activities shall be in compliance with religious doctrines and canons,” this provision requires government approval for all doctrines and practices and government preapproval for any other activities, whatever their purpose.

d. Continued discrimination against and among religious groups.
The new regulations demonstrate subtle discrimination against religious groups vis-à-vis nonreligious groups and among religious groups themselves.

Article 15 requires groups to file a second application for a site after construction is completed. While applications for construction permits are common, nonreligious groups need not make separate pre- and post-construction applications and await government approval for specific uses.\(^{99}\) Thus, the regulations discriminate between religious and nonreligious construction, despite a specific prohibition on such discrimination in the constitution.\(^{100}\)

Article 43 penalizes groups that establish a site for religious activities without proper approval by banning the site and having the local construction department tear it down. This provision discriminates against religious groups by subjecting them to stiffer penalties than those applied against nonreligious groups. The Construction Law specifies that a group who starts construction without a permit “shall be ordered to set it right”; unqualified builders must stop construction and “may be fined.”\(^{101}\) For nonreligious groups that host religious activities or accept religious donations, the RAB will order the group to cease such activities, confiscate the “illegal gains,” and fine the group one to three times the gain.

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98. See, e.g., Mickey Spiegel, Control and Containment in the Reform Era, in GOD AND CAESAR IN CHINA, supra note 8, at 40, 49.


100. The regulations also do not address converting an existing structure for religious use. This activity would likely need to meet the same requirements listed in Article 14.

101. Construction Law, supra note 99, art. 64.
Article 11 requires Muslims who wish to make the hajj, the pilgrimage to Mecca, to go through the Chinese Islamic Association, which necessarily precludes Muslims from making the pilgrimage on their own accord. Article 43 specifies the penalties for anyone organizing their own hajj without official approval: any gain is confiscated, and a fine of one to three times the gain is levied against those organizing the unsanctioned hajj. The restriction was justified as necessary for “prevent[ing] possible accidents.”

Article 27, which requires special approval and reporting provisions for Catholic bishops and Tibetan Buddhist lamas, reflects the government’s special concern for these two categories of religious leaders. By singling these two groups out for special (i.e., more restrictive) treatment, the regulations discriminate among religions in violation of Article 36 of the constitution.

2. Nonsanctioned groups may be worse off

Of the more than 200 million religious adherents in China, only about 140 million belong to registered religious groups. The rest may be worse off under the new regulations. Outside of the five recognized religions, millions belong to Protestant “house” churches, the underground Catholic Church, and longstanding foreign religions formally unrecognized in China. Millions of

102. China boasts that it has partially subsidized some 50,000 Muslims in making the hajj over the previous several decades. Ye Xiaowen, Religions: Retrospect and Prospect, Address at the Chung Chi College of Chinese, University of Hong Kong (Feb. 19, 2001), available at http://www.china.org.cn/english/features/45466.htm. But as there are some 20 million Muslims in China currently, this number is quite small.

103. The regulations do not specifically say that those simply traveling with an unsanctioned group will be penalized, though this is not implausible.

104. Hajj Shamsuddin Mahmud, vice president of the China Islamic Association, said, “It’s really necessary to order all pilgrimage activities organized by the China Muslim Association. You know, only in this way can we prevent possible accidents.” Religious Leaders Hail Landmark Statute, supra note 29.

105. See supra note 97 and accompanying text.

106. Additionally, of China’s approximately 12 million Catholics, about 4 million are registered, while about 8 million are unregistered. CECC ANNUAL REPORT 2004, supra note 6, at 37, 128 n.326.

107. GOD AND CAESAR IN CHINA, supra note 8. These unregistered religions include Hinduism, Judaism, various Orthodox churches, Seventh-Day Adventists, Jehovah’s Witnesses, and The Church of Jesus Christ of Latter-day Saints. Id.
others ascribe to folk religious practices not neatly categorized into traditional Western notions of religion.\textsuperscript{108} 

Prior to the new regulations, these nonsanctioned groups could exist in a no-man’s land, operating with tacit consent of local officials. The new regulations eliminate many of these gray areas, making it harder for RAB officials to accommodate groups—particularly smaller ones—that do not meet all of the criteria for registration. National, provincial, and local governments will have additional legal tools in their arsenals to crack down on groups and individuals in violation of the new regulations.

Chapter II (articles 6–11) of the new regulations covers the administration of religious bodies, although the term is not defined in the regulations. Yet, it is clear that the term does not cover religious organizations that are not sanctioned by the government, including unofficial churches.\textsuperscript{109} Consequently, those groups not officially registered as “religious bodies” could be subject to persecution, repression, and periodic crackdown.\textsuperscript{110}

Religious groups seeking registration have little incentive to be the first group to register. If the government denies the registration, the group has already identified its membership and its leaders. Further, most religious groups know that dealing with national and local RABs is a repetitive process rather than a one-time interaction. Thus, even though the regulations provide for administrative reconsideration and appeal, groups may have a strong disincentive to challenge administrative decisions—if a bureaucrat’s (or agency’s) decision is challenged through reconsideration or judicial lawsuit, the bureaucrat/agency may be less likely to later exercise discretion in favor of that group.


\textsuperscript{109} Presumably, any belief system outside the five recognized religions, including Hinduism, Judaism, Orthodoxy, or other Christian organizations not part of the Catholic or Protestant patriotic religious associations, are also not covered. The national RAB may be in the process of establishing a department to oversee Orthodox affairs. See Wiest, \textit{supra} note 74, at 6.

\textsuperscript{110} The government does not crackdown on every unregistered group, and many groups have come to unofficial agreements with local RABs and public security bureaus.
3. Vagueness and lack of definitions and standards will likely have negative repercussions

The regulations do not define many key terms. “Religion,” “religious belief,” and “religious activities” are never defined. A broad definition of religion would have a number of advantages, but the lack of any definition whatsoever leaves the government to define, sometimes on a case-by-case basis, what is and what is not a religion.111 The corresponding advantage to leaving “religion” undefined is that the term may be informally expanded to include more than the five recognized religions. Even if “religious activities” is defined, the constitution protects only “normal” religious activities, and the term “normal” is not defined in the constitution, in other regulations, or in the new regulations. What is “normal” thus becomes a matter of bureaucratic discretion.112

Other terms and standards like “foreign domination,” “religious extremism,” “frequently,” “endangering public security,” “impairs social stability,” and “abuse of power” are never defined. Without an independent judiciary to fill in the gaps or check abuses, administrative agencies are left with nearly unfettered discretion to use law to oppress or crackdown on religious groups and individuals. While “abuse of power” could be interpreted broadly to prevent or punish official malfeasance, it is difficult to see how “foreign domination” or “endangering public security” could be interpreted positively for religious groups or individuals.

Article 7 permits religious bodies to publish religious reference publications if they comply with the “Regulations on Publications Administration”113 and the publications do not contain any


112. One scholar noted the rather circular nature of “normalcy” to the government: “In the jargon used most frequently, permitted activities are called ‘normal’ and those of which the Party disapproves may be called ‘illegal.’” HUNTER & CHAN, supra note 84, at 50.

prohibited items. Article 7 is a general requirement that religious materials, including Bibles, Korans, and other sacred texts, be published only by state-sanctioned organizations.\textsuperscript{114}

Apart from the broad concept of government censorship generally and censorship of religious materials specifically, there are a number of particularly troublesome provisions in Article 7. One provision prohibits publication of materials that “jeopardize the harmonious coexistence between religious and nonreligious citizens” or “jeopardize the harmony between different religions or within a religion.” This provision could be used to ban any publication from a religion claiming to be the only true faith on grounds that such assertions “jeopardize the harmony” among citizens. Another troublesome provision bans publications that “propagate religious extremism.” Like many terms in the new regulations, this term is never defined or specified, thus leaving bureaucrats to decide when a doctrine or publication qualifies as “religious extremism.”\textsuperscript{115}

Furthermore, Article 7 prohibits publications that “contravene the principle of independence and self-governance in respect of religions.” While the principle of independence and self-governance—meaning free from foreign influences—has been part of religious administration for many years in various forms,\textsuperscript{116} the terms are left for bureaucratic interpretation in the new regulations. Article 7 seems to be an important provision to the drafters of the regulations, as they specified it as a particular provision for “administrative penalties” or criminal liability if violated.\textsuperscript{117}

Article 23 prohibits any activity at a religious site that breaks “religious taboos,” “hurts religious feelings of religious citizens,” “disrupts the unity of all nationalities,” or “impairs social stability.” The regulations do not define any of these terms, leaving enforcement to bureaucratic discretion. Many religions have teachings about their own correctness and the incorrectness of other

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115. The term “religious extremism” is most often used in connection with adherents of Islam. Security forces told foreign journalists that a young Muslim poet was guilty of “spiritual terrorism” after they arrested him for reciting a verse during a public performance. Robert Marquand, \textit{Pressure To Conform in West China}, \textit{CHRISTIAN SCI. MONITOR}, Sept. 29, 2003, at 6.

116. \textit{See, e.g.}, Document 6, \textit{supra} note 36; Document 19, \textit{supra} note 10; Beijing Regulations, \textit{supra} note 39, at art. 37; Shanghai Regulations, \textit{supra} note 39, at 47.

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religions—such teachings could likely hurt religious feelings\textsuperscript{118} or break a religious taboo and thus be subject to sanction. While the regulations are admirably concerned about the well-being of religious citizens and the avoidance of inter- and intra-religious conflict, heavy-handed restrictions on religious doctrine enforced through vague provisions are not the best way to accomplish it.

Similarly, in Article 38, “abuse of power” and “neglect of duty” are not defined, and no provision is made for penalizing poor bureaucratic decision-making. Further, while bureaucrats may be punished administratively or criminally for misbehavior, such punishment does not give redress to the aggrieved group. The provisions (counched in the ubiquitous passive voice) do not indicate the standard of determining when bureaucrats have neglected their duty or abused their power, the possibility of a religious group or individual filing a complaint against an allegedly abusive official, or the opportunity for nongovernmental groups to obtain proof of such actions.

Article 39 does not specify the meaning of “violation of public security administration” or “administrative penalty for public security.” Articles 38 and 39 use “administrative sanction,” “administrative penalty,” and “administrative penalty for public security” almost interchangeably. The regulations do not specify what these penalties are. If they are monetary, the end destination of the penalty money is local government coffers, which may give local officials added incentive to crack down on religious groups and activities and impose stiff penalties.

4. Penalties are harsh and arbitrary

Chapter VI (articles 38–46), entitled “Legal Liability,” is the punitive section of the new regulations and is more accurately entitled “Penalties.” The administrative and criminal penalties and punishments are somewhat more codified than in previous regulations. For example, the new regulations provide for the first time a semblance of an administrative remedy for those whose rights have been violated. Nevertheless, the protections still heavily favor the state. For example the regulations do not describe the nature of the penalty (monetary, punitive, or otherwise), the group responsible

\textsuperscript{118} Another translation could be “offend the religious sensibilities.”
for administering the penalty, or the standards for administering the penalty. Additionally, none of the remedies or penalties listed has a statute of limitations, and the regulations do not indicate if the remedies or penalties can be applied retroactively.

Most troubling in Article 40 is the fact that for situations that endanger public security or seriously disrupt public order, “the matter shall be handled on the spot.” This means that public security officers, rather than RAB officials, will likely be the ones making the determination of a violation and administering punishment. Unlike the decisions made by the RAB, the regulations do not provide for or describe a process by which religious believers could obtain recourse when a public security officer unjustly and unfairly carries out this duty. Furthermore, the government will cancel a religious group’s registration.

Article 41 lists six categories of violations and three degrees of severity: “not serious,” “relatively serious,” and “serious.” Article 41 does not define these categories beyond listing them, which apparently leaves the definition to bureaucratic discretion. Not serious violations receive “corrections” from the RAB, relatively serious violations require replacement of the responsible person, and serious violations require cancellation of the religious group’s registration. Thus, the regulations still leave an immense amount of discretion in the hands of the RAB and public security officials.

Article 45 requires the RAB to “make a proposal” to the respective patriotic religious association to disqualify religious personnel who have engaged in illegal conduct. This merely shifts the discretion from the RAB to the religious association in disqualifying personnel, while still keeping the decision firmly within government control. In reality, such a “proposal” by the RAB would almost certainly be accepted, else a religious association or group could be prosecuted under Article 41 for “refusing to accept supervision and administration.”

5. Legal status of new and other regulations

Article 48 repeals the “Regulations on Administration of Sites for Religious Activities” (also known as Decree No. 145), which was essentially a less sophisticated version of Chapter III of the new regulations. The regulations do not detail the legal status of other

119. Decree No. 145, supra note 51.
national, provincial, and local regulations governing religious affairs, leaving religious groups and individuals uncertain as to which regulations still apply after March 1, 2005. It is unclear if the new national regulations “cover the field” and preempt regulation by provincial and local governments, or if the hundreds of regulations on religious affairs promulgated by provincial and municipal governments are still in force.\textsuperscript{120} The express repeal of Decree No. 145 and failure to repeal others implies that at least some other regulations still apply, but it is unclear which regulations are repealed at which level and to what extent. If provisions in another set of regulations conflict with the new regulations, the new regulations would presumably trump, assuming a “last-in-time” rule.

Some news reports issued prior to the issuance of the new regulations cited government sources indicating that the new regulations would “replace a patchwork of local administrative decrees.”\textsuperscript{121} Even if the new regulations legally preempt part or all of local regulations, administration over religion will likely continue as before as local officials may prefer their own methods of oversight and enforcement to nationally imposed standards. Religious administration is no exception to the challenge of the central government to effectuate change at local levels.\textsuperscript{122} Consequently, religious administration will probably be a combination of national regulations, local practice, and bureaucratic discretion.

The regulations themselves do not indicate if they are intended as a floor or a ceiling.\textsuperscript{123} In other words, it is unclear if a provincial or local government could promulgate regulations giving religious groups and individuals greater protections, or if such a subnational

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\textsuperscript{120} Many of these provincial and local regulations can be found on the Religion and Law Research Consortium Web site, http://www.religlaw.org. English translations of some of the regulations are also available on the site.

\textsuperscript{121} Wiest, supra note 47, at 7. The same report indicated that the title would be “Regulation Governing the Religious Activities of Chinese Nationals Within China,” so it is unclear how accurate the source is. \textit{Id.}

\textsuperscript{122} The decentralization has happened gradually over time as a result of reforms. The central government’s struggle to ensure standardized application of laws and policies in far-flung regions has been well documented. See, e.g., Gregory Fennell, Comment, \textit{The People’s Republic of China’s Ability to Comply with the Standards Mandated by the World Trade Organization}, 21 N.Y.L. SCH. J. INT’L & COMP. L. 613, 613 (2002).

\textsuperscript{123} One scholar well-acquainted with religious administration in China believes they are a ceiling. E-mail from Revd. Dr. Kim-Kwong Chan, Executive Secretary, Hong Kong Christian Council, to the author (Jan. 23, 2005) (on file with the author).
government could grant fewer protections than the new regulations while remaining within the constitutional requirements.

6. Implementation: legislative, administrative, and judicial interpretation and procedure

According to Chinese law, the National People’s Congress interprets the meaning and intent of statutes while interpretation of administrative regulations is left to the State Council and its subsidiaries. The regulations bear the stamp of the State Council, but national RAB officials undoubtedly crafted the majority of the regulations. At the national level, RAB cadres are generally proficient, but at provincial and especially local levels, the quality of the cadres and their commitment to “rule of law” rather than “rule by law” is somewhat mixed. Unfortunately, most of the crucial provisions of the regulations on registration of groups and sites, applications for activities and publications, and approval of personnel are conducted at the local rather than national level.

China’s judiciary is also far from ideal, and the courts in China are not the refuge for individual rights that they are in many other places. China’s constitution has not yet been truly judicialized, meaning that a citizen whose constitutional rights have been violated cannot sue based solely on the constitutional provision. Until this is the case, citizens must rely on administrative reconsideration and appeals as provided in the new regulations.

7. Unanswered questions and what the regulations do not cover

The new regulations specify many procedures in detail but leave many questions unanswered. The regulations do not cover certain topics, leaving holes in the administrative framework. Absent additional guidance, what appears to be a broad protection of rights is in fact legally empty.


125. The fact that the English translation comes from the national RAB (formally called the State Administration for Religious Affairs) rather than the State Council provides additional support for this proposition.

The improved procedures in Articles 8 and 9 still fall short of true due process: if a religious body’s application is denied by either local or national RAB officials, the regulations do not provide for any judicial appeal.127 The requirements in Article 9 for establishing a religious institute are fairly specific but could be problematic, depending on the religion. Subpart three requires applicants to have the “necessary funds” and “stable financial sources” but does not specify how much funding is necessary or from where this funding should come.128 Article 9(5) requires full-time teachers and administrators for the institutes, which might prove problematic for small religions or religions who would normally use clergy as teachers and administrators.129

Article 5 seems to give the primary responsibility for administration of religious affairs to the RABs at each level of government.130 However, this article is replete with ambiguity. For example, after granting primary responsibility to the Religious Affairs Bureau, Article 5 requires “other departments” to administer “relevant affairs within the limits of their respective functions and duties.” The regulations do not specify what “relevant affairs” are, or what “other departments” would weigh in on a decision to register a religious body. The problem of primary jurisdiction arises, leaving unclear who “wins” if two government agencies at the same governmental level have differing viewpoints on how a situation should be handled. Previous regulations were equally unclear.131

Article 29 legally protects religious personnel in their religious activities but leaves unclear from whom or what the personnel are protected.132 It is unclear whether they are protected from

127. Note that the national RAB only takes up the application if the local RAB approves it. If the local RAB denies the application, there is no mandatory appeal to the national RAB.

128. Article 35 seems to permit funding from overseas, but other provisions put serious limits on the kind and quantity of overseas funding.

129. The requirement in Article 9(6) of “being rationally distributed” could also be translated as “rationally located” or “a reasonable layout,” referring to the physical location of the institute. See also Article 14(5), which requires sites for religious activity to be “rationally located.” Again, what is “rationally located” is left to bureaucratic discretion and may be subject to “not in my backyard” lobbying.

130. See supra notes 15–19 and accompanying text.

131. See, e.g., Beijing Regulations, supra note 39, at art. 7 (“Other relevant departments of the people’s government at different levels shall fulfill their respective duties to implement the Regulations.”).

132. The Chinese text is equally ambiguous, listing out the different activities and then using the passive clause “are protected by law” (or “receive legal protection”).
government interference or protected from criticism within their own religion. It is likewise unclear whether responsibilities of religious personnel not specifically mentioned in this provision are not protected by law. Finally, it is unclear whether a religious leader may bring suit against someone who infringes upon his or her right to conduct religious ceremonies.

Article 47 provides that religious exchanges between the mainland and Macau, Hong Kong, and Taiwan are to be undertaken according to the “laws, administrative regulations and the relevant provisions of the State,” but it does not specify what these laws, regulations, and provisions are. Relations with Hong Kong and Macau have long been a source of tension due to their close connection with foreign interests, and Taiwan has been a longstanding and deeply rooted foreign policy issue for the mainland government. The regulations do not appear to break any new legal ground in Taiwan relations and by negative implication assert that Hong Kong, Macau, and Taiwan are not governed by the new regulations.

While the regulations appear to cover the actions of religious groups and individuals and the RABs, they do not appear to cover the patriotic religious associations, which are governed by their own constitutions. Because the patriotic religious associations often make many of the day-to-day decisions of approving religious personnel, sanctioning activities, and generally supervising religions, the government could retain effective control over religious groups without formal regulation.

Finally, the regulations cover Chinese citizens but do not address noncitizens. Noncitizens in China are likely still covered by Decree 144, Regulations Governing the Religious Activities of Foreigners in China, which prohibits foreigners from doing the following: establishing sites of religious activities, religious organizations, or liaison offices; running religious institutions and schools within

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133. The territories of Hong Kong and Macau returned to Chinese sovereignty in 1997 and 1999. Both are Special Administrative Regions governed by their respective Basic Laws, which provide for broad local autonomy but mainland control over foreign affairs and defense. Mainland Chinese officials see Taiwan as a “renegade province” that will someday be incorporated into the People’s Republic of China. Many administrative regulations explicitly or implicitly exclude these three regions from jurisdiction.

134. See Regulations, supra note 3, at art. 2 (“Citizens enjoy freedom of religious belief . . . . Religious citizens and non-religious citizens shall respect each other and co-exist in harmony . . . .”).
China; or appointing religious personnel, recruiting believers, and undertaking evangelic activities.135

8. References to other laws

The regulations allude a number of times to “laws, regulations, and provisions of the state” as part of individual provisions. But specific laws are rarely referenced, and even when referenced, never cited in a manner conducive to easy location. This practice is fairly typical of Chinese regulations and has the advantage of flexibility in allowing the government to pass other laws and regulations without updating several others at the same time. But the practice also forces religious groups and individuals to become experts in researching, interpreting, and complying with any law possibly related to religious administration. While large religious groups could likely afford legal counsel, the regulations place a large burden on smaller groups or groups of less ample means, not to mention religious individuals unassociated with formal religious movements.

IV. A LOOK TOWARD THE FUTURE

Chinese citizens will not be significantly freer to exercise their religious convictions after the regulations take effect. Law is still used to constrain religion within government-set parameters rather than to protect freedom of religious belief. The regulations make small steps forward by adopting some procedural protections toward the rule of law, but it is uncertain how many of these protections will be observed in practice.

Indeed, the strength or weakness of the new regulations hinges on implementation and interpretation, particularly the forthcoming detailed “decree on implementation.” If national, provincial, and local RAB officials interpret the provisions liberally and with an eye toward protecting religious rights, the regulations may help to push forward religious freedom. But if local officials interpret the rights in the regulations narrowly and the restrictions broadly and continue to alternate between conciliation and repression, the regulations will do little to protect religious freedom in practice.

Eric R. Carlson

135. See supra note 51 and accompanying text.
APPENDIX: REGULATIONS ON RELIGIOUS AFFAIRS

Decree of the State Council of the People’s Republic of China No. 426

Regulations on Religious Affairs, adopted at the 57th Executive Meeting of the State Council on July 7, 2004, are hereby promulgated and shall become effective as of March 1, 2005.

Premier Wen Jiabao
November 30, 2004

Regulations on Religious Affairs
Chapter I. General Provisions

Article 1. These Regulations are formulated in accordance with the Constitution and relevant laws for the purposes of ensuring citizens’ freedom of religious belief, maintaining harmony among and between religions, preserving social concord and regulating the administration of religious affairs.

Article 2. Citizens enjoy freedom of religious belief.

No organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in any religion (hereinafter referred to as religious citizens) or citizens who do not believe in any religion (hereinafter referred to as non-religious citizens).

Religious citizens and non-religious citizens shall respect each other and co-exist in harmony, and so shall citizens who believe in different religions.

136. This translation is provided by the State Administration for Religious Affairs of the People’s Republic of China and can be found online at http://www.amitynewservice.org/page.php?page=1289. Alternative translations are available in Tripod no. 136 (Spring 2005) (Peter Barry trans.) and at http://www.orthodox.cn/contemporary/zjshwtli_en.htm (Peter Erickson trans.).
Article 3. The State, in accordance with the law, protects normal religious activities, and safeguards the lawful rights and interests of religious bodies, sites for religious activities and religious citizens.

Religious bodies, sites for religious activities and religious citizens shall abide by the Constitution, laws, regulations and rules, and safeguard unification of the country, unity of all nationalities and stability of society.

No organization or individual may make use of religion to engage in activities that disrupt public order, impair health of citizens or interfere with the educational system of the State, or in other activities that harm State or public interests, or citizens’ lawful rights and interests.

Article 4. All religions shall adhere to the principle of independence and self-governance. Religious bodies, sites for religious activities and religious affairs are not subject to any foreign domination.

Religious bodies, sites for religious activities and religious personnel may develop external exchange on the basis of friendship and equality; all other organizations or individuals shall not accept any religious conditions in external cooperation or exchange in economic, cultural or other fields.

Article 5. The religious affairs department of the people’s government at or above the county level shall, in accordance with the law, exercise administration of religious affairs that involve State or public interests, and the other departments of the people’s government at or above the county level shall, in accordance with the law, be responsible for the administration of relevant affairs within the limits of their respective functions and duties.

People’s governments at various levels shall solicit the views of religious bodies, sites for religious activities and religious citizens, and coordinate the administration of religious affairs.

Chapter II. Religious Bodies

Article 6. The establishment, alteration, or cancellation of registration, of a religious body shall be registered in accordance with
the provisions of the Regulations on Registration Administration of Associations.

The articles of association of a religious body shall comply with the relevant provisions of the Regulations on Registration Administration of Associations.

The activities carried out by a religious body in accordance with its articles of association are protected by law.

Article 7. A religious body may, in accordance with the relevant provisions of the State, compile and publish reference publications to be circulated within religious circles. Religious publications for public distribution shall be published in accordance with the relevant provisions of the State on publication administration.

Publications involving religious contents shall comply with the provisions of the Regulations on Publication Administration, and shall not contain the contents:

(1) which jeopardize the harmonious co-existence between religious and non-religious citizens;

(2) which jeopardize the harmony between different religions or within a religion;

(3) which discriminate against or insult religious or non-religious citizens;

(4) which propagate religious extremism; or

(5) which contravene the principle of independence and self-governance in respect of religions.

Article 8. For the establishment of an institute for religious education, an application shall be made by the national religious body to the religious affairs department of the State Council, or made by the religious body of the province, autonomous region or municipality directly under the Central Government to the religious affairs department of the people’s government of the province, autonomous region or municipality directly under the Central Government of the place where such institute is to be located. The religious affairs department of the people’s government of the province, autonomous region or municipality directly under the
Central Government shall, within 30 days from the date of receipt of the application, put forward its views, and, if it agrees to the establishment, make a report to the religious affairs department of the State Council for examination and approval.

The religious affairs department of the State Council shall, within 60 days from the date of receipt of the application made by the national religious body or the report made by the religious affairs department of the people’s government of the province, autonomous region or municipality directly under the Central Government on the establishment of the institute for religious education, make a decision of approval or disapproval.

Article 9. An institute for religious education to be established shall meet the following conditions:

1. having clear and definite training objectives, a charter for school-running and a curriculum;
2. having the source of students who meet the training requirements;
3. having the necessary funds for school-running and stable financial sources;
4. having the sites, facilities and equipment for teaching that are necessary for its tasks of teaching and school-running scale;
5. having full-time leading members, qualified full-time teachers and an internal management organization; and
6. being rationally distributed.

Article 10. In light of the need of the religion concerned, a national religious body may, in accordance with the relevant provisions, select and send people for religious studies abroad, or accept foreigners for religious studies in China.

Article 11. The making of hajj abroad by Chinese citizens who believe in Islam shall be organized by the national religious body of Islam.
Chapter III. Sites for Religious Activities

Article 12. Collective religious activities of religious citizens shall, in general, be held at registered sites for religious activities (i.e., Buddhist monasteries, Taoist temples, mosques, churches and other fixed premises for religious activities), organized by the sites for religious activities or religious bodies, and presided over by religious personnel or other persons who are qualified under the prescriptions of the religion concerned, and the process of such activities shall be in compliance with religious doctrines and canons.

Article 13. For the preparation for establishing a site for religious activities, an application shall be made by a religious body to the religious affairs department of the people’s government at the county level of the place where such site is to be located. The religious affairs department of the people’s government at the county level shall, within 30 days from the date of receipt of the application, make a report to the religious affairs department of the people’s government at the level of a city divided into districts for examination and approval if it agrees to the establishment. Within 30 days from the date of receipt of the report made by the religious affairs department of the people’s government at the county level, the religious affairs department of the people’s government at the level of a city divided into districts shall, if it agrees to the establishment of a Buddhist monastery, Taoist temple, mosque or church, put forward its views upon examination and verification and make a report to the religious affairs department of the people’s government of the province, autonomous region or municipality directly under the Central Government for examination and approval; and for the establishment of other fixed premises for religious activities, it shall make a decision of approval or disapproval.

The religious affairs department of the people’s government of the province, autonomous region or municipality directly under the Central Government shall, within 30 days from the date of receipt of the report made by the religious affairs department of the people’s government at the level of a city divided into districts agreeing to the establishment of a Buddhist monastery, Taoist temple, mosque or church, make a decision of approval or disapproval.
A religious body may begin the preparatory work for establishing a site for religious activities only after the application for such establishment is approved.

Article 14. A site for religious activities to be established shall meet the following conditions:

(1) it is established for a purpose not in contravention of the provisions of Articles 3 and 4 of these Regulations;

(2) local religious citizens have a need to frequently carry out collective religious activities;

(3) there are religious personnel or other persons who are qualified under the prescriptions of the religion concerned to preside over the religious activities;

(4) there are the necessary funds; and

(5) it is rationally located without interfering with the normal production and livelihood of the neighboring units and residents.

Article 15. Upon approval of preparation for the establishment of a site for religious activities and completion of construction, an application shall be made for registration with the religious affairs department of the people’s government at the county level of the place where such site is located. The religious affairs department of the people’s government at the county level shall, within 30 days from the date of receipt of the application, examine the management organization, formulation of internal rules, and other aspects of such site, and, if the site meets the conditions for registration, register it and issue the Registration Certificate of the Site for Religious Activities.

Article 16. Where a site for religious activities merges with another one, divides itself, terminates, or changes any item registered, the formalities for alteration registration shall be gone through with the original registration administration department.

Article 17. A site for religious activities shall set up a management organization and exercise democratic management. Members of the management organization of the site for religious activities shall be
recommended or elected upon democratic consultation, and then be reported to the registration administration department of such site for the record.

Article 18. A site for religious activities shall strengthen internal management, and, in accordance with the provisions of the relevant laws, regulations and rules, establish and improve the management systems for personnel, finance, accounting, security, fire control, cultural relics protection, sanitation, and epidemic prevention, etc., and accept the guidance, supervision and inspection by the relevant departments of the local people’s government.

Article 19. The religious affairs department shall supervise and inspect the sites for religious activities in terms of their compliance with laws, regulations and rules, the development and implementation of management systems, the alteration of registered items, the conduction of religious activities and activities that involve foreign affairs. The sites for religious activities shall accept the supervision and inspection by the religious affairs department.

Article 20. A site for religious activities may accept donations from citizens in accordance with religious customs, but no means of compulsion or apportionment may be adopted.

No non-religious bodies or sites not for religious activities may organize or hold any religious activities, nor accept any religious donations.

Article 21. Religious articles, artworks and publications may be sold in the sites for religious activities.

A Buddhist monastery, Taoist temple, mosque or church that is registered as a site for religious activities (hereinafter referred to as a monastery, temple, mosque or church) may, in accordance with the relevant provisions of the State, compile and publish reference publications to be circulated within religious circles.

Article 22. Where a large-scale religious activity, in which different provinces, autonomous regions and municipalities directly under the Central Government are involved and which is beyond the accommodation capacity of a site for religious activities, is to be held,
or where a large-scale religious activity is to be held outside a site for religious activities, the religious body, monastery, temple, mosque or church that sponsors such activity shall, 30 days before the activity is held, make an application to the religious affairs department of the people’s government of the province, autonomous region or municipality directly under the Central Government of the place where such large-scale religious activity is to be held. The religious affairs department of the people’s government of the province, autonomous region or municipality directly under the Central Government shall, within 15 days from the date of receipt of the application, make a decision of approval or disapproval.

A large-scale religious activity shall, as required in the written notification of approval, proceed in accordance with religious rites and rituals, without violating the relevant provisions of Articles 3 and 4 of these Regulations. The religious body, monastery, temple, mosque or church that sponsors such large-scale religious activity shall adopt effective measures to prevent against any accidents. The people’s government of the township or town and the relevant departments of the local people’s government at or above the county level of the place where such large-scale religious activity is to be held shall, within the limits of their respective functions and duties, exercise the necessary administration in order to ensure the safe and orderly progress of the large-scale religious activity.

Article 23. A site for religious activities shall prevent against the occurrence, within the site, of any major accident or event, such as breaking of religious taboos, which hurts religious feelings of religious citizens, disrupts the unity of all nationalities or impairs social stability.

When any accident or event mentioned in the preceding paragraph occurs, the site for religious activities in question shall, without delay, make a report to the religious affairs department of the people’s government at the county level of the place where it is located.

Article 24. Where a religious body, monastery, temple, mosque or church intends to build a large-size outdoor religious statue outside the site for religious activities, the relevant religious body of the province, autonomous region or municipality directly under the
Central Government shall make an application to the religious affairs department of the people’s government of the province, autonomous region or municipality directly under the Central Government, which shall, within 30 days from the date of receipt of the application, put forward its views, and, if it agrees to the building of such statue, make a report to the religious affairs department of the State Council for examination and approval.

The religious affairs department of the State Council shall, within 60 days from the date of receipt of the report on building a large-size outdoor religious statue outside the site for religious activities, make a decision of approval or disapproval.

No organization or individual other than religious bodies, monasteries, temples, mosques and churches may build large-size outdoor religious statues.

Article 25. Where a unit or an individual intends to alter or construct buildings, set up commercial service centers, hold displays or exhibitions, or make films or television programs in a site for religious activities, it shall obtain in advance the consent of the site for religious activities in question and that of the religious affairs department of the local people’s government at or above the county level of the place where such site is located.

Article 26. For a scenic spot or historic zone where a site for religious activities therein constitutes the main tourist attraction, the local people’s government at or above the county level of the place where such spot or zone is located shall coordinate and deal with the interrelated interests between the site for religious activities and the park, relics, and tourism, and safeguard the lawful rights and interests of the site for religious activities.

The planning and construction of a scenic spot or historic zone where a site for religious activities constitutes the main tourist attraction shall be in harmony with the style and surroundings of such site.

Chapter IV. Religious Personnel

Article 27. Religious personnel who are determined qualified as such by a religious body and reported for the record to the religious affairs
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department of the people’s government at or above the county level may engage in professional religious activities.

The succession of living Buddhas in Tibetan Buddhism shall be conducted under the guidance of Buddhist bodies and in accordance with the religious rites and rituals and historical conventions, and be reported for approval to the religious affairs department of the people’s government at or above the level of a city divided into districts, or to the people’s government at or above the level of a city divided into districts. With respect to Catholic bishops, the matter shall be reported for the record by the national religious body of the Catholic Church to the religious affairs department of the State Council.

Article 28. Where religious personnel are to assume or leave the chief religious posts of a site for religious activities, the matter shall, upon consent by the religious body of the religion concerned, be reported to the religious affairs department of the people’s government at or above the county level for the record.

Article 29. The presiding over of religious activities, conduction of religious ceremonies, sorting out of religious scriptures and pursuit of religious and cultural research by religious personnel are protected by law.

Chapter V. Religious Property

Article 30. The land legally used by a religious body or a site for religious activities, the houses, structures and facilities legally owned or used by such body or site, and its other legal property and proceeds thereof, are protected by law.

No organization or individual may encroach upon, loot, privately divide up, damage, destroy, or, illegally seal up, impound, freeze, confiscate or dispose of the legal property of a religious body or a site for religious activities, nor damage or destroy cultural relics possessed or used by a religious body or a site for religious activities.

Article 31. The houses owned and the land used by a religious body or a site for religious activities shall, according to law, be registered with the real estate department and the land administration
department of the local people’s government at or above the county level, and be granted the certificate of ownership and the certificate of right to use; where the property right is altered, the formalities for alteration registration shall be gone through without delay.

The land administration department shall, when determining and altering the land-use right of a religious body or a site for religious activities, solicit the views of the religious affairs department of the people’s government at the same level.

Article 32. The houses and structures used for religious activities by a site for religious activities, and their accessory houses for the daily use of religious personnel as well, shall not be transferred, mortgaged or used as investments in kind.

Article 33. Where the houses or structures of a religious body or a site for religious activities need to be demolished or relocated because of city planning or construction of key projects, the demolisher shall consult with the religious body or the site for religious activities concerned, and solicit the views of the relevant religious affairs department. If, after consultation, all the parties concerned agree to the demolition, the demolisher shall rebuild the houses or structures demolished, or, in accordance with the relevant provisions of the State, make compensation on the basis of the appraised market price of the houses or structures demolished.

Article 34. A religious body or a site for religious activities may operate public undertakings according to law, and the proceeds and other lawful income therefrom shall be subject to financial and accounting management, and be used for the activities that are commensurate with the purpose of the religious body or the site for religious activities, or for public undertakings.

Article 35. A religious body or a site for religious activities may, in accordance with the relevant provisions of the State, accept donations from organizations and individuals at home or abroad, which shall be used for the activities that are commensurate with the purpose of the religious body or the site for religious activities.

Article 36. A religious body or a site for religious activities shall implement the systems of the State for administration of financial
and accounting affairs and taxation, and may enjoy the preferential treatment in terms of tax reduction or exemption in accordance with the relevant provisions of the State on taxation.

A religious body or a site for religious activities shall report to the religious affairs department of the people’s government at or above the county level of the place where it is located on its income and expenditure, and on the acceptance and use of donations as well, and, in an appropriate way, make such information public to religious citizens.

Article 37. In case of cancellation of registration or termination of a religious body or a site for religious activities, the property thereof shall be liquidated and the property remaining after the liquidation shall be used for the undertakings that are commensurate with the purpose of the religious body or the site for religious activities.

Chapter VI. Legal Liability

Article 38. Where any State functionary, in administration of religious affairs, abuses his power, neglects his duty or commits illegalities for personal gain or by fraudulent means, and a crime is thus constituted, he shall be investigated for criminal liability according to law; if no crime is constituted, he shall be given an administrative sanction according to law.

Article 39. Where anyone compels citizens to believe in, or not to believe in, any religion, or interferes with the normal religious activities conducted by a religious body or a site for religious activities, the religious affairs department shall order it to make corrections; if such act constitutes a violation of public security administration, it shall be given an administrative penalty for public security according to law.

Where anyone infringes upon the lawful rights and interests of a religious body, a site for religious activities or a religious citizen, it shall assume civil liability according to law; if a crime is constituted, it shall be investigated for criminal liability according to law.

Article 40. Where anyone makes use of religion to engage in such illegal activities as endanger State or public security, infringe upon
citizens’ right of the person and democratic rights, obstruct the administration of public order, or encroach upon public or private property, and a crime is thus constituted, it shall be investigated for criminal liability according to law; if no crime is constituted, the relevant competent department shall give it an administrative penalty according to law; if any loss is caused to a citizen, legal person or any other organization, it shall assume civil liability according to law.

Where, in the course of a large-scale religious activity, there occurs any event endangering public security or seriously disrupting public order, the matter shall be handled on the spot and penalties shall be imposed in accordance with the laws and administrative regulations on assembly, procession and demonstration; if the religious body, monastery, temple, mosque or church that sponsors such large-scale religious activity is responsible therefor, the registration administration department shall cancel its registration.

Where anyone organizes a large-scale religious activity without approval, the religious affairs department shall order it to discontinue such activities and shall confiscate the illegal gains, if any; and it may concurrently impose thereupon a fine of not less than one time but not more than three times the illegal gains. In addition, if the large-scale religious activity is organized by a religious body or a site for religious activities without approval, the registration administration department may order the religious body or the site for religious activities to dismiss and replace the person-in-charge who is directly responsible therefor.

Article 41. Where a religious body or a site for religious activities commits any of the following acts, the religious affairs department shall order it to make corrections; if the circumstances are relatively serious, the registration administration department shall order the religious body or the site for religious activities to dismiss and replace the person-in-charge who is directly responsible therefor; if the circumstances are serious, the registration administration department shall cancel the registration of such religious body or site for religious activities and confiscate the unlawful property or things of value, if any:

(1) failing to go through the formalities for alteration registration or submission for the record in accordance with the relevant provisions;
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(2) in the case of a site for religious activities, in violation of Article 18 of these Regulations, failing to formulate relevant management systems, or failing to have the management systems meet the requirements;

(3) failing to report, without delay, on the occurrence of any major accident or event in a site for religious activities, thus causing serious consequences;

(4) contravening the principle of independence and self-governance in violation of the provisions of Article 4 of these Regulations;

(5) accepting donations from home or abroad in violation of the provisions of the State; or

(6) refusing to accept supervision and administration conducted by the registration administration department according to law.

Article 42. Where any publications involving religious contents contain the contents prohibited by the second paragraph of Article 7 of these Regulations, the relevant competent department shall impose administrative penalties upon the relevant responsible units and persons according to law. If a crime is constituted, criminal liability shall be investigated according to law.

Article 43. Where a site for religious activities is established without approval, or a site originally for religious activities continues to carry out religious activities after its registration as such has been cancelled, or an institute for religious education is established without approval, the religious affairs department shall ban such site or institute and confiscate the illegal gains; the illegal houses or structures, if any, shall be disposed of by the competent construction department according to law. If any act in violation of public security administration is committed, an administrative penalty for public security shall be imposed according to law.

Where a non-religious body or a site not for religious activities organizes or holds religious activities or accepts religious donations, the religious affairs department shall order it to discontinue such activities and confiscate the illegal gains, if any; if the circumstances
are serious, a fine of not less than one time but not more than three times the illegal gains may be imposed concurrently.

Where anyone organizes the making of hajj abroad for religious citizens without authorization, the religious affairs department shall order it to discontinue such activities and shall confiscate the illegal gains, if any; and it may concurrently impose a fine of not less than one time but not more than three times the illegal gains.

Article 44. Where, in violation of the provisions of these Regulations, anyone builds a large-size outdoor religious statue, the religious affairs department shall order it to discontinue the construction and to demolish the statue in a specified time limit; the illegal gains, if any, shall be confiscated.

Article 45. Where any religious personnel violate laws, regulations or rules in professional religious activities, the religious affairs department shall, in addition to having the legal liability investigated according to law, make a proposal to the religious body concerned to disqualify them as religious personnel.

Where anyone engages in professional religious activities by impersonating religious personnel, the religious affairs department shall order it to discontinue such activities and shall confiscate the illegal gains, if any; if any act in violation of public security administration is committed, an administrative penalty for public security shall be imposed thereupon according to law; if a crime is constituted, criminal liability shall be investigated according to law.

Article 46. Where anyone refuses to accept a specific administrative act taken by the religious affairs department, it may apply for administrative reconsideration according to law; if it refuses to accept the decision of the administrative reconsideration, it may institute an administrative lawsuit according to law.

Chapter VII. Supplementary Provisions

Article 47. The religious exchange between the Mainland and the Hong Kong Special Administrative Region, the Macao Special Administrative Region and Taiwan region shall be developed in
accordance with laws, administrative regulations and the relevant provisions of the State.

Article 48. These Regulations shall become effective as of March 1, 2005. The Regulations on Administration of Sites for Religious Activities promulgated by the State Council on January 31, 1994 shall be repealed simultaneously.