

# Research on the Standardization of Administrative Penalty Discretion in Market Regulation

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**Abstract:** Standardizing the discretionary power of administrative penalty in market regulation is of great significance for maintaining market order, ensuring fair law enforcement, and protecting the rights and interests of market entities. Through literature analysis and status quo induction, this study systematically defines the core concepts of market regulation, administrative penalty, and discretionary power, and discusses the necessity of standardizing the exercise of such power. The research finds that current exercise of discretionary power suffers from prominent problems such as inconsistent regional benchmarks, lack of detailed benchmark content, insufficient transparency in the discretionary process, and mechanical application leading to “excessive punishment for minor faults”. Therefore, a standardization path should be constructed by improving the discretionary benchmark system for administrative penalties, strengthening the construction of related systems such as hearings and legal review, and improving internal and external supervision mechanisms.

**Keywords:** Market Regulation; Administrative Penalty; Discretionary Power; Standardization

## 1. Introduction

### 1.1 Overview of Market Regulation

Market regulation authorities are key forces in maintaining market order and protecting consumer rights and interests. The discretionary power of administrative penalty grants administrative organs a certain degree of autonomous decision-making and disposition authority. However, at present, some problems have emerged in the exercise of administrative penalty discretion by market regulation authorities, posing challenges to fair law

enforcement. How to address these problems and challenges, and further standardize the exercise of administrative penalty discretion in market regulation, is of critical importance.

First, it is necessary to define the concept of market regulation: what is market regulation?

At present, there is no separate law or regulation that clearly defines market regulation. Different scholars have different definitions. For example, scholar Guo Yuejin believes that market regulation refers to the supervision and management of market entities' business activities by third-party organizations independent of market entities, such as judicial, administrative, and industry associations, in accordance with laws and constitutions, so as to maintain normal market order and ensure the normal operation and full positive role of the market mechanism [1]. Scholar Zhao Junshan believes that market regulation is an abbreviation for market supervision and management, referring to the supervision, management, and control exercised by government functional departments or organizations authorized by laws and regulations over the behaviors of market entities according to law, in order to maintain normal economic order. Market regulation falls within the scope of public administration and is an important function of the government [2].

In addition, based on economic definitions, scholars Shi Youqi and Chen Yongmei define market regulation as follows: market regulation refers to the activities in which the government and its relevant work departments, in order to prevent inefficient resource allocation and ensure fair use of resources by users, regulate, manage, supervise, and serve the market behaviors of market entities under the market rule system through means such as licensing, recognition, restriction, or prohibition according to law, with the purpose of ensuring orderly and benign competition in the market [3]. Scholar Zhai Yun believes that market regulation refers

to the government's guidance and restriction of market actors according to rules, with the purpose of correcting market failures [4].

### 1.2 Overview of Administrative Penalty

The definition of administrative penalty is provided in Article 2 of the *Administrative Penalty Law of the People's Republic of China*: "Administrative penalty refers to the act of an administrative authority, in accordance with the law, imposing sanctions on citizens, legal persons, or other organizations that have violated administrative management order, by way of reducing their rights or increasing their obligations."

Several characteristics of administrative penalty can be seen from this provision. First, the implementing subject of administrative penalty is administrative organs. However, subsequent provisions of the *Administrative Penalty Law of the People's Republic of China* indicate that organizations authorized by laws or regulations to manage public affairs, and organizations entrusted by administrative organs in accordance with laws, regulations, or rules, are also subjects implementing administrative penalties. Second, the objects of administrative penalty are citizens, legal persons, or other organizations that have violated administrative management order, i.e., external private parties, not internal staff of administrative organs. Third, the methods of administrative penalty are reduction of rights or interests or increase of obligations, which are punitive in nature.

Furthermore, administrative penalties must be carried out in accordance with statutory procedures. The main procedures include: case acceptance, filing, investigation and evidence collection, preparation of investigation closing report, collegial discussion, advance notice of administrative penalty, service of advance notice, (statement, defense, hearing), issuance of administrative penalty decision, service of decision, execution, and case closure. Each link must follow statutory procedures to ensure procedural legality.

### 1.3 Overview of Discretionary Power

Regarding discretionary power, it originated from equity law in the common law system and was later introduced into ordinary law. American scholar Walker defines discretionary power as the power to make fair and reasonable decisions discretionarily according to the circumstances at

the time [5].

Administrative discretionary power refers to the power of administrative organs and their staff, within the scope prescribed by normative documents such as laws, regulations, and rules, to make independent judgments, choices, and decisions on various administrative affairs based on specific actual conditions [6].

Administrative penalty discretionary power refers to the autonomous decision-making and disposition authority of administrative organs, when exercising administrative penalty power according to laws, regulations, and rules, to decide whether to impose an administrative penalty, what type of penalty, and within what range, based on factors such as the violator's illegal facts, nature, circumstances, degree of social harm, and subjective fault [7].

Article 34 of the *Administrative Penalty Law of the People's Republic of China* stipulates that administrative authorities may, in accordance with the law, formulate discretion benchmarks for administrative penalties to regulate the exercise of discretionary power in imposing administrative penalties. Such discretion benchmarks for administrative penalties shall be made public. This provision establishes, by way of legislation, the concept of discretion benchmarks for administrative penalties and clarifies that administrative authorities are the primary bodies responsible for formulating these benchmarks. Additionally, this provision introduces a disclosure system, requiring that discretion benchmarks for administrative penalties be published to the public, thereby safeguarding the rights of citizens, legal persons, and other organizations to be informed and to supervise.

Issued on August 17, 2022, the *Opinions on Further Regulating the Formulation and Management of Administrative Discretionary Power Benchmarks* (Guobanfa (2022) No. 27) set requirements and provided direction for the formulation and management of administrative discretionary power benchmarks.

Adopted on July 18, 2024, the *Decision on Further Deepening Reform Comprehensively to Advance Chinese Modernization* explicitly states: "Improve the system of administrative discretion benchmarks in areas such as administrative penalties."

## 2. Analysis of the Current Situation of Administrative Penalty Discretion in Market

## Regulation

On October 8, 2022, the State Administration for Market Regulation issued the *Guiding Opinions on Standardizing the Administrative Penalty Discretion Power in Market Regulation* (Guoshijianfagui (2022) No. 2), providing guidance for further standardizing administrative penalty discretion in market regulation.

Regarding what constitutes administrative penalty discretion in market regulation, Article 2 of the Opinions clarifies: “The term ‘administrative penalty discretion power’ in these Opinions refers to the authority of market regulation authorities at all levels, when imposing administrative penalties, to decide whether to impose a penalty, and the type and range of penalty, based on laws, regulations, and rules, after comprehensively considering factors such as the facts, nature, circumstances, social harm degree, and the party’s subjective fault.”

### 2.1 Necessity of Standardizing the Exercise of Administrative Penalty Discretion in Market Regulation

Standardizing the exercise of administrative penalty discretion in market regulation is significant for improving the efficiency of market regulation, ensuring fair law enforcement, protecting the legitimate rights and interests of market entities, ensuring individual case justice, and enhancing the credibility of market regulation authorities.

First, standardization helps improve the efficiency of market regulation. Specifically, discretion benchmarks provide different ranges of discretion based on different illegal circumstances and degrees of social harm. Market regulation authorities can quickly find the corresponding discretion range for a case, which helps improve regulatory efficiency.

Second, standardization helps ensure fair law enforcement and protect the legitimate rights and interests of market entities. Specifically, applying discretion benchmarks properly to impose the same penalty for similar cases can avoid the phenomenon of “different penalties for the same case”, ensuring fairness in administrative law enforcement. At the same time, standardizing the exercise of administrative penalty discretion can prevent abuse of power by market regulation authorities, benefiting the protection of market entities’ rights and interests.

Third, standardization helps ensure individual

case justice. Administrative penalty discretion can increase the flexibility of administrative law enforcement, allowing market regulation authorities to handle cases flexibly within the scope of the law and make different administrative penalty decisions based on the specific circumstances of each case, which helps ensure justice in individual cases.

Fourth, standardization helps enhance the credibility of market regulation authorities. Standardizing the exercise of administrative penalty discretion ensures that penalty decisions comply with laws and regulations, are proportionate to the facts, nature, circumstances, and social harm of the violation, gain the acceptance of administrative counterparties and the support of the public, thereby enhancing the credibility of market regulation authorities.

### 2.2 Problems in the Exercise of Administrative Penalty Discretion in Market Regulation

However, some problems have also emerged during the exercise of administrative penalty discretion by market regulation authorities, such as inconsistent discretion benchmarks across regions, insufficient specificity and detail of benchmarks, lack of transparency in the discretionary process and imperfect supervision mechanisms, mechanical application of discretion benchmarks, etc.

First, inconsistent discretion benchmarks across regions. Discretion benchmarks formulated by market regulation authorities in different regions may differ, leading to different penalties for similar cases.

Second, insufficient specificity and detail of discretion benchmarks. This leaves a large margin of discretion in individual cases, resulting in inconsistent outcomes and triggering public questioning and dissatisfaction.

Third, lack of transparency in the discretionary process and imperfect supervision mechanisms. The process of administrative penalty discretion by market regulation authorities is not sufficiently transparent, which may lead some law enforcement personnel to abuse power or enforce unfairly when exercising discretion, causing unjust and unreasonable outcomes that seriously affect the credibility of market regulation authorities.

Fourth, mechanical application of discretion benchmarks may cause problems such as “disproportionate punishment” or “excessive

punishment for minor faults". For example, during the inspection team's major inspection in Shaanxi Province, it was found that some administrative penalties imposed by local market regulation authorities on small and micro market entities suffered from "disproportionate punishment" and "different penalties for similar cases", affecting normal operations of small and micro entities [8]. Among them, the "Yulin Celery Case" is a typical case of "excessive punishment for a minor fault", which once drew widespread attention and became an important case for legal scholarship discussion [9].

Fifth, the year-end assessment of market regulation authorities in some regions may be linked to the amount of fines and penalties in cases, leading to stricter and heavier penalties when handling cases, harming the legitimate rights and interests of administrative counterparties.

### **3. Standardization Path for Administrative Penalty Discretion in Market Regulation**

#### **3.1 Improving the Discretion Benchmark System for Administrative Penalties**

The discretion benchmark system for administrative penalties should be improved.

First, market regulation authorities must strictly perform their duty to formulate administrative discretion benchmarks in accordance with the *Opinions on Further Standardizing the Formulation and Management of Administrative Discretion Benchmarks* and the *Guiding Opinions on Standardizing the Administrative Penalty Discretion Power in Market Regulation*, refining and quantifying such benchmarks. Specifically, provincial and prefecture-level city market regulation authorities may refer to the *Guiding Opinions* and formulate local administrative penalty discretion benchmarks based on regional realities. County-level market regulation authorities may, within the statutory scope, reasonably refine and quantify the standards, conditions, types, ranges, methods, and time limits for applying the discretion benchmarks formulated by upper-level authorities.

Formulating administrative penalty discretion benchmarks that specify the discretion ranges for different illegal acts enables law enforcement personnel to more accurately judge the nature, circumstances, and social harm of illegal acts when exercising discretion, ensuring accuracy

and fairness. Scholars Gao Xiaochao and Liu Zexiang believe that attention should be paid to the following aspects when establishing and improving discretion benchmark systems: first, adhere to the principle of proportionality; second, facilitate practical law enforcement operations; third, strictly observe the authority to refine and quantify; fourth, conduct regular follow-up inspections [10].

Second, an intelligent auxiliary decision-making system, such as an automated penalty calculation system, can be introduced. Law enforcement personnel log into the system, input case details and illegal facts, select the degree of violation and whether there are circumstances for lighter, mitigating, or heavier penalties, and the system will, in combination with relevant laws and regulations, provide a discretion range for administrative penalties and automatically generate the penalty result. This helps standardize the discretionary power of administrative law enforcement personnel, avoid "different penalties for the same case", and ensure fairness.

In addition, the transparency of administrative penalty discretion benchmarks should be enhanced, and they should be publicly announced according to law. A dynamic adjustment mechanism for discretion benchmarks should be established, updating them timely based on legal revisions to ensure adaptability. Training for law enforcement personnel should be strengthened to improve their legal literacy and professional competence, ensuring that they can correctly apply the discretion benchmarks.

#### **3.2 Strengthening the Construction of Related Systems**

The construction of various related systems should be strengthened, such as the hearing system, legal review system for major cases, and public disclosure system according to law.

Regarding the hearing system: for cases that meet the conditions for a hearing, if a market regulation authority intends to impose an administrative penalty, it shall inform the party of the right to request a hearing. If the party requests a hearing, the authority shall organize one. Scholar Hu Chunfeng et al. believe that law enforcement agencies should make full use of administrative procedures involving party participation, such as administrative penalty hearings and administrative reconsideration

hearings, to discover and resolve discretionary issues more within the administrative system. Hearing methods ensure that parties fully understand the content of administrative law enforcement files, thereby raising targeted cross-examination and defense opinions, and also help legal review personnel identify issues in law enforcement and discretion [11].

Regarding the legal review system for major cases: under any of the circumstances provided in Article 58 of the *Administrative Penalty Law of the People's Republic of China*, before the responsible person of the administrative organ makes a decision on administrative penalty, a legal review shall be conducted by personnel engaged in legal review of administrative penalty decisions; if no legal review is conducted or the case fails review, no decision may be made. Personnel who engage in legal review of administrative penalty decisions for the first time in an administrative organ shall pass the unified national legal professional qualification examination and obtain legal professional qualifications.

Regarding the public disclosure system according to law: on the one hand, the administrative penalty discretion benchmarks shall be announced to the public according to law; on the other hand, the results of administrative penalty decisions shall be proactively disclosed on the internet in a timely manner. Strengthening information disclosure is an important means of standardizing the exercise of administrative penalty discretion, and it also helps protect the public's right to know and supervise. Through increased information disclosure, the public can learn about the results of administrative penalties, which enhances the transparency of administrative law enforcement and increases public trust and support for law enforcement actions and penalty results.

### 3.3 Improving Supervision Mechanisms

Supervision mechanisms, including both internal and external supervision, should be improved, as shown in Table 1.

Internal supervision mainly includes legal review of major cases and case evaluation organized by higher-level authorities. Regarding case evaluation, higher-level authorities may organize periodic case evaluations. For example, provincial and prefecture-level city market regulation authorities may organize quarterly case evaluations, selecting cases from county-

level authorities to evaluate aspects such as whether evidence is sufficient, facts are clear, procedures are legal, laws are correctly applied, and discretion is appropriate.

External supervision mainly includes administrative reconsideration, administrative litigation, and social supervision. Regarding administrative litigation, scholar Zhang Xue believes that cases involving administrative penalty discretion in market regulation are broad and complex. Judicial personnel's understanding of case facts and relevant laws may be less than that of administrative personnel. When reviewing specific administrative cases in market regulation, administrative personnel are more professional and persuasive. Therefore, she argues that there are inherent defects and limitations in judicial regulation as an external control method for administrative penalty discretion in market regulation, and that administrative self-restraint has natural advantages [12].

Regarding social supervision, scholar Ju Mingfeng believes that mass supervision and news media supervision should be strengthened. Specifically, mass supervision organizations should be established to publicize the administrative penalty regulations, discipline, and procedural requirements of administrative law enforcement agencies, continuously enhancing transparency and credibility. At the same time, administrative law enforcement should be publicized through newspapers, television, radio, and other news media, combining media supervision with media guidance to effectively enhance the effect of external supervision [13].

**Table 1. Comparison of Internal and External Supervision Mechanisms**

Supervision Type	Specific Methods	Characteristics
Internal Supervision	Legal review of major cases; case evaluation by higher authorities	Self-correction within the system, high efficiency
External Supervision	Administrative reconsideration; administrative litigation; social supervision	Strong credibility, forces standardized law enforcement

### 4. Conclusion

The discretionary power of administrative penalty grants administrative organs a certain

degree of autonomous decision-making and disposition authority. However, at present, some problems have emerged in the exercise of administrative penalty discretion by market regulation authorities. Therefore, it is necessary to propose certain standardization paths, such as improving the discretion benchmark system for administrative penalties, strengthening the construction of related systems, and improving supervision mechanisms, in order to address the problems and challenges, promote more standardized exercise of administrative penalty discretion in market regulation, and achieve strict, standardized, fair, and civilized law enforcement.

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