### 7510 Legal Basis to Impose Administrative Penalties

LPPH DRAFT 8242-CCL (new item)

Policy

Administrative penalties are fines that Licensing may impose against an operation or a controlling person with the intent of reducing the risk of harm to children in care. Administrative penalties are not imposed for clerical errors.

Administrative penalties may be imposed against:

a. any licensed operation, registered or listed family home, including those exempt from paying annual fees;

b. controlling persons; and

c. a child placing agency’s main office for violations cited at the operation’s branch offices.

Texas Human Resources Code [§42.078(a)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.078)

DFPS Rules, 40 TAC [§745.8603](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8603)

#### 7511 Imposing an Administrative Penalty Before Taking a Corrective Action

LPPH DRAFT 8242-CCL (new item)

Policy

Licensing may impose a fine before taking non-monetary corrective action. This is done only when an operation or controlling person has violated high risk minimum standards or rules. These rules include, but are not limited to, standards and rules related to supervision, safety hazards, and background checks.

Texas Human Resources Code [§42.078(a-2)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.078)

Also see:

7521 Single High Risk Violations

7522 Repeated High Risk Violations

#### 7512 Imposing an Administrative Penalty After Taking a Corrective Action

LPPH DRAFT 8242-CCL (new item)

Policy

Licensing must take a non-monetary corrective action before imposing a fine against an operation or a controlling person in situations in which the operation:

a. violates a term of a permit issued under HRC [Chapter 42](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm), or a rule or order adopted under that chapter;

b. makes a statement about a material fact that the operation or person knows or should know is false:

• on an application for the issuance of a permit or an attachment to the application, or

• in response to a matter under investigation;

c. refuses to allow an inspector to inspect:

• a book, record, or file required to be maintained by the operation, or

• any part of the premises of the operation;

d. purposefully interferes with the work of an inspector or the enforcement of HRC [Chapter 42](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm);

e. fails to pay a penalty assessed under HRC Chapter 42 on or before the date the penalty is due, as determined under HRC [§42.078](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.078);

f. commits repeated deficiencies that present low to medium risk to children; or

g. fails to comply with any evaluation or probation plan after time limits for correction have expired.

Texas Human Resources Code [§42.078(a)(1)-(5)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.078)

DFPS Rules, 40 TAC §§[745.8603](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8603), [745.8605](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8605), [745.8711](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8711), [745.8715](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8715)

### 7520 Assessing the Need for an Administrative Penalty

LPPH DRAFT 8242-CCL (new item)

Policy

To determine whether an administrative penalty should be recommended, staff consider the following:

a. whether corrective action is more appropriate (see [7400](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7400) Evaluation and Probation);

b. whether the operation or controlling person has made any effort to come into compliance;

c. whether an operation has been cited for the same violation within the past six months;

d. whether it has been documented that the operation has been advised that another violation of the high risk minimum standard or rule previously cited could result in an administrative penalty; and

e. the level of risk posed to children in care because of the violation.

#### 7521 A Single High Risk Violation

LPPH DRAFT 8242-CCL (new item)

Procedure

Licensing staff consider recommending an administrative penalty when an operation or controlling person has a single violation of a high risk minimum standard or administrative rule.

##### 7521.1 A Single High Risk Violation of Background Check Requirements

LPPH DRAFT 8242-CCL (new item)

Policy

Licensing staff consider recommending an administrative penalty for a single violation of a minimum standard or rule for the following background check requirements:

a. knowingly allowing a person to be present in the operation before receiving the results of the person’s background check;

b. knowingly allowing a person to be present in the operation after receiving the results of the person’s background check, if the results contain criminal history or central registry findings that preclude the person from being present in the operation; or

c. violating a condition or restriction placed by Licensing on a person’s presence at the operation as part of a pending or approved risk evaluation.

DFPS Rules, 40 TAC §§[745.626](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=626), [745.651](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=651), [745.656](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=656), [745.657](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=657), [745.693](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=693), [745.701](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=701), [745.8713](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8713)

Also see:

Protocol for Citing and Recommending Administrative Penalties for Single High Risk Deficiencies

#### 7522 Repeated High Risk Violations

LPPH DRAFT 8242-CCL (new item)

Procedure

Licensing staff consider imposing an administrative penalty when an operation or a controlling person has repeated violations of the same high risk minimum standard or administrative rule during any six month period.

##### 7522.1 Repeated Violations of Background Check Requirements

LPPH DRAFT 8242-CCL (new item)

Procedure

Licensing staff consider imposing an administrative penalty when an operation or controlling person has demonstrated a pattern of noncompliance (two or more violations during any six month period) with the following background check requirements:

• timely submission of an initial background check; or

• timely submission of a renewal background check.

DFPS Rules, 40 TAC §§[745.601](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=601), [745.625](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=625), [745.8713](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8713)

Administrative penalties are *not* imposed for repeated violations of these background check requirements if:

• the violation involves a regular or frequent visitor, if the operation has not been previously informed that the person needed a background check; and

• the violation is for an overdue background checks in listed family homes when automatic suspension is appropriate.

Also see

[7810](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7810) Automatic Suspensions

### 7530 Recommending the Administrative Penalty

#### 7531 When to Recommend the Administrative Penalty

LPPH DRAFT 8242-CCL (new item)

Policy

Licensing staff must submit the recommendation to impose an administrative penalty to the legal division as soon as possible, but no later than 30 days after the operation or controlling person was notified of the violation.

Also see:

7532 How to Document the Recommendation to Impose the Administrative Penalty

##### 7531.1 When the Violation is Corrected at the Time of the Inspection

LPPH DRAFT 8242-CCL (new item)

Procedure

If the operation corrects the deficiency at the time of the inspection, the inspector recommends the administrative penalty as early as the same day the violation was cited, or as soon as possible following the inspection.

##### 7531.2 When the Violation is Not Corrected During the Inspection

LPPH DRAFT 8242-CCL (new item)

Procedure

If the violation is not corrected during the inspection, the operation or controlling person is responsible for notifying Licensing when the violation has been corrected.

Staff wait to recommend the administrative penalty until the operation or controlling person notifies Licensing that compliance is met.

If the operation or controlling person does not notify Licensing that compliance has been met within 15 days of being notified of the violation, the inspector:

a. processes a penalty on the existing violation;

b. recites the minimum standard or administrative rule in violation, if applicable; and

c. considers recommending a separate administrative penalty for the new violation.

#### 7532 How to Document the Recommendation to Impose the Administrative Penalty

LPPH DRAFT 8242-CCL (new item)

Policy

A recommendation to impose an administrative penalty must be completed and submitted to the supervisor within three days of creating the administrative penalty in CLASS.

An administrative penalty is created when the inspector identifies and saves violations on the *Administrative Penalty Standards List* page. At this point, a unique administrative penalty number is created.

Procedure

The inspector completes the *Administrative Penalty Details* page and *Administrative Penalty Standard Details* page in CLASS by:

a. selecting whether to send the recommendation letter to the permit holder, designee, or controlling person;

b. searching for and selecting each violation resulting in the administrative penalty;

c. entering the fields required to calculate the recommended penalty amount to be imposed for each violation (see 7532.1 Determining the Maximum Daily Penalty Amount); and

d. documenting any additional information regarding the penalty in the *Narrative* box specific to that particular violation. Information may include an employee’s name or date of hire, or any other pertinent information as to why a penalty should be imposed for violation identified.

After the inspector identifies each violation the administrative penalty should be imposed for, the inspector submits the recommendation to the supervisor for review and approval by selecting the *Recommendation Ready for Supervisor Approval* checkbox and saving the *Administrative Penalty Details* page in CLASS.

##### 7532.1 Determining the Maximum Daily Penalty Amount

LPPH DRAFT 8242-CCL (new item)

Policy

The maximum daily amount Licensing may impose for each day a violation continues or occurs is set in statute and is based on the type and capacity of the operation.

Licensing staff may recommend imposing 25%, 50%, 75%, or 100% of the maximum daily amount based on the:

a. seriousness of the violation,

b. history of previous violations,

c. efforts the operation or controlling person has taken to correct the violation;

d. amount necessary to deter future violations; and

e. extent to which the violation causes harm to property or the environment

Texas Human Resources Code [§42.078](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.078)(b)(1) and (2); and (c)(1) and (2)

Procedure

The inspector enters the recommended percentage of the maximum daily amount in the *Recommended Penalty Amount for Violation* field on the *Administrative Penalty Standard Details* page for each violation associated with the penalty.

###### 7532.11 Determining the Operation’s Capacity

LPPH DRAFT 8242-CCL (new item)

Policy

For operations other than child placing agencies, the maximum penalty amount is based on the capacity listed on the operation’s permit.

For children placing agencies, the maximum daily penalty amount is based on the number of children in care at the time of the violation.

Texas Human Resources Code [§42.078(b)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.078)

Procedure

If the administrative penalty is being imposed on an operation other than a child placing agency, the operation’s capacity will automatically display on the *Administrative Penalty Standard Details* page in CLASS.

If the administrative penalty is being imposed on a child placing agency, the inspector enters the operation’s capacity in the *Capacity* field on the *Recommended Penalty Amount* section of the *Administrative Penalty Standard Details* page in CLASS.

###### 7532.12 Determining the Number of Days to Impose an Administrative Penalty

LPPH DRAFT 8242-CCL (new item)

Procedure

To determine the number of days to impose the penalty, the inspector enters the following information in the *Recommended Penalty Amount for Violation* fields on the *Administrative Penalty Standard Details* page:

a. the date the operation was notified of the violation in the *Begin Date* field;

b. the date the operation was given to comply with the minimum standard or rule in the *Comply by Date* field;

c. the date the operation came into compliance in the *Corrected Date* field:

i. if the violation is corrected at the time of the recommendation, the inspector uses the date the operation notified Licensing of the correction;

ii. if the violation has not been corrected 15 days after the operation was notified of the violation the inspector enters a date equal to 15 days from the *Begin Date*; and

d. the number of days excluded, which is the number of days the operation was not providing care for children between the *Begin Date* and the *Compliance Date,* in the *Number of Excluded Days* field.

###### 7532.13 Submitting the Recommendation to the Supervisor

LPPH DRAFT 8242-CCL (new item)

Procedure

When the inspector has entered all information to be considered with the administrative penalty, the inspector submits the recommendation to the supervisor by checking the *Recommendation Ready for Supervisor Approval* checkbox on the *Administrative Penalty Details* page.

#### 7533 Supervisor and Legal Review of the Recommendation to Impose an Administrative Penalty

LPPH DRAFT 8242-CCL (new item)

Policy

From the date the inspector submits the recommendation to impose the administrative penalty for review, the supervisor has five days to edit, approve, and submit the request to the legal division for review.

The supervisor processes the recommendation to impose the administrative penalty even if an administrative review is requested on violations identified in the penalty.

The supervisor must obtain approval from legal before sending the recommendation to impose the administrative penalty to the operation or controlling person.

Procedure

In order to approve the recommendation to impose an administrative penalty, the supervisor reviews the recommendation to determine:

a. whether an administrative penalty is warranted for each identified violation;

b. that the maximum daily amount to be imposed for each violation is consistent with policy;

c. that the number of days the penalty is imposed is correct; and

d. whether the appropriate technical assistance was provided at the time of the original citation.

If the administrative penalty totals more than $500, the supervisor must submit the recommendation for approval to the director or designee of Child Day Care or Residential Child Care before the recommendation is sent to the legal department for review.

Also see*:*

[4161.2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4161_2) Documenting Inspection Results on CLASS Form 2936

##### 7533.1 Supervisor and Legal Agree With the Recommendation

LPPH DRAFT 8242-CCL (new item)

Procedure

If the supervisor agrees with the recommendation, the supervisor:

a. makes any necessary edits to the inspector’s initial recommendation;

b. selects the *Supervisor Approved* checkbox on the *Administrative Penalty Details* page;

c. saves a draft of the *Notice of Recommendation for Administrative Penalty* CLASS Form 2994; and

d. sends a copy of the *Notice of Recommendation for Administrative Penalty* CLASS Form 2994 to the legal mailbox, along with a copy of each inspection, assessment, or investigation form in which a violation identified in the administrative penalty were cited.

##### 7533.2 Legal Agrees With the Recommendation

LPPH DRAFT 8242-CCL (new item)

If legal approves the recommendation to impose an administrative penalty, the supervisor sends the notice to the licensed operation, registered or listed home, or controlling person.

Also see:

7534 Sending Notification of the Recommendation to Impose an Administrative Penalty

##### 7533.3 Supervisor or Legal Disagree With the Recommendation

LPPH DRAFT 8242-CCL (new item)

Procedure

If the supervisor determines that an administrative penalty is not necessary or appropriate, the supervisor completes the *Administrative Penalty Final Result* section on the *Administrative Penalty* *Details* page in CLASS by:

• selecting *Stopped* from the *Final Result* field; and

• documenting the reason the penalty was not approved in the *Final Result Narrative* field.

#### 7534 Sending Notification of the Recommendation to Impose an Administrative Penalty

LPPH DRAFT 8242-CCL (new item)

Policy

From the date the supervisor sends the recommendation to impose an administrative penalty to the legal division, Licensing has six days to notify the operation or controlling person of the recommendation.

Procedure

If the legal division approves the recommendation to impose an administrative penalty, the supervisor takes the following steps on the *Administrative Penalty Details page*:

a. makes any requested edits to the recommendation;

b. finalizes the *Notice of Recommendation for Administrative Penalty* CLASS Form 2994; and

c. sends the recommendation to impose the penalty via regular and certified mail, and includes copies of relevant inspection and investigation forms supporting the decision.

Also see:

7540 Issuing the Order to Pay an Administrative Penalty

7550 Due Process Rights for Administrative Penalties

#### 7535 Reviewing the Status of Administrative Reviews for Minimum Standard or Rule Violations Identified in the Administrative Penalty

LPPH DRAFT 8242-CCL (new item)

Policy

Before notifying the operation or controlling person about the recommendation to impose an administrative penalty, the supervisor reviews the administrative review status for each violation identified in the administrative penalty to determine whether:

a. the penalty should be stopped;

b. a different amount should be imposed; or

c. the recommendation can be sent as drafted.

Also see:

7535.1 Actions to Take If Any, But Not All, Violations Identified in the Administrative Penalty Are Overturned During the Administrative Review

7535.2 Actions to Take If All Violations Identified in the Administrative Review are Overturned During the Administrative Review

##### 7535.1 Actions to Take if Any, But Not All, Violation Identified in the Administrative Penalty is Overturned During the Administrative Review

LPPH DRAFT 8242-CCL (new item)

Procedure

If the *Administrative Review* status for any, but not all of the violations identified in the administrative penalty are set to *Overturned and the Notice of Recommendation for Administrative Penalty CLASS Form 2994 has not been sent to the operation or controlling person*, the supervisor reviews and makes any needed edits the recommendation to impose the administrative penalty.

If the *Administrative Review* status for any, but not all of the violations identified in the administrative penalty are set to *Overturned* and the *Notice of Recommendation for Administrative Penalty* CLASS Form 2994 has already been sent to the operation or controlling person, the supervisor:

• requests a data fix to remove to *Overturned* violation;

• sends notification to the operation or controlling person on DFPS Letterhead if the outcome of the administrative review significantly alters the initial recommendation, including the amount of the penalty; and

• gives the operation or controlling person another opportunity to accept the updated penalty if the operation previously requested a due process hearing.

##### 7535.2 Actions to Take if All Violations Identified in the Administrative Penalty are Overturned During the Administrative Review

LPPH DRAFT 8242-CCL (new item)

Procedure

If the *Administrative Review* status for all violations identified in the administrative penalty are set to *Overturned*, the supervisor:

a. selects *Stopped* from the *Final Result* field on the *Administrative Details* page in CLASS and enters a reason for the penalty being stopped; and

b. if the Notice of *Recommendation for Administrative Penalty* CLASS Form 2994 has already been sent to the operation sends notification to the operation or controlling person that the decision to recommend an administrative penalty was stopped by sending notice using DFPS Letterhead.

### 7540 Issuing the Order to Pay an Administrative Penalty

#### 7541 When to Send the Order to Pay the Administrative Penalty

LPPH DRAFT 8242-CCL (new item)

Policy

The operation or controlling person has 30 days to either accept the administrative penalty or request a due process hearing.

Procedure

The supervisor waits 30 days after the operation or controlling person receives the *Notice of Recommendation for Administrative Penalty* CLASS Form 2994 to issue an order to pay an administrative penalty.

The supervisor sends the notice to the operation only after:

a. the due process for each violation identified in the administrative penalty is complete;

b. the *Administrative Review* status for at least one of the violations is set to *Waived* or *Upheld; and*

c. the operation or controlling person:

i. provides written notice accepting the penalty;

ii. fails to respond with written notice within the specified time frame after receiving the recommendation to impose a penalty; or

iii. requests a due process hearing to contest the penalty and the decision to impose the penalty is upheld during the due process hearing and judicial review.

Also see:

7535.1 Actions to Take If Any, But Not All, Violation Identified in the Administrative Penalty is Overturned During the Administrative Review

7535.2 Actions to Take If All Violations Identified in the Administrative Penalty are Overturned During the Administrative Review

7550 Due Process Rights for Administrative Penalties

#### 7543 Processing the Order to Pay the Administrative Penalty

LPPH DRAFT 8242-CCL (new item)

Procedure

A supervisor does not need legal to review or approve the order to impose the administrative penalty unless significant edits or changes were made to the original recommendation to impose the administrative penalty.

To issue the order to pay an administrative penalty, the supervisor updates the *Administrative Penalty Details* page in CLASS by:

a. entering the *Acceptance Letter Received* date, if applicable;

b. changing the *Due Process Hearing* status to *Waived* or *Upheld*;

c. creating and finalizing the *Administrative Penalty Order* CLASS Form 2995; and

d. sending the *Administrative Penalty Order* CLASS Form 2995 and the *Administrative Fee CLASS Form* 2993 to the operation or controlling person.

The supervisor monitors for payment of the administrative penalty in CLASS.

Also see:

7535.1 If Any Violation Identified in the Administrative Penalty are Overturned During the Administrative Review

7562 When Administrative Penalties Remain Unpaid

### 7550 Due Process Rights for Administrative Penalties

LPPH DRAFT 8242-CCL (new item)

Policy

Licensing must receive a request for a due process hearing in writing, including by e-mail or fax, within 30 days of the date that the operation or controlling person received the *Notice of Recommendation for Administrative Penalty* CLASS Form 2994.

When determining the due date for a request for a due process hearing, Licensing allows time for the operation or controlling person to receive notice about the recommendation through the mail.

The operation or controlling person waives the right to a due process hearing and the supervisor may process the order to impose the penalty if: the operation or controlling person:

• does not accept the penalty or request a due process hearing for the administrative penalty within 30 days of receiving the notice; or

• sends the request for a hearing late enough that it is received after the due date.

DFPS Rules, 40 TAC [§745.8839](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8839)

#### 7551 Determining Whether a Request for a Due Process Hearing Meets the Due Date

LPPH DRAFT 8242-CCL (new item)

Procedure

To determine whether the request for a due process hearing for the administrative penalty is received by the due date, staff:

a. determines the date that Licensing mailed a notification letter to the operation or controlling person explaining the right to a due process hearing;

b. adds three calendar days to that mail date to estimate the date that the operation or controlling person is presumed to have received the notification letter by regular mail;

c. adds 30 calendar days to that date of presumed receipt for the request; and

d. identifies the first date after that time period that is not a Saturday, Sunday, or legal holiday.

If the operation or controlling person is eligible for a due process hearing, the supervisor does not send the order to pay the penalty. The supervisor makes the following edits to the *Due Process* section on the *Administrative Penalty Details* Page in CLASS:

• changes the *Hearing Status* from *Pending* to *Requested*; and

• enters the date the request was received in the *Date Hearing Requested* field.

#### 7552 Processing the Outcome of a Due Process Hearing for an Administrative Penalty

##### 7552.1 Due Process Hearing Upholds the Decision to Impose the Administrative Penalty

LPPH DRAFT 8242-CCL (new item)

Procedure

If the decision to impose an administrative penalty is upheld after the due process hearing, the supervisor makes the following updates to the *Due Process* section on the *Administrative Penalty Details* page in CLASS:

a. changes the *Hearing Status* field from *Requested* to *Upheld*;

b. enters the date of the hearing; and

c. enters the date the decision was sent to the operation or controlling person.

If the amount of the administrative penalty is reduced as a result of the due process hearing, the supervisor completes the *Penalty Amount Reduced Section on the Administrative penalty Details page in CLASS.*

The supervisor monitors for payment or a request for a judicial review before sending the *Administrative Penalty Order* CLASS Form 2995.

Also see:

7540 Issuing the Order to Pay an Administrative Penalty

7553 The Right to Request a Judicial Review of an Administrative Penalty

7560 Payment and Nonpayment of Administrative Penalties

##### 7552.2 Due Process Hearing Overturns the Decision to Impose the Administrative Penalty

LPPH DRAFT 8242-CCL (new item)

Procedure

If the decision to impose the administrative penalty is overturned after the due process hearing, the supervisor updates the *Due Process* section and selects *Stopped* option in the Final Results section on the *Administrative Penalty Details* page in CLASS.

#### 7553 The Right to Request a Judicial Review of an Administrative Penalty

LPPH DRAFT 8242-CCL (new item)

Policy

Following a due process hearing, an operation or controlling person has 30 days from receiving the results to:

• pay the penalty amount ordered; or

• file a petition for a judicial review.

The operation or controlling person may also take both actions at the same time: paying the penalty amount ordered *and* filing a petition for a judicial review.

Texas Human Resources Code §[42.078(k)(1)-(3)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.078)

##### 7553.1 If the Right to a Judicial Review is Waived

LPPH DRAFT 8242-CCL (new item)

Procedure

If the operation or controlling person does not request a judicial review or fails to make the request within the required time frame, the supervisor updates the petition status field on the *Administrative Penalty Details* page and sends the order to pay the penalty.

Also see:

7540 Issuing the Order to pay an Administrative Penalty

##### 7553.2 If a Judicial Review is Requested

LPPH DRAFT 8242-CCL (new item)

Procedure

If the operation or controlling person requests a judicial review within the required time frame, the supervisor changes the *Petition Status* from *Pending* to *Requested* on the *Administrative Penalty Details* page in CLASS.

The supervisor will receive an email notification from the legal docket clerk about the outcome of the judicial review.

###### 7553.21 Documenting the Outcome of the Judicial Review

LPPH DRAFT 8242-CCL (new item)

Procedure

If a decision is upheld or if the judge orders a new penalty amount imposed, the supervisor takes the following actions on the *Administrative Penalty Details* page in CLASS:

a. changes the *Petition Status* from *Requested* to *Upheld*; and

b. indicates if the penalty amount is reduced by completing the *Penalty Amount Reduced* and *Reduced Penalty Amount* fields; and

c. monitors for payment.

Also see:

7561 Documenting Payment of Administrative Penalties

If the decision to impose the administrative penalty is overturned, the supervisor takes the following actions on the *Administrative Penalties Details* page in CLASS:

a. changes the *Petition Status* in the *Due Process* section from *Requested* to *Overturned*;

b. reviews the *Penalty Amount* section to determine whether a refund should be issued; and

c. selects *Stopped* from the *Final Result* field.

### 7560 Payment and Nonpayment of Administrative Penalties

LPPH DRAFT 8242-CCL (new item)

Policy

The operation or controlling person must pay the administrative penalty within 30 days after:

a. the order to pay the administrative penalty is received by the operation or controlling person;

b. an administrative law judge’s order to pay the administrative penalty becomes final, unless a judicial review is requested.

c. a judge conducts a judicial review and upholds the decision to impose the administrative penalty.

Licensing staff do not accept payment for the administrative penalty at the local office.

#### 7561 When Administrative Penalties Remain Unpaid

LPPH DRAFT 8242-CCL (new item)

Policy

If the operation or controlling person does not pay the penalty amount as ordered by the due date, Licensing staff may:

• impose remedial action against the operation or controlling person; or

• refer the matter to the Office of Attorney General for collection.

DFPS Rules, 40 TAC [§745.8605](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8605)

##### 7561.1 Nonpayment Due to Insufficient Funds

LPPH DRAFT 8242-CCL (new item)

Procedure

If a payment is returned due to insufficient funds, the supervisor or inspector must follow up with the operation or controlling person within seven days of being notified of the nonpayment.

Also see

[5261](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5000.asp#LPPH_5261) How to Verify and Follow Up on Insufficient Funds (NSF).

Publication note, above (do not remove this note): The title of 5261 is incorrect (“non-sufficient” should be “insufficient”) and needs to be changed in the TOC and on the page (no change in revision date needed for 5261). Also, “follow up” does not take a hyphen in this title. I checked, and there are no x-refs directed at 5261 other than the one above. JS

##### 7561.2 Nonpayment of Administrative Penalties for Reasons Other than Insufficient Funds

LPPH DRAFT 8242-CCL (new item)

Procedure

If the operation or controlling person fails pay the entire penalty within the required time frame, the supervisor and inspector meet and consider the following:

a. the amount of the penalty not paid;

b. steps the operation or controlling person has taken to correct the problem which led to the violation; and

c. the compliance history of the operation.

The supervisor and inspector consult with Legal to determine the next steps. If the decision is to impose corrective or adverse action, the supervisor selects *Corrective or Adverse Action Recommended* on the *Final Results* section on the *Administrative Details* page in CLASS.

The supervisor consults with Legal before making the decision to refer nonpayment of an administrative penalty to the Office of Attorney General.

##### 7561.3 Closing an Unpaid Administrative Penalty

LPPH DRAFT 8242-CCL (new item)

Procedure

The supervisor considers closing an administrative penalty imposed against an operation with the results of *Operation Closed* if the operation has closed since the penalty was imposed or with the results of *No Further Action* if the following criteria are met:

a. there have been no repeated violations of similar minimum standards for which the penalty was imposed within the previous year;

b. the penalty is over a year old;

c. the penalty amount is for less than $100;

d. there have been no other administrative penalties recommended in the previous year;

e. the penalty is not pending due process; and

f. the district director or designee has approved closing the penalty.

###### 4161.24 Technical Assistance for High Risk Violations

LPPH DRAFT 8242-CCL (new item)

When citing a high risk violation which may result in an administrative penalty, staff:

• provides technical assistance on how to comply with the minimum standard or rule, and

• advises the operation that another violation of the high risk minimum standard previously cited could result in an administrative penalty.

Staff documents, in the *Technical Assistance* narrative box in CLASS, as outlined in the [Guidelines for Assessing Admin Penalties Related to BGC Deficiencies](http://intranet/CCL/Communications/2014/documents/Admin_Penalties_BGC_Deficiencies.pdf) job aid, that:

• the technical assistance on compliance was provided; and

• the operation was advised of the risk of incurring an administrative penalty.