

TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. General Provisions

The Texas State Board of Plumbing Examiners (Board or TSBPE) proposes amendment to the existing rule at 22 Texas Administrative Code (TAC), Chapter 361, § 361.1(18) which concerns definitions and general provisions. The proposed amendment is referred to as the "proposed rule amendment."

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The Board, under its general rule-making authority in Section 1301.251(2) of Texas Occupations Code and part of its four-year rule review of the existing rules at 22 Texas Administrative Code (TAC) Chapter 361, initiated a rule simplification initiative to make the rules easier to understand and enforce by eliminating unnecessary language, adding clarifying language, and restructuring regulations to reduce regulatory barriers and make the rules more efficient.

During that rule review, the Board recognized that technology with the capability to visually stream or project the job site in real-time such as Facetime, Zoom, etc. may be successfully utilized to perform on-the-job oversight and direct supervision of apprentices and licensees in the field. It is believed that given the pandemic and related, necessary social-distancing practices, virtual supervision was utilized in the plumbing industry since 2020 as a matter of necessity.

The proposed rule amendment creates the option for a Responsible Master Plumber (RMP) to choose to use virtual, visual, real-time supervision in certain conditions to directly supervise work done under their authority and responsibility. Section 361.1(18) defines Direct Supervision. On-the-job oversight and supervision is amended to show that direct supervision may include virtual visual, real-time communication for registrants and licensees with 2000 hours of work documented by a RMP on non-commercial jobs, not involving gas appliances.

The proposed rule amendment does not create any affirmative duty on or regulation of registrants or licensees. The proposed amended rule does not alleviate the responsibility of the RMP from adequate supervision or from ensuring that work is performed to the standards of the applicable code. It is in the RMP's discretion to utilize optional technology as they deem it appropriate given their job sites, staff, technological capacities. Should inspection or investigation be done on the job site, any present licensee or registrant must demonstrate that real-time, visual communication is successful and effective.

SECTION BY SECTION SUMMARY

Section 361.1(18) Direct Supervision. On-the-job oversight and supervision is amended to show that direct supervision may include virtual visual, real-time communication for registrants and licensees that hold at least 2000 hours of experience documented by a Responsible Master Plumber (RMP). The virtually supervised registrant or licensee may perform non-commercial work not involving gas appliances.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lisa G. Hill, Executive Director for the Board (Executive Director), has determined that for the first five-year period the proposed amended rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the rule. The Executive Director

has further determined that for the first five-year period the proposed amended rule is in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the rule.

PUBLIC BENEFITS

The Executive Director has determined that for each of the first five years the proposed amended rule is in effect, the public benefit anticipated as a result of enforcing or administering the proposed amended rule will be to have fewer regulatory barriers.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE RULE

The Executive Director has determined that for the first five years the proposed amended rule is in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed amended rule.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

Given that the proposed amended rule does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, proposal and adoption of the proposed amended rule is not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed amended rule is in effect, the Board has determined the following: (1) the proposed amended rule does not create or eliminate a government program; (2) implementation of the proposed amended rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed amended rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed amended rule does not require an increase or decrease in fees paid to the agency; (5) the proposed amended rule does not create a new regulation; (6) the proposed amended rule does not expand, limit, or repeal an existing regulation; (7) the proposed amended rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed amended rule does not positively or adversely affect this state's economy.

LOCAL EMPLOYMENT IMPACT STATEMENT

No local economies are substantially affected by the proposed amended rule. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

FISCAL IMPACT ON SMALL AND MICRO-BUSINESS, AND RURAL COMMUNITIES

The proposed amended rule will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed amended rule. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

TAKINGS IMPACT ASSESSMENT

There are no private real property interests affected by the proposed amended rule. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

PUBLIC COMMENTS

Written comments regarding the proposed amended rule may be submitted by mail to Patricia Latombe at 929 East 41st Street, Austin, Texas 78765, or by email to rule.comment@tsbpe.texas.gov with the subject line "Rule Amendment." All comments must be received within 30 days of publication of this proposal.

STATUTORY AUTHORITY

This proposal is made under the authority of §1301.251(2) of the Texas Occupations Code authorizes the Texas State Board of Plumbing Examiners to adopt rules as necessary to implement the Chapter. No other statutes or rules are affected by the proposal.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

<rule>

RULE §361.1 Definitions

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

- (1) APA--The Administrative Procedure Act, Chapter 2001 of the Texas Government Code.
- (2) Adopted Plumbing Code--A plumbing code, including a fuel gas code adopted by the Board or a political subdivision, in compliance with §1301.255 and §1301.551 of the Plumbing License Law.
- (3) Advisory Committee--A committee appointed by the presiding officer of the board created to assist the board in exercising its powers and duties.
- (4) Appliance Connection--An appliance connection procedure using only a code-approved appliance connector that does not require cutting into or altering the existing plumbing system.
- (5) Applicant--An individual seeking to obtain a license, registration or endorsement issued by the Board.
- (6) Board--The Texas State Board of Plumbing Examiners.
- (7) Board Member--An individual appointed by the governor and confirmed by the senate to serve on the Board.
- (8) Building Sewer--The part of the sanitary drainage system outside of the building, which extends from the end of the building drain to a public sewer, private sewer, private sewage disposal system, or other point of sewage disposal.
- (9) Certificate of Insurance--A form submitted to the Board certifying that the Responsible Master Plumber carries insurance coverage as specified in the Plumbing License Law and Board Rules.
- (10) Chief Examiner--An employee of the Board who, under the direction of the Executive Director, coordinates and supervises the activities of the Board examinations and registrations.
- (11) Cleanout--A fitting, other than a p-trap, approved by the adopted plumbing code and designed to be installed in a sanitary drainage system to allow easy access for cleaning the sanitary drainage system.
- (12) Code-Approved Appliance Connector--A semi-rigid or flexible assembly of tube and fittings approved by the adopted plumbing code and designed for connecting an appliance to the existing plumbing system without cutting into or altering the existing plumbing system.

(13) Code-Approved Existing Opening--For the purposes of drain cleaning activities described in §1301.002(3) of the Plumbing License Law, a code-approved existing opening is any existing cleanout fitting, inlet of any p-trap or fixture, or vent terminating into the atmosphere that has been approved and installed in accordance with the adopted plumbing code.

(14) Complaint--A written complaint filed with the Board against a person whose activities are subject to the jurisdiction of the Board.

(15) Contested Case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.

(16) Continuing Professional Education or CPE--Approved courses/programs required for a licensee or registrant.

(17) Director of Enforcement--An employee of the Board who meets the definition of "Field Representative" and, under the direction of the Executive Director, coordinates and supervises the activities of the Field Representatives.

(18) Direct Supervision--

(A) The on-the-job oversight and direction of a registered Plumber's Apprentice or licensee performing plumbing work by a licensed plumber who is fulfilling his or her responsibility to the client and employer by ensuring the following:

(i) that the plumbing materials for the job are properly prepared prior to assembly according to the material manufacturers recommendations and the requirements of the adopted plumbing code; and

(ii) that the plumbing work for the job is properly installed to protect health and safety by meeting the requirements of the adopted plumbing code and all requirements of local and state ordinances, regulations and laws.

(iii) This oversight may include virtual visual, real-time communication, on non-commercial jobs not involving gas appliances, for registrants and license holders with 2,000 hours of experience documented by a responsible master plumber.

(B) The on-the-job oversight and direction by a licensed Plumbing Inspector of an individual training to qualify for the Plumbing Inspector Examination.

(C) For plumbing work performed only in the construction of a new one-family or two-family dwelling in an unincorporated area of the state, a Responsible Master Plumber is not required to provide for the continuous or uninterrupted on-the-job oversight of a Registered Plumber's Apprentice's work by a licensed plumber, however, the Responsible Master Plumber must:

(i) provide for the training and management of the Registered Plumber's Apprentice by a licensed plumber;

(ii) provide for the review and inspection of the Registered Plumber's Apprentice's work by a licensed plumber to ensure compliance with subparagraph (A)(i) and (ii) of this paragraph; and

(iii) upon request by the Board, provide the name and plumber's license number of the licensed plumber who is providing on-the-job training and management of the Registered Plumber's Apprentice and who is reviewing and inspecting the Registered Plumber's Apprentice's work on the job, or the name and plumber's license number of the licensed plumber who trained and managed the Registered Plumber's Apprentice and who reviewed and inspected the Registered Plumber's Apprentice's work on a job.

(19) Endorsement--A certification issued by the Board as an addition to a Master Plumber, Plumbing Inspector, or Journeyman Plumber License or a Plumber's Apprentice Registration, including a Drain Cleaner Registration, a Drain Cleaner-Restricted Registration, and a Residential Utilities Installer Registration.

(20) Executive Director--The executive director of the Texas State Board of Plumbing Examiners who is employed by the Board as the executive head of the agency.

(21) Field Representative--An employee of the Board who is:

(A) knowledgeable of the Plumbing License Law and of municipal ordinances related to plumbing;

(B) qualified by experience and training in good plumbing practice and compliance with the Plumbing License Law;

(C) designated by the Board to assist in the enforcement of the Plumbing License Law and Board rules;

(D) licensed by the Board as a plumber; and

(E) hired to:

(i) make on-site license and registration checks to determine compliance with the Plumbing License Law;

(ii) investigate complaints; and

(iii) assist municipal plumbing inspectors in cooperative enforcement of the Plumbing License Law.

(22) Journeyman Plumber--An individual licensed under the Plumbing License Law who has met the qualifications for registration as a Plumber's Apprentice or for licensure as a Tradesman Plumber-Limited, who has completed at least 8,000 hours working under the supervision of a Responsible Master Plumber, who supervises, engages in, or works at the actual installation, alteration, repair, service and renovating of plumbing, and who has successfully fulfilled the examinations and requirements of the Board.

(23) License--A license, registration, certification, or endorsement issued by the Board.

(24) Licensing and Registering--The process of granting, denying, renewing, reinstating, revoking, or suspending a license, registration or endorsement.

(25) Maintenance Man or Maintenance Engineer--An individual who:

(A) is an employee, and not an independent contractor or subcontractor;

(B) performs plumbing maintenance work incidental to and in connection with other employment-related duties; and

(C) does not engage in plumbing work for the general public.

(D) For the purposes of paragraph 25(B), "incidental to and in connection with" includes the repair, maintenance and replacement of existing potable water piping, existing sanitary waste and vent piping, existing plumbing fixtures and existing water heaters. It does not include cutting into fuel gas plumbing systems and the installation of gas fueled water heaters.

(E) An individual who erects, builds, or installs plumbing not already in existence may not be classified as a maintenance man or maintenance engineer. Plumbing work performed by a maintenance man or maintenance engineer is not exempt from state law and municipal rules and ordinances regarding plumbing codes, plumbing permits and plumbing inspections.

(26) Master Plumber--An individual licensed under the Plumbing License Law who is skilled in the design, planning, superintending, and the practical installation, repair, and service of plumbing, who is knowledgeable

about the codes, ordinances, or rules and regulations governing those matters, who alone, or through an individual or individuals under his supervision, performs plumbing work, and who has successfully fulfilled the examinations and requirements of the Board.

(27) Medical Gas Piping Installation Endorsement--

(A) A certification entitling the holder of a Master or Journeyman Plumber License to install piping that is used solely to transport gases used for medical purposes including, but not limited to, oxygen, nitrous oxide, medical air, nitrogen, or medical vacuum.

(B) A certification entitling the holder of a Plumbing Inspector License to inspect medical gas and vacuum system installations.

(28) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement--

(A) A certification entitling the holder of a Master or Journeyman Plumber License to install a multipurpose residential fire protection sprinkler system in a one or two family dwelling.

(B) A certification entitling the holder of a Plumbing Inspector License to inspect a multipurpose residential fire protection sprinkler system.

(29) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(30) Military spouse--A person who is married to a military service member who is currently on active duty.

(31) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(32) One-Family Dwelling--A detached structure designed for the residence of a single family that does not have the characteristics of a multiple family dwelling, and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(33) Party--A person or state agency named or admitted as a party to a contested case.

(34) Paid Directly--As related to §1301.255(e) of the Plumbing License Law, "paid" and "directly" have the common meanings and "paid directly" means that compensation for plumbing inspections must be paid by the political subdivision to the individual Licensed Plumbing Inspector who performed the plumbing inspections or the plumbing inspection business which utilized the plumbing inspector to perform the inspections.

(35) Person--An individual, partnership, corporation, limited liability company, association, governmental subdivision or public or private organization of any character other than an agency.

(36) Petitioner--A person requesting the Board to adopt, amend or repeal a rule pursuant to §2001.021 of the Texas Government Code and the Board Rules.

(37) Plumbing--

(A) All piping, fixtures, appurtenances, and appliances, including disposal systems, drain or waste pipes, multipurpose residential fire protection sprinkler systems or any combination of these that: supply, distribute, circulate, recirculate, drain, or eliminate water, gas, medical gasses and vacuum, liquids, and sewage for all personal or domestic purposes in and about buildings where persons live, work, or assemble; connect the building on its outside with the source of water, gas, or other liquid supply, or combinations of these, on the premises, or the water main on public property; and carry waste water or sewage from or within a building to

the sewer service lateral on public property or the disposal or septic terminal that holds private or domestic sewage.

(B) The installation, repair, service, maintenance, alteration, or renovation of all piping, fixtures, appurtenances, and appliances on premises where persons live, work, or assemble that supply gas, medical gasses and vacuum, water, liquids, or any combination of these, or dispose of waste water or sewage. Plumbing includes the treatment of rainwater to supply a plumbing fixture or appliance. The term "service" includes, but is not limited to, cleaning a drain or sewer line using a cable or pressurized fluid.

(38) Plumbing Company--A person who engages in the plumbing business.

(39) Plumbing Inspection--Any of the inspections required in the Plumbing License Law, including any check of multipurpose residential fire protection sprinkler systems, pipes, faucets, tanks, valves, water heaters, plumbing fixtures and appliances by and through which a supply of water, gas, medical gasses or vacuum, or sewage is used or carried that is performed on behalf of any political subdivision, public water supply, municipal utility district, town, city or municipality to ensure compliance with the adopted plumbing and gas codes and ordinances regulating plumbing.

(40) Plumbing Inspector--Any individual who is employed by a political subdivision or state agency, or who contracts as an independent contractor with a political subdivision or state agency, for the purpose of inspecting plumbing work and installations in connection with health and safety laws, ordinances, and plumbing and gas codes, who has no financial or advisory interests in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Board.

(41) Plumbing License Law or PLL--Chapter 1301 of the Texas Occupations Code.

(42) Pocket Card--A card issued by the Board which:

(A) certifies that the holder has a Responsible Master Plumber License, Master Plumber License, Journeyman Plumber License, Tradesman Plumber-Limited License, Plumbing Inspector License, or a Plumber's Apprentice Registration; and

(B) lists any Endorsements obtained by the holder.

(43) Political Subdivision--A political subdivision of the State of Texas that includes a:

(A) city;

(B) county;

(C) school district;

(D) junior college district;

(E) municipal utility district;

(F) levee improvement district;

(G) drainage district;

(H) irrigation district;

(I) water improvement district;

(J) water control improvement district;

(K) water control preservation district;

(L) freshwater supply district;

- (M) navigation district;
- (N) conservation and reclamation district;
- (O) soil conservation district;
- (P) communication district;
- (Q) public health district;
- (R) river authority; and
- (S) any other governmental entity that:
 - (i) embraces a geographical area with a defined boundary;
 - (ii) exists for the purpose of discharging functions of government; and
 - (iii) possesses authority for subordinate self-government through officers selected by it.

(44) P-Trap--A fitting connected to the sanitary drainage system for the purpose of preventing the escape of sewer gasses from the sanitary drainage system and designed to be removed to allow for cleaning of the sanitary drainage system. For the purposes of drain cleaning activities described in §1301.002(2) of the Plumbing License Law, a p-trap includes any integral trap of a water closet, bidet, or urinal.

(45) Public Water System--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals, but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater, at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if the individual lives in, uses as the individual's place of employment, or works in a place to which drinking water is supplied from the water system.

(46) Respondent--A person charged in a complaint filed with the Board.

(47) Responsible Master Plumber or RMP--A licensed Master Plumber who:

- (A) allows the person's Master Plumber License to be used by only one plumbing company for the purpose of offering and performing plumbing work;
- (B) is authorized to obtain permits for plumbing work;
- (C) assumes responsibility for plumbing work performed under the person's license;
- (D) has submitted a certificate of insurance as required by the Plumbing License Law and Board Rules; and
- (E) When used in Board forms, applications or other communications by the Board, the abbreviation "RMP" shall mean Responsible Master Plumber.

(48) Registration--A document issued by the Board to certify that the named individual fulfilled the requirements of the PLL and Board Rules to register as a Plumber's Apprentice.

(49) Rule--An agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term includes the amendment

or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures.

(50) Supervision--The general oversight, direction and management of plumbing work and individuals performing plumbing work by a Responsible Master Plumber, or licensed plumber designated by the RMP.

(51) System--An interconnection between one or more public or private end users of water, gas, sewer, or disposal systems that could endanger public health if improperly installed.

(52) Tradesman Plumber-Limited Licensee--An individual who has completed at least 4,000 hours working under the direct supervision of a Journeyman or Master Plumber as a registered Plumber's Apprentice, who has passed the required examination and fulfilled the other requirements of the Board, or successfully completed a career and technology education program, who constructs, installs, changes, repairs, services, or renovates plumbing for one-family or two-family dwellings under the supervision of a Responsible Master Plumber, and who has not met or attempted to meet the qualifications for a Journeyman Plumber License.

(53) Two-Family Dwelling--A detached structure with separate means of egress designed for the residence of two families ("duplex") that does not have the characteristics of a multiple family dwelling and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(54) Water Supply Protection Specialist--A Master or Journeyman Plumber who holds the Water Supply Protection Specialist Endorsement issued by the Board to engage in customer service inspections, as defined by rule of the Texas Commission on Environmental Quality, and the installation, service, and repair of plumbing associated with the treatment, use, and distribution of rainwater to supply a plumbing fixture or appliance.

(55) Water Treatment--A business conducted under contract that requires experience in the analysis of water, including the ability to determine how to treat influent and effluent water, to alter or purify water, and to add or remove a mineral, chemical, or bacterial content or substance. The term also includes the installation and service of potable water treatment equipment in public or private water systems and making connections necessary to complete installation of a water treatment system. The term does not include treatment of rainwater or the repair of systems for rainwater harvesting.

(56) Yard Water Service Piping--The building supply piping carrying potable water from the water meter or other source of water supply to the point of connection to the water distribution system at the building.