On the Application of Decisions to Modify and Decisions to Revoke in Administrative Reconsideration

Chen Yang
School of Law, Xinjiang University of Finance and Economics, Urumqi, Xinjiang, China

Abstract: Modification decisions and revocation decisions are the principal forms through which administrative reconsideration substantively resolves administrative disputes. Compared with decisions to uphold the original administrative act, they not only more clearly reflect the reconsideration authority's diligence in case handling and its supervisory role over the respondent, but also more effectively facilitate the substantive resolution of disputes between the applicant and the respondent. In this sense, they help administrative reconsideration fulfill both its formal function as a mechanism for diverting administrative disputes and its institutional role as the primary channel for their substantive resolution. The newly revised Administrative Reconsideration Law specifies three circumstances for modification decisions and four circumstances for revocation or partial revocation decisions. Although the current law has formally separated these two types of decisions, normative overlap in their application persists, and the abstract language of the statutory provisions remains difficult to connect with the circumstances of individual cases. As a result, the accurate application of these provisions, the avoidance of inconsistent outcomes in similar cases, and the enhancement of the credibility of administrative reconsideration have become pressing issues. Through doctrinal analysis and with reference to the three essential attributes of evidence, this article clarifies the relationship between the provisions governing modification and revocation decisions and examines the specific circumstances in which each should apply, with a view to providing practical guidance for their interpretation and application.

Keywords: Administrative Reconsideration; Modification Decision; Revocation Decision; Standards of Application

1. Difficulties in the Application of Modification Decisions and Revocation Decisions in Administrative Reconsideration

The White Paper on Administrative Reconsideration Work (2024), issued by the Ministry of Justice of the People's Republic of China on June 30, 2025, systematically summarizes the practical achievements following the revision of the new Administrative Reconsideration Law. According to the White Paper, in 2024 a total of 58,000 unlawful or improper administrative acts were corrected through modification decisions, revocation decisions, decisions confirming illegality, and other such means. This figure stands in sharp contrast to the total of 749,600 newly accepted cases handled by administrative reconsideration organs nationwide, with the direct error-correction rate amounting to only 12.1%. Among these outcomes, modification decisions accounted for merely 0.21% of all adjudicative decisions, while revocation decisions accounted for only 5.04%.

It is therefore evident that, although the new law specifically provides for the circumstances under which modification decisions and revocation decisions may be applied, problems of low case volume and a low error-correction rate persist in practice. Accordingly, it is of considerable significance to examine how these two types of decisions should be properly selected and applied, and how the relevant standards of discretion may be further refined and unified.

Existing scholarship has devoted considerable attention to the question of which type of reconsideration decision should occupy a central place in the resolution of administrative disputes. Professor Zhang Jiansheng summarizes the main academic positions as the "core" approach, the "priority" approach, and the "independence" approach, and argues in favor of revocation decisions as the core mechanism. By comparison, relatively few studies focus specifically on the application of modification decisions. Among

the exceptions, Professor Zhang distinguishes between modifications based on substantive illegality and those based on procedural illegality, and discusses the criteria for identifying each. Professor Yu Lingyun classifies reconsideration cases into those with clear facts and evidence and those involving defects in facts and evidence, and examines the application of modification decisions accordingly. Professor Wu Weidong, for his part, analyzes the issue from four dimensions—supporting legislation, the appropriate choice of review procedures, the fuller use of administrative reconsideration committees, and the development of guiding cases—with the aim of removing obstacles to the use of modification decisions [1-4].

Nevertheless, little attention has been paid to the differentiated application of modification decisions and revocation decisions. Existing studies that debate which of the two should take priority, or that further identify the circumstances in which modification decisions should apply, generally do not provide a sufficiently clear account of how the two forms of decisions should be distinguished in practice. This gap is detrimental to the substantive resolution of administrative disputes. The contribution of this article lies precisely in addressing that gap. By returning to the statutory text and legislative intent, it seeks to construct a set of standards for distinguishing between modification decisions and revocation decisions in application. Clearer operational rules and review standards, in turn, may increase the use of both types of decisions and thereby advance the substantive resolution of administrative disputes.

2. Comparing the Applicable Categories and Standards of Review for Modification Decisions and Revocation Decisions

Although the legislature has delineated the scenarios warranting modification or revocation decisions, the substantial caseload and intricate factual patterns in reconsideration practice render a typological approach essential. By first categorizing cases into distinct types and subsequently mapping these classifications back to the relevant statutory provisions, authorities can significantly enhance the precision of applying specific legal norms.

2.1 Cases with Clear Facts and Sufficient Evidence

Cases with clear facts and sufficient evidence are those in which the legally relevant facts are clear, the evidence is conclusive, and the procedure is lawful, yet the content of the administrative act remains inappropriate. In such cases, the proper disposition is a modification decision rather than a revocation decision [5]. The relevant legal basis is Article 63(1) of the Administrative Reconsideration Law, which provides that where "the facts are clear, the evidence is conclusive, the legal basis is correctly applied, and the procedure is lawful, but the content is inappropriate, the administrative reconsideration organ shall decide to modify the administrative act."

The logic of this provision is that the defect in such cases lies neither in the application of law nor in the factual or evidentiary foundation of the administrative act. Rather, the problem is one of substantive inappropriateness. More specifically, the original administrative organ typically commits only a minor flaw, if any, in fact-finding; the real difficulty instead lies in divergent evaluative judgments or in outcomes that are excessively lenient or excessively severe as a result of the exercise of administrative discretion. In this context, a revocation decision may be unable to resolve the dispute in a substantive sense. By contrast, a modification decision made by the reconsideration organ—often a superior administrative authority exercising supervisory review over the respondent—may carry greater authority and persuasive force, and is therefore better suited to achieving a substantive resolution of the dispute.

Accordingly, the core issue in applying a modification decision to this category of cases is whether the content of the administrative act is inappropriate. The relevant standard of review thus turns on two closely related questions: first, what constitutes the "content" of the administrative act; and second, under what circumstances that content should be regarded as "inappropriate."

2.1.1 The content of the administrative act

What kind of "content" falls within the scope of review in administrative reconsideration? To answer this question, it is necessary to refer to the relevant provisions of China's Administrative Licensing Law, Administrative Compulsion Law, and Administrative Penalty Law. Among these, the written decision on an administrative penalty is the most typical

example. Article 59(1) of the Administrative Penalty Law of the People's Republic of China provides that an administrative penalty decision shall specify the following matters: (1) the name or title and address of the party concerned; (2) the facts and evidence establishing the violation of laws, regulations, or rules; (3) the type of administrative penalty and the legal basis therefor; (4) the method and time limit for performance of the administrative penalty; (5) the avenues and time limits for applying for administrative reconsideration or filing administrative litigation; and (6) the name of the administrative organ making the decision and the date of the decision. Article 63(1) of the Administrative Reconsideration Law provides that where the facts are clear, the evidence is conclusive, the legal basis is correctly applied, and the procedure is lawful, but the content is inappropriate, the administrative reconsideration organ shall decide to modify the administrative act. Accordingly, in cases involving clear facts and sufficient evidence, such matters as the identity of the parties, the facts and evidence, the authority issuing the act, and the date of the act should not fall within the scope of considerations relevant to a modification decision. Rather, the reconsideration organ should focus on reviewing substantive issues such as the type of penalty imposed, its severity, and the manner of performance. In other words, where the facts are clear, the evidence is conclusive, and no procedural defect exists, the reconsideration organ need only examine whether the respondent has, in substance, unreasonably infringed upon the applicant's lawful rights and interests; in all other circumstances, a modification decision should not be applied.

2.1.2 Whether the content is appropriate

Whether the content of an administrative act is appropriate is a central criterion for assessing its substantive legality. A more general and workable benchmark is therefore needed, so that the review of appropriateness may proceed within a clear and predictable framework. At bottom, such a framework serves to discipline administrative discretion. It is thus consistent with the broader commitment of administrative law to restraining public power, protecting private rights, and giving effect to the principle of rational administration.

A suitable analytical framework may be drawn from the principle of proportionality [6]. In the context of administrative reconsideration, proportionality provides a structured method for determining whether the substance of an administrative act is justified. This inquiry may be divided into four related questions.

First, is the measure directed toward a legitimate administrative objective? This requires an examination of whether the objective pursued is compatible with the public interest or another legitimate public purpose, and whether it possesses sufficient social value and normative justification.

Second, is the measure necessary? Here the reconsideration organ should ask whether less restrictive alternatives were available; whether milder means—such as education, persuasion, or administrative guidance—could have been used; whether the situation was sufficiently urgent or threatening to public safety to justify the measure adopted; and whether the same objective could have been achieved through another course of action imposing fewer burdens on the affected party.

Third, is the measure appropriate in the strict sense? This inquiry should be conducted with particular care. It includes at least four elements: (A) relevance, namely whether the measure adopted is closely connected to the realization of the administrative objective; (B) effectiveness, namely whether the measure is capable of producing a meaningful and identifiable result in achieving that objective; (C) whether the measure exceeds what is necessary, that is, whether it imposes disproportionate restrictions or adverse effects beyond the limits required by the objective pursued; and (D) whether the scope of the measure's impact has been reasonably controlled, especially with respect to unrelated parties or collateral interests.

Fourth, have the competing interests and rights been properly balanced? This requires consideration of whether limitations on the citizen's fundamental rights are reasonable; whether the relationship between the administrative objective and the individual or social interests affected is fair and proportionate; whether compensatory arrangements or mitigating measures are available to reduce harm; and whether negative effects on particular individuals or groups have been minimized as far as possible.

Not all aspects of this framework require the same degree of scrutiny. Strict review should be reserved for necessity and appropriateness in the narrow sense, because these inquiries go most

directly to whether the administrative organ has exceeded the permissible bounds of discretion. By contrast, the legitimacy of the objective and the balancing of interests may generally be reviewed under a reasonableness standard. Such a differentiated approach helps preserve the efficiency of administrative reconsideration while still ensuring meaningful control over administrative discretion.

2.1.3 A "Three-Step" model of review

In assessing whether an exercise of public power that restricts a fundamental right is justified, Professor Zhang Xiang proposes a "three-step" framework of review: the scope of protection of the fundamental right, the existence of a restriction on that right, and the constitutional justification for such a restriction. The inquiry into the appropriateness of an administrative act in administrative reconsideration cases involving clear facts and sufficient evidence is highly analogous to the inquiry into whether state action restricts a citizen's fundamental rights.

The first step is to determine whether the case falls within the scope of protection of the relevant legal provision. In the context of administrative reconsideration, this corresponds to what has been discussed above as the "content of the administrative act." If the case concerns substantive matters such as the type of penalty imposed, the severity of the penalty, or the method of performance, the analysis proceeds to the next step; otherwise, the case does not fall within the circumstances for a modification decision under Article 63(1) of the Administrative Reconsideration Law.

The second step is to determine whether the administrative act imposes a restriction on the applicant. This step raises certain difficulties relating to the principle of legal reservation and the need for legal uniformity. For example, Professor Wu Weidong has been a firm advocate of strengthening supporting legislation for administrative reconsideration. In his view, supplementary legislation should be expedited, and the Implementation Regulations should be revised as soon as possible in order to provide legislative support for more refined regulation of administrative reconsideration. In the absence of clear legislative authorization, locally formulated implementation standards may, on the one hand, conflict with matters reserved to law and, on the other hand, generate serious problems for uniform application in the absence of a nationally unified legislative framework. This is not conducive to the formation of a legal system that is both formally rigorous and internally coherent.

The third step is to determine whether the content of the administrative act satisfies the requirements of proportionality [7,8]. In reconsideration practice, the first step should be governed by a relatively broad standard of review so as to preserve administrative reconsideration's function as the principal channel for resolving administrative disputes and to lower unnecessary barriers to access. The second step, by contrast, still requires further legislative refinement. The third step therefore becomes the most workable operational standard presently available in practice: the appropriateness and necessity of the administrative act should be subjected to strict review.

2.2 Cases with Defects in Facts and Evidence

The defining feature of this category of cases is that "the facts are unclear and the evidence is insufficient." Both Articles 63 and 64 of the Administrative Reconsideration Law address this situation. Article 63(3) provides for circumstances in which "the facts are unclear and the evidence is insufficient, but the administrative reconsideration organ has ascertained the facts and evidence upon review." Article 64(1), by contrast, refers to cases in which "the principal facts are unclear and the evidence is insufficient." On their face, the difference between the two provisions lies only in the word "principal." Accordingly, the key to distinguishing between the application of modification decisions and revocation decisions is how to distinguish principal evidence from ordinary evidence, and principal facts from non-principal facts.

From a systematic perspective, the phrase "unclear facts and insufficient evidence" in Article 63 should be read narrowly as referring to unclear secondary facts and insufficient ordinary evidence. The deeper legislative logic is that, in cases involving unclear principal facts and insufficient evidence, the respondent enjoys a natural advantage of proximity in investigating and collecting evidence. In such circumstances, the reconsideration organ should perform a supervisory role by requiring the authority that originally made the administrative act to act honestly, lawfully, and efficiently. If, by contrast, the reconsideration organ were to modify the act

on its own initiative in such cases, it would need to reexamine the case in its entirety and make extensive use of its own investigatory powers in order to reconstruct the full factual picture. This would place substantial pressure on the reconsideration organ and would also consume significant adjudicative and administrative resources.

Where the principal facts of the case have already been clarified and the key evidence is largely in place, however, it is more reasonable for the reconsideration organ to make a modification decision after supplementing the remaining facts and evidence if it is still unable to reach a decision on the basis of documentary review alone. If the facts and evidence of the case are compared to a target, the principal facts are the bullseye, directly established by key evidence, whereas the secondary facts form the outer rings, supported and reinforced by ordinary evidence. The following discussion evaluates the facts and evidence of individual cases from three dimensions in order to establish the relevant standard of review.

2.2.1 The classification of facts: The constituent elements of the applicable legal norm as the benchmark

This is the most fundamental and decisive dimension of the analysis. The importance of a fact depends on the role it plays within the constituent elements of the applicable legal norm.

(1) Principal facts: facts directly prescribed by substantive or procedural legal norms and capable of giving rise to, altering, or extinguishing a legal relationship.

(2) Secondary facts: facts used to infer the existence of principal facts, or to explain the background and circumstances of the case—such as time, place, motive, and surrounding conditions—but which do not directly determine whether legal responsibility or other legal consequences are established.

2.2.2 The classification of evidence: The means and object of proof as the benchmark

This is the evidentiary dimension of the analysis. The significance of a piece of evidence depends on both the manner in which it proves a fact and the object to which its proof is directed.

(1) Key evidence: evidence that can directly and independently establish a principal fact. Its content itself contains the constituent elements of that principal fact.

(2) Ordinary evidence: evidence that can establish only secondary facts, or that can prove principal facts only indirectly or partially, and that must be combined with other evidence in order to form a complete chain of proof.

2.2.3 The "Three Attributes" of evidence: probative force as the benchmark

A further dimension of the analysis concerns the "three attributes" of evidence, with probative force serving as the relevant benchmark.

(1) Relevance

For key evidence, the evidentiary content must bear a direct, inherent, and necessary connection to the principal facts. Ordinary evidence, by contrast, need only satisfy a looser standard of indirect or auxiliary relevance: it is sufficient that the evidence be indirectly connected to the principal facts or related only to secondary facts.

(2) Legality

Key evidence is subject to strict review as to legality. If key evidence is excluded because it was obtained through unlawful procedures—such as torture, coercion, or illegal search—the entire evidentiary structure of the case may collapse. Ordinary evidence is subject to a relatively more lenient standard, though certain minimum requirements still apply. Minor procedural defects in ordinary evidence may not necessarily lead to its total exclusion, but they may affect its probative weight. Examples include witness testimony taken at an irregular location, or written records containing a small number of clerical errors that can be reasonably explained.

(3) Authenticity

Key evidence must be highly reliable. Its authenticity must be tested under the strictest standard, and challenges to its authenticity typically lie at the core of evidentiary examination. Ordinary evidence, by contrast, may tolerate a degree of uncertainty, since deficiencies in a particular item of ordinary evidence can be remedied through corroboration by other evidence. Doubts as to the authenticity of a single item of ordinary evidence therefore do not necessarily undermine the case as a whole, so long as they can be cured through the broader chain of proof.

2.3 Errors in the Applicable Legal Basis

Errors in the application of law in administrative reconsideration cases may be divided into two categories: the incorrect application of the relevant legal basis and the application of an unlawful legal basis, corresponding respectively

to Articles 63 and 64 of the Administrative Reconsideration Law. Whether these two categories should be distinguished, and if so how, is the central issue. The answer should be grounded in both legislative purpose and administrative practice so as to provide practical guidance for reconsideration [9].

2.3.1 Incorrect application of the relevant legal basis

In administrative reconsideration cases, the incorrect application of the relevant legal basis may be divided into two forms. The first is erroneous application of law, where the administrative organ relies on the wrong legal basis in making the administrative act. This may occur when the statutory elements do not match the facts of the case, when a general law is applied in place of a special law, when an old law is applied instead of a new one, or when a lower-level norm conflicts with a higher-level norm. The second is improper citation of legal basis, which mainly involves defects in citation, such as citing a provision only in general terms without specifying the relevant paragraph or subparagraph, or making errors in numbering or wording. The precise scope of this latter category, however, must be interpreted in light of the statutory framework as a whole, and becomes clearer when read together with the category of "application of an unlawful legal basis" that gives rise to a revocation decision.

2.3.2 Application of an unlawful legal basis

From a purely textual perspective, the notion of "incorrect application of the relevant legal basis" appears broad enough to encompass the "application of an unlawful legal basis." From the standpoint of systematic interpretation, however, the two cannot be understood as standing in an inclusive relationship. If Article 63 were interpreted so broadly as to absorb Article 64, the statutory distinction between modification and revocation would be undermined, and confusion in application would inevitably follow. It is therefore necessary to adopt a restrictive interpretation of "incorrect application of the relevant legal basis."

The rationale for such a restrictive reading lies in the institutional function of modification decisions. In terms of both legal effect and procedural economy, a modification decision better reflects the supervisory role and efficiency-oriented value of administrative reconsideration, and is better suited to producing a final and substantive resolution of disputes. On that basis, the category discussed above as "improper application of the legal basis" should fall within the scope of modification decisions. In practice, disputes of this kind can usually be resolved by correcting the defect in legal citation alone. If such cases were instead dealt with through revocation, the original administrative organ would often issue a new administrative act substantially identical to the previous one, yielding no meaningful relief to the applicant and merely resulting in procedural circularity. Accordingly, "application of an unlawful legal basis" should be confined to cases of erroneous application of law, whereas defects amounting only to improper citation should remain within the scope of modification decisions.

3. Choosing between the Paths of Modification and Revocation

3.1 A Suggested Analytical Tool for Path Selection: The Coordinated Operation of the Three-Dimensional Framework

The choice between modification and revocation may be guided by the coordinated use of the three-dimensional framework [10].

(1) Identifying the target.

Under the dimension of fact classification, the reconsideration organ should determine the principal facts that must be established.

(2) Selecting the evidence.

Under the dimension of evidence classification, it should identify the evidence capable of directly proving those principal facts; such evidence is potential key evidence.

(3) Testing evidentiary quality.

Under the dimension of the "three attributes" of evidence, the reconsideration organ should examine whether that evidence is relevant, lawful, and authentic.

(4) Reaching the conclusion.

Evidence that can directly, lawfully, and authentically prove the principal facts is key evidence. Evidence that proves only secondary facts, proves principal facts only indirectly, or requires corroboration because of defects in the three attributes is ordinary evidence. Where the principal facts are unclear and key evidence is insufficient, a revocation decision should be made; where only secondary facts are unclear and ordinary evidence is insufficient, a modification decision should be made.

3.2 Procedural Suggestions for Choosing

Between Modification and Revocation

In light of the case categories and standards of review discussed above, the reconsideration organ may proceed through the following steps at the review and decision-making stages.

The first stage is documentary review. At this stage, the reconsideration organ should first determine whether the case involves an error in the application of law. If so, it should then consider whether the circumstances call for a modification decision.

The second stage is case classification and evidentiary organization. At this stage, the reconsideration organ should first identify the type of case and then sort out the relevant facts and evidence.

The third stage is the determination of the appropriate disposition in light of the case type. Where the facts are clear and the evidence is sufficient, a modification decision should be made. Where the case involves defects in facts and evidence, a further distinction should be drawn: if the principal facts are unclear and key evidence is insufficient, a revocation decision should be made; if only secondary facts are unclear and ordinary evidence is insufficient, a modification decision should be made.

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