

Original Paper

Research on the Application of the “No Penalty for First Violation” System in the Field of Market Regulation

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Abstract

As an important measure to practice the concept of inclusive and prudent supervision in the field of market regulation, the “no penalty for first violation” system is of great significance for optimizing the business environment and improving law enforcement efficiency. However, the system still faces numerous challenges in its specific application, which restrict the full play of its effectiveness. By adopting normative analysis and case analysis methods, this paper sorts out the normative system for the application of the “no penalty for first violation” system in market regulation, analyzes relevant cases from China Judgments Online, and focuses on exploring how to establish a standardized path for the application of this system in the field. The research finds that the application of the “no penalty for first violation” system in market regulation has such problems as differentiated application standards, rigid application of the “no penalty for first violation” list, and the absence of a supervision mechanism for administrative discretion. In response to the above issues, targeted legal suggestions are put forward, including clarifying the applicable elements of the “no penalty for first violation” system, establishing an escape mechanism for the system, and constructing an administrative discretion supervision mechanism. It is hoped that this research can provide theoretical reference for promoting the standardized and precise application of the “no penalty for first violation” system in market regulation and realizing the unification of legal effects and social effects.

Keywords

No penalty for first violation, Market regulation, Application of law

1. Introduction

As China enters a new stage of high-quality development, optimizing the business environment and continuously advancing the transformation of government functions have become key links in comprehensively deepening reform. As an important part of the government governance system,

market regulation's law enforcement concepts and methods are directly related to safeguarding market order and stimulating market vitality. Against this backdrop, the "rigid" law enforcement model of imposing mandatory penalties for all administrative violations has increasingly revealed its limitations: on the one hand, it dampens the enthusiasm of start-up enterprises and individual industrial and commercial households; on the other hand, it consumes a large amount of valuable administrative resources, making it difficult to fully meet the in-depth requirements of the "streamline administration, delegate powers, improve regulation, and optimize services" reform. To seek an organic balance between "management" and "service," and between "stringency" and "temperature," the "no penalty for first violation" system has emerged as an innovative flexible law enforcement method, quickly evolving from local practice into an important national-level system.

"No penalty for first violation" refers to a system where administrative organs may, in accordance with the law, decide not to impose administrative penalties on violations that are a first offense, cause minor harmful consequences, and are promptly corrected. The core value of this system lies in integrating punishment with education: through non-mandatory means such as persuasion, education, and warnings, it encourages market entities to recognize and voluntarily rectify their mistakes, thereby achieving the unification of legal effects and social effects. However, this system, which embodies the principle of law enforcement moderation and humanistic care, is facing a series of urgent legal application issues in the process of transforming from a policy concept to specific law enforcement practice. For instance, how to clarify the identification standards for the applicable elements of "no penalty for first violation", how to address the limitations of the "no penalty for first violation" list-based model, and how to effectively supervise administrative discretion. The existence of these problems has led grassroots law enforcement personnel to frequently encounter dilemmas in practice, such as "daring not to use, not knowing how to use, and failing to use it well". It may even give rise to risks such as selective law enforcement and unfair law enforcement, which to a certain extent undermines the credibility and effectiveness of the system.

A search and analysis using "no penalty for first violation" as the keyword in the CNKI database shows that academic circles have conducted many useful discussions on the "no penalty for first violation" system. Existing research mainly focuses on the following aspects: first, the elaboration on the policy background and value of the "no penalty for first violation" system. Wang Chunye and Zeng Xingting argue that the introduction of the "no penalty for first violation" system reflects the humanistic law enforcement concept, promotes the return of value rationality, and balances the macro social legal interests (Wang, C. Y., & Zeng, X. T., 2022, pp. 120-127). Jiang Guohua and Ding Anran further point out that the "no penalty for first violation" system embodies the organic unity among three pairs of logics: administrative education and administrative punishment, consequentialism and rule-basedism, as well as substantive rule of law and formal rule of law (Jiang, G. H., & Ding, A. R., 2021, pp. 143-153). Second, the interpretation of the relevant provisions in the Administrative Penalty Law. Xie Hongxing takes the non-penalty provisions in the Administrative Penalty Law as the research object,

and explores the scenarios and approaches for the direct application of these non-penalty provisions in combination with the principle of legality of punishment and the doctrine of prosecutorial discretion (Xie, H. X., 2025, pp.15-29). Third, the optimization and improvement of the “no penalty for first violation” system or list in a specific field. This mainly focuses on the fields of taxation and ecological environment. In the field of taxation, Zhang Wansu proposes that the legislative expression of the tax “no penalty for first violation” system should be reconstructed from four aspects: legislative philosophy, the boundaries of applicable elements, the resolution of normative conflicts, and the improvement of supporting systems (Zhang, W. S., 2024, pp. 116-129). Zhu Qiuxiang and Chen Xinyi take the tax “no penalty for first violation” list as the research object, clarify the standards for the applicable conditions and the boundaries of the scope of application of the list, so as to ensure the effective implementation of the list (Zhu, Q. X., & Chen, X. Y., 2022, pp. 109-121). In the field of ecological environment, Peng Zhongyao proposes constructing a hierarchical administrative penalty discretion system from three perspectives: circumstances, effects, and procedures (Peng, Z. Y., 2024, pp. 65-73). These achievements have laid a solid foundation for this paper. However, existing research also has shortcomings: discussions on operational aspects such as law enforcement procedures and supervision mechanisms are relatively scattered; comprehensive studies that conduct a linked analysis of substantive dilemmas, procedural deficiencies, and discretion control need to be strengthened.

Therefore, this paper, titled “Research on the application of the ‘no penalty for first violation’ system in the field of market regulation,” explores how to establish a standardized path for the application of this system in market regulation, which holds significant theoretical value and practical significance. At the theoretical level, this paper aims to provide theoretical support for constructing a modern market regulatory system. Traditional administrative penalty theory focuses on deterrence and punishment, while the “no penalty for first violation” system highlights the function of education and the concept of restorative law enforcement. Exploring its institutional logic and normative basis helps enrich and develop administrative law theory, and provides theoretical support for building a more diverse and three-dimensional administrative law enforcement toolbox. At the practical level, this paper strives to offer feasible paths to address the current dilemmas in law enforcement. By adopting normative analysis and case analysis methods, it systematically sorts out relevant laws, regulations and typical cases, summarizes the substantive and procedural obstacles in the operation of the “no penalty for first violation” system, and puts forward targeted legal suggestions. It seeks to provide clear operational guidelines for frontline market regulation law enforcement personnel, improve the standardization and refinement of law enforcement, effectively protect the legitimate rights and interests of market entities, and thereby promote the integration of an efficient market and a capable government.

2. The Normative System for the Application of the “No Penalty for First Violation” System in the Field of Market Regulation

2.1 Provisions of the Administrative Penalty Law

Paragraph 1 of Article 33 of the Administrative Penalty Law revised in 2021 added provisions on the “no penalty for first violation” system: “Where a person commits a violation for the first time, the harmful consequences are minor, and the violation is promptly corrected, no administrative penalty may be imposed.” Literally, “no penalty for first violation” refers to the notion that a person who commits an illegal act for the first time will not be given an administrative penalty. However, this is a conceptual interpretation divorced from legal norms, and its actual meaning is not as such. Paragraph 1 of Article 33 of the Administrative Penalty Law stipulates: “Where a person commits a violation for the first time, the harmful consequences are minor, and the violation is promptly corrected, no administrative penalty may be imposed.” This clarifies three applicable elements of “no penalty for first violation” in the form of legal provisions, namely: “first violation”, “minor harmful consequences”, and “prompt correction”. The conjunctions “and” and “and” are used in the provision to connect the three applicable elements, indicating that they are in a parallel relationship—failure to meet any one of these elements means the statutory requirements for “no penalty for first violation” cannot be satisfied. In addition, even if all three elements are met, the legal consequence is only that “no administrative penalty may be imposed”, which endows administrative organs with a certain degree of discretionary power.

Regarding the three applicable elements of the “no penalty for first violation” system: First, the “first violation” element. There are three understandings regarding the definition of “first”: 1) From the perspective of the actual occurrence time of the illegal act, “first” refers to the administrative counterpart actually committing an illegal act for the first time; 2) From the perspective of the time of administrative subject’s intervention, “first” means the administrative counterpart is detected by the administrative organ to have committed an illegal act for the first time, but in fact, the counterpart has committed such an act before; 3) Meeting both of the above two dimensions—i.e., the administrative counterpart is discovered by the administrative organ to have committed an illegal act for the first time, and this act is also their first in fact. This is referred to as “dual first-time”. Second, the “minor harmful consequences” element. “Minor harmful consequences” consists of two parts: “harmful consequences” and “minor”. Firstly, “harmful consequences” refers to the damage caused by the administrative illegal act to the interests protected by law. The scope of harmful consequences shall be strictly defined based on legally protected interests—only when an interest is protected by law can “harmful consequences” in the sense of the Administrative Penalty Law arise (Zhang, J. S., 2011, pp. 10-24). Secondly, “minor”, as an adverb, is used to limit the degree of “harmful consequences”. From the perspective of legal and regulatory norms, the Administrative Penalty Law does not provide specific, clear and objective criteria for determining the “minor” degree of harmful consequences. Third, the “prompt correction” element. The understanding of “prompt correction” usually includes three scenarios: 1) The administrative

counterpart takes the initiative to correct the illegal act before the administrative organ discovers clues of the violation; 2) The counterpart voluntarily corrects the illegal act after the administrative organ discovers clues but before filing a case; 3) The counterpart corrects the act on the spot or within the time limit ordered by the administrative organ after the organ files the case and issues a correction instruction.

2.2 The Provisions on the “No Penalty for First Violation” List Issued By the State Administration for Market Regulation

All administrative authorities have formulated corresponding item lists and discretionary benchmarks based on the actual circumstances of their respective fields, so as to effectively promote the accurate textual implementation and refinement of the “no penalty for first violation” system in various specific areas. On January 7, 2025, the State Administration for Market Regulation issued the List of First Violations in Market Regulation Subject to No Penalty (I) and the List of Minor Administrative Violations in Market Regulation Subject to No Penalty (I). Among them, the List of First-Time Violations Subject to No Penalty specifies eight types of administrative violations in the field of food safety, along with their corresponding penalty bases and exemption conditions. Although the issuance of this list has met the urgent needs of grass-roots market supervision personnel, provided clear guidance for grass-roots law enforcement, and effectively restricted the scope of discretionary power, its coverage is relatively limited. The eight types of violations listed mainly focus on food operation licensing, labeling and marking, food production and other aspects. Other common food safety violations with minor harms, such as improper use of food additives and non-compliant food storage conditions, have not been clearly included. Furthermore, other market supervision areas besides food safety, such as advertising, product quality and price supervision, are not covered. This may lead to the persistent existence of problems like “disparate penalties for similar cases” and “excessive penalties for minor violations” in these other fields.

2.3 The Provisions on the “No Penalty for First Violation” Lists of Various Provinces and Cities

After searching the “no penalty for first violation” lists in the field of market regulation across various provinces and cities through Pkulaw, it was found that the provisions on “no penalty for first violation” vary from region to region. In terms of the nature of the lists, most of them are normative documents and local work documents. For example, the List of Administrative Violations Subject to No Penalty or Mitigated Penalty in Anhui Province’s Market Regulation Field, jointly issued by the Anhui Provincial Administration for Market Regulation and the Anhui Provincial Department of Justice, is a local normative document; the List of First-Time Violations Subject to No Penalty and Minor Violations Subject to Exemption from Penalty in Wuhan’s Market Regulation Field, issued by the Wuhan Administration for Market Regulation, is classified as a local work document. In terms of the fields and items covered by the lists, each province and prefecture-level city has its own focus. For instance, the List of First Violations Subject to No Penalty and Minor Violations Subject to Exemption from Penalty in Wuhan’s Market Regulation Field (in Effect) includes 106 items across nine fields, such as

advertising supervision, food safety supervision, and supervision of pharmaceuticals, medical devices, and cosmetics; the List of First Minor Administrative Violations Subject to Exemption from Penalty upon Commitment in Dalian's Market Regulation Field covers 77 items in 13 fields, including registration and registration, price supervision, online transaction supervision, and consumer rights protection. Regarding the total number of items in the lists, some provinces and cities have formulated very detailed provisions with a large number of applicable items; others involve relatively few types of items. For example, the Inclusive Exemption from Penalty List (Trial Implementation) in Ya'an's Market Regulation Field only includes 21 items applicable to "no penalty for first violation". It can be seen that due to differences in their respective socioeconomic development levels, provinces and prefecture-level cities hold varying attitudes towards "no penalty for first violation".

3. The Litigation Status of the "No Penalty for First Violation" System in the Field of Market Regulation

After analyzing the "no penalty for first violation" cases retrieved from China Judgments Online, it is found that the system has demonstrated several distinct characteristics in the practical application of administrative law, while also exposing problems that urgently need to be addressed. From the perspective of the focal points of disputes in the judicial documents, the main controversial issues include:

First, whether the application of legal basis is correct, and whether the alleged administrative illegal act meets the applicable elements of "no penalty for first violation" as stipulated in Article 33 of the Administrative Penalty Law. In the case of "Xiapu County Administration for Market Regulation v. Han Mouxing Vegetable Stall in Songgang, Xiapu County", the Xiapu County Administration for Market Regulation found through sampling inspection that the mung bean sprouts sold by the vegetable stall contained excessive additives, and therefore imposed a fine of 50,000 yuan on it in accordance with Article 124 of the Food Safety Law. After trial, the court held that although the vegetable stall failed to strictly fulfill the obligation of incoming inspection, it could clarify the procurement process. Combined with the trading habits of the farmers' market, it could be determined that it had no subjective intent to violate the law. Objectively, the illegal act caused little disruption to the food safety market and did not result in actual adverse consequences. Therefore, the court ruled that the illegal act of the vegetable stall met the provisions of "no penalty for first violation" and could be exempted from punishment. However, the court regarded "no subjective intent" as a constituent element of "no penalty for first violation". In fact, subjective fault is stipulated in Paragraph 2 of Article 33 of the Administrative Penalty Law, which is distinguishable from "no penalty for first violation" in the legislative system. It can be seen that the positioning of the element of "no subjective intent" is not clear.

Second, whether an alleged administrative illegal act not included in the list issued by the local market supervision authority may be exempted from punishment? In the case of “Anmin Grain, Oil and Condiment Store in Weihai Economic and Technological Development Zone v. Administrative Committee of Weihai Economic and Technological Development Zone and People’s Government of Shandong Province”, the plaintiff placed edible baking soda and five-spice beef sauce that had exceeded their shelf life in the goods consignment area, which was identified as an illegal act of selling food past its expiration date. The plaintiff claimed that its act should be applicable to the “no penalty for first violation” rule. However, the defendant argued that the act was not covered by the 2021 List of Items for Exemption from Administrative Penalties for Minor Illegal Acts and Mitigated Administrative Penalties for General Illegal Acts in Shandong Province, and thus the rule should not apply. After an in-depth review, the court pointed out that the application of the “no penalty for first violation” rule should not be determined merely based on the single factor of being a first-time violation. Instead, it is necessary to comprehensively and synthetically consider multiple factors, such as the nature of the act, the severity of the illegal circumstances, the degree of the party’s subjective fault, and the extent of social harm. It can be seen that during the law enforcement process, the defendant applied the list in a rigid and mechanical manner, failing to make flexible and comprehensive judgments in full combination with the actual situation.

Third, whether the procedure of the administrative penalty is legitimate and proper. In the case of “A Certain Medical Technology Company in Gansu v. Market Supervision Administration of Chengguan District, Lanzhou City and People’s Government of Chengguan District, Lanzhou City”, the medical technology company filed an administrative lawsuit with the court because it refused to accept the penalty decision made by the Market Supervision Administration of Chengguan District and the administrative reconsideration decision issued by the People’s Government of Chengguan District. After hearing the case, the court found that the Market Supervision Administration of Chengguan District failed to submit evidence to prove that it had ordered the technology company to rectify its illegal act. This act constituted a procedural illegality, so the court revoked the administrative penalty in accordance with the law. This case exposes the problem of insufficient supervision over administrative discretion.

4. Problems Existing in the Application of the “No Penalty for First Violation” System in the Field of Market Regulation

4.1 The Application Standards of the “No Penalty for First Violation” System in the Field of Market Regulation Show Differentiation

4.1.1 No Clear Temporal or Geographical Standards for “First Violation”

“First violation” is a prerequisite for the application of the “no penalty for first violation” system, and there are significant differences in the provisions on “first violation” among various regions.

First, the provisions on the time cycle for “first violation”. Even within the same field of market regulation, the Rules for the Application of Exemption from Administrative Penalties and Administrative Compulsory Measures in Sichuan Province’s Market Regulation Field stipulates that “first violation” refers to the first violation of laws, regulations and rules in the field of market supervision within three years; however, Zhanjiang has set a different retrospective period for “first violation”. It stipulates that for general minor illegal acts, the retrospective period for “first violation” is limited to two years; for emerging business formats, multiple determinations as “first violation” are allowed under certain conditions.

Second, the determination of the geographical scope for “first violation”. If a person has been exempted from punishment for a certain illegal act in one place and then travels to another place to commit the same type of illegal act again, whether the “no penalty for first violation” system can still be applied at this time. If it can be applied, given the relative independence of legislation and rules in different administrative regions, the person may, by virtue of differences in regional rules, obtain the treatment of exemption from administrative punishment multiple times in different regions. This will not only condone some people’s continuous commission of illegal acts, but also may lead to the abuse of the system, undermining the authority and fairness of market supervision. If the application of “no penalty for first violation” is strictly restricted, it is necessary to break through the boundaries of administrative regions, incorporate the person’s previous enjoyment of “no penalty for first violation” in other regions into the current law enforcement considerations, and establish a cross-regional information sharing mechanism. This will prevent them from evading punishment by switching regions, thereby ensuring that the original intention of the system design is realized.

4.1.2 Lack of Objective Criteria for Judging Harmful Consequences

Minor harmful consequences consists of two parts: harmful consequences and minor. In administrative law, consequence refers to the damage caused by illegal acts to the interests protected by law. Determining the degree of harmful consequences shall be based on the extent of damage to the interests targeted by the act of violating administrative obligations. However, in practice, the legal literacy of grass-roots law enforcement personnel varies, making it difficult for them to fully understand the legal interests protected by the law. The identification of harmful consequences is highly subjective; some law enforcement personnel even directly ignore this requirement and apply no penalty for first violation solely based on first violation and timely correction. Therefore, the identification of harmful consequences should be judged as much as possible based on objective criteria.

4.1.3 Unclear Positioning of the “Non-Subjective Intent” Element

In the process of administrative penalty, there has always been the question of whether subjective intent can be a constituent element of administrative penalty. In the practice of “no penalty for first violation”, there is also the issue of whether “non-subjective intent” can be a constituent element for exemption from administrative penalty. In the case of “Exemption from Administrative Penalty for a Catering Store in Jingdezhen High-tech Zone Engaging in Catering Business Without Obtaining an Operating

License”, law enforcement officers found during daily inspections that the catering store was operating without a valid operating license. After being educated by the law enforcement officers, the catering store promptly corrected its illegal act. Ultimately, the market supervision authority held that the catering store had committed a first violation, caused no serious consequences, and had not intentionally failed to apply for the operating license. Therefore, it met the conditions for “no penalty for first violation” and decided to exempt it from administrative penalty. In another case, “Exemption from Administrative Penalty for a Food Company in Xinyu City for Violating the Food Safety Law”, the market supervision authority conducted sampling inspections on the company. After receiving the unqualified food inspection results, it filed a case for investigation. During the investigation, the company actively cooperated, truthfully stated the illegal facts, and took the initiative to recall the illegal products, thereby mitigating the harmful consequences. The market supervision authority held that the party had committed a first violation, with minor harmful consequences and timely correction, and thus decided to exempt it from administrative penalty.

4.2 Rigid Application of the “No Penalty for First Violation” List

Although administrative discretion benchmarks have a positive effect in restricting the abuse of administrative discretion, they have an inherent rigidity problem (Wang, Q. B., 2023, pp. 18-33). It may occur that when law enforcement officers of market supervision authorities face an administrative illegal act, they compare it with the local market supervision exemption from administrative penalty list and find that the illegal act is not included in the list, thus excluding the application of the no penalty for first violation list. For example, in the case of Hainan Yibaolu Beverage Co., Ltd. suspected of using uninspected forklifts, Yibaolu Company was fined by the market supervision authority for failing to complete registration procedures for its forklifts. The company argued that it had actively cooperated with the investigation, rectified the violation promptly, and the use of the unqualified forklifts had not caused any adverse consequences, so it met the conditions for no penalty for first violation. However, Haikou Municipal Administration for Market Regulation refused to apply the system on the grounds that the party’s illegal act was not included in the List of First-time Minor Illegal Acts of Market Entities Exempted from Administrative Penalty in Hainan Province’s Market Supervision Field. Therefore, although on the basis of only principled provisions for no penalty for first violation, several exemption from administrative penalty lists have been formulated to make the original general and vague provisions operable, the risk of rigidity still exists.

4.3 Lack of Supervision Mechanism for Administrative Discretion

At present, the administrative supervision mechanism of the “no penalty for first violation” system in the field of market supervision has significant deficiencies, making it difficult to form effective constraints on administrative discretion. At the internal supervision level, the hierarchical supervision by higher authorities often becomes a mere formality, lacking in-depth exploration of the substantive rationality of discretionary decisions; meanwhile, the absence of a normalized unannounced inspection mechanism leaves grass-roots law enforcement without continuous and effective external constraints

when applying “no penalty for first violation”. In terms of external supervision, public supervision is restricted. Publicly available documents often use obscure professional terminology and are released through a single channel, resulting in a lack of necessary information basis for social supervision. The ineffective reporting and feedback mechanism has further dampened the public’s willingness to supervise. This dual weakening of internal and external supervision has led to a lack of rigid constraints on the exercise of discretionary power. It not only encourages unfair phenomena such as selective law enforcement and inconsistent judgments in similar cases, but also undermines the credibility and authority of administrative law enforcement.

5. Legal Suggestions on the Application of the “No Penalty for First Violation” System in the Field of Market Regulation

5.1 Clarify the Applicable Elements of the “No Penalty for First Violation” System in the Field of Market Regulation

5.1.1 Clarify the Temporal and Geographical Standards for “First Violation”

There are three understandings of “first violation”: factual first violation, first violation first discovered by the supervisory authority, and “dual first violation” which combines the first two understandings. In conjunction with the statute of limitations for prosecution stipulated in Article 36 of the Administrative Penalty Law, “first violation” shall refer to the first illegal act committed by a violator and discovered by the market supervision authority within a certain period. In terms of the time cycle, a model of “taking a fixed cycle as the mainstay and specific circumstances as exceptions” can be adopted. Firstly, clarify the valid time scope for “first violation”: set a unified review cycle of retroactively two years from the date when the party completes rectification. Only those with no records of the same type of violations in the recent two years shall be identified as “first violation”. This standard is consistent with the statute of limitations for prosecuting some illegal acts in the Administrative Penalty Law, and the time limit is appropriate—it can not only give first-time offenders a chance to reform, but also maintain deterrence against repeat offenders. Secondly, introduce a credit repair mechanism as an exception. For those who have illegal records but have fulfilled the penalty, corrected the act, and successfully repaired their credit, the date of completion of credit repair shall be taken as a new starting point to restart the review of “first violation” qualification. In terms of the geographical scope, it should be supported by a national unified database, and promote the unification within provinces and the coordinated development of regional provinces and cities in a hierarchical and gradual manner. Ultimately, the standard for “first violation” shall be “no records of the same type of illegal acts nationwide”, which completely eliminates the practice of evading legal liability by taking advantage of geographical information asymmetry.

5.1.2 Refine the Objective Criteria for Judging Harmful Consequences

The core focus of the criteria for determining minor harmful consequences lies in defining “minor”. However, the term “minor” is highly subjective and requires clearer, more accurate objective judgment

standards. Based on the provisions of local lists and specific practices, the consideration of “minor harmful consequences” includes three aspects: the amount of illegal gains, the duration of the illegal act, and procedural violations. Firstly, regarding the amount of illegal gains: due to inconsistent economic development levels across regions, the threshold for the amount of illegal gains can be set according to local actual conditions. When establishing monetary limits, local authorities may define a specific range by setting minimum and maximum thresholds for illegal gains. Secondly, in terms of the duration of the illegal act: the longer the illegal act persists, the greater the actor’s subjective malice and the resulting social harm. Provisions on the duration of illegal acts of the same nature should be unified, with gradients such as within one month, within six months, and so on. Finally, concerning procedural violations: administrative authorities may classify illegal acts committed due to procedural flaws by the violating entity as “minor”. This is particularly applicable in areas involving administrative licensing, where the counterpart is required to submit an application to the relevant administrative authority and obtain approval before engaging in the act. If the counterpart commits such an act for the first time without obtaining the required license due to procedural flaws and no harmful consequences are caused, the act may be deemed “minor”.

5.1.3 Take “Non-Subjective Intent” As a Discretionary Factor

Non-subjective intent means that the violating entity has no subjective intent to violate the law when committing the illegal act. Non-subjective intent should not be a constituent element of “no penalty for first violation”, but it can be taken as a factor for administrative authorities to consider when exercising discretion. The reasons are as follows: Firstly, the legal provisions of the Administrative Penalty Law on the “no penalty for first violation” system do not explicitly stipulate the condition of non-subjective intent; instead, they separately list a clause for “no penalty without subjective fault” to exempt from administrative penalty. Secondly, if non-subjective intent is regarded as a constituent element of “no penalty for first violation”, it would require the violating entity to have no subjective intent when committing the illegal act. On the basis of satisfying “first violation”, “minor harmful consequences”, and “timely correction”, the absence of subjective intent would also be required to qualify for exemption from penalty. This would essentially narrow the scope of application of “no penalty for first violation”, which is not conducive to implementing the principle of combining punishment with education. Finally, according to existing provisions, if non-subjective intent were a constituent element, the violating entity would bear the burden of proof. This would actually impose a certain burden on the counterpart and be inconsistent with the original philosophy of the “no penalty for first violation” system. Therefore, the positioning of non-subjective intent should be as a discretionary circumstance for “no penalty for first violation”. That is to say, even if the violating entity commits the illegal act with subjective intent, as long as the above three elements are met, it may be exempt from administrative penalty. Whether there is subjective intent is merely a factor for administrative authorities to consider when exercising administrative discretion.

5.2 Set up An Escape Mechanism for “No Penalty/for First Violation”

The original purpose of formulating the list for “no penalty for first violation” is to prevent administrative organs from abusing their discretionary power. However, the list itself has an inherent flaw of limitation, which is likely to lead to rigid discretion by law enforcement officers and improper infringement upon the rights of administrative counterparts during its practical implementation. Therefore, in the implementation of this list, it is necessary to reasonably formulate deviation clauses and corresponding procedures, leaving sufficient discretionary space for law enforcement officers to handle cases flexibly when necessary. Deviation here refers to the act where, when confronted with special circumstances, administrative law enforcement organs, after considering the purposes of the rule of administrative law and legislative intent, determine that the existing administrative discretion standards are inappropriate for a specific case and thus exercise the power to deviate from such standards in accordance with the law (Zhou, Y. Y., 2009, pp. 12-16).

Firstly, regarding the initiation procedure for deviation acts, administrative organs shall make such acts in accordance with the principle of “general compliance with discretionary standards and deviation only in individual cases”. In specific cases, they may conduct assessments based on the principle of proportionality, the principle of proportionality between punishment and offense, and the principle of equality. Deviation clauses may only be considered for application when the discretionary result determined in accordance with the discretionary standards is obviously inappropriate. Excessive abuse of deviation clauses will render the discretionary standards ineffective, leading administrative organs back to a state of disorder in determining the application of “no penalty for first violation”. Secondly, if discretionary standards are not applied in a specific case, administrative organs shall fully explain the reasons based on the specific circumstances of the case, taking into account relevant factors such as the regional economic and social development level and the subjective and objective conditions of the party concerned. Such a decision shall be made through collective discussion by the responsible persons of the administrative organ to ensure that the deviation act is within a reasonable scope.

5.3 Construct an Administrative Discretion Supervision Mechanism

Faced with the current predicament of the absence of a supervision mechanism for administrative discretion, it is imperative to construct a systematic and rigid restrictive system at the legal level. Firstly, the hierarchical supervision mechanism should be improved through legislation. Detailed implementation rules of the Administrative Penalty Law or departmental regulations shall explicitly require the establishment of a supervision model of “provincial-level filing and ministerial-level random inspection”. It shall be stipulated that cases of “no penalty for first violation” are subject to mandatory filing and regular special inspections, and an inter-regional mutual inspection mechanism shall be introduced to break down local protection barriers and ensure the independence and effectiveness of supervision. Secondly, the legal safeguards for external supervision must be strengthened. Legislation shall mandate the full disclosure of decisions on exemption from administrative penalty that do not involve state secrets or trade secrets, and require the preparation of

public versions in plain language to protect the public's right to know. Meanwhile, the legal authority of social supervisors shall be established by law, endowing them with procedural rights such as accessing case files and participating in acceptance inspections, and a legal protection and reward mechanism for whistleblowers shall be established. Only through such a legal system design combining internal and external supervision can administrative discretion be truly “locked in the cage of systems”, ensuring that the original legislative intent of “no penalty for first violation” is not rendered nugatory in law enforcement practice.

6. Conclusion

The “no penalty for first violation” system represents a profound transformation in the law enforcement philosophy of market regulation, and serves as a valuable practice in building a law-based government and a service-oriented government. Far from condoning illegal acts, it embodies a more refined and humanized allocation of administrative penalty resources within the framework of the rule of law. Currently, the various challenges encountered in the application of this system are an inevitable stage in the development of any emerging institution. Moving forward, we should continue to clarify its boundaries, optimize its procedures, and strengthen its supervision through sustained institutional innovation and strict legal regulation. By doing so, the “no penalty for first violation” system can strike an optimal balance between stimulating market vitality and safeguarding market order, ultimately becoming a solid legal guarantee for promoting the high-quality development of China’s market economy.

Fund Project

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