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Final Regulation Agency Background Document

Agency name	Department of Professional and Occupational Regulation
Virginia Administrative Code (VAC) citation(s)	18 VAC 50-120
Regulation title(s)	Natural Gas Automobile Mechanics and Technicians
Action title	Initial Regulations
Date this document prepared	January 5, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Department of Professional and Occupational Regulations seeks to create initial regulations for this newly created regulatory program. Individuals who work on natural gas powered vehicles now have the option to become certified.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

There are no technical terms or acronyms in this document that are not defined in the Regulations.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Director of the Department of Professional and Occupational Regulation adopted proposed regulations for the establishment of the certification program for Natural Gas Automobile Mechanics and Technicians on December 30, 2015.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Chapter 763 of the 2014 Acts of the General Assembly created Chapter 23.4 of Title 54.1 of the Code of Virginia. Section 54.1-2356 of this newly created chapter (effective July 1, 2014) requires the Department to promulgate regulations that create a certification program for natural gas automobile mechanics and technicians.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Department of Professional and Occupation Regulation seeks to create initial regulations for this newly created regulatory program. The number of natural gas vehicles has continued to increase steadily since their inception in the late 1970s. The General Assembly has determined that this program is necessary to insure that the public be protected against incompetent, unqualified, unscrupulous, or unfit persons engaging in the activities regulated by this newly created chapter.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

As these would be newly created regulations there would be no changes to existing regulations. These new regulations would include provisions for the creation of an advisory board to provide technical

guidance to the Department with regards to the industry, create initial certification requirements, renewal and reinstatement requirements, standards of conduct, and education provider requirements for training programs.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1) In creating these regulations, the Department is complying with the provisions of legislation signed into law in 2014, establishing a program to certify natural gas automobile mechanics and technicians. After studying data relative to accident rates, inspection reports and the licensing/education requirements in other states, the General Assembly determined a need for this level of regulation in order to protect the public. The primary advantage of the program is to ensure that the work done on natural gas powered vehicles is performed by individuals who have received sufficient training and demonstrated enough experience to reasonably assume competency in the repairs, maintenance and conversions they will be completing. This is a voluntary certification and is not a required certification therefore there are no foreseen disadvantages to the public.

2) This program is predicted to have a moderate impact on the Department and its licensing staff. The initial licensing of approximately 100 certificate holders in the first year should not require significant staff training or modifications to existing software. The creation of the examination for certification may be challenging as there are only a few jurisdictions that currently regulate this type of work.

3) The development of this program, through the legislative process, was supported by industry representatives, localities and other interested parties, all of who were in the workgroup created by the Department. Testimony provided and information gathered by the work group indicated that the majority of those individuals currently employed as natural gas automobile mechanics and technicians would welcome a certificate that would recognize the individuals performing this type of work meet industry standards for minimum competency.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements in the proposed regulations that would be more restrictive than those currently required in Federal Law.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There will be no localities particularly affected by this proposed regulatory action.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

- 1) The proposed regulations will not strengthen or erode the authority and rights of parents in the education nurturing, or supervision of their children.
- 2) The proposed regulations may encourage self-pride for the individual who holds the voluntary certificate and their immediate family members.
- 3) The proposed regulations will have no impact on marital commitment.
- 4) The proposed regulations should have no impact on disposable family income since it is a voluntary certification and it not required by law.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

There have been no changes made since the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

There was no public comment received after the publication of the proposed change.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
18 VAC 120-50-10	Definitions for the following words and terms: “address of record”, “advisory board” or “board”, “applicant”, “application”, “department”, “director”, “formal vocational training”, “reciprocity”, “regulant”, “reinstatement”, and “renewal”.		The purpose of this section is to provide a list of words and terms used in the regulations and definitions of those words and terms.
18 VAC 120-50-20	Advisory board section. The authority of the advisory board, the requirements of the 8 member advisory board, term length of member and frequency of meetings.	§ 54.1-2356	The intent of creating an advisory board is to provide the Director of the department a ready source of technical expertise. This is necessary in the development of regulations, review of disciplinary cases, and responding to technical inquiries. The polygraph examiners license program has an advisory board that serves the same function.
18 VAC 120-50-30	Application procedures section. A list of requirements that must be on the Department application including name, social security number or Virginia Department of Motor Vehicles Number, physical address, training documentation, experience documentation, conviction disclosure, and copies of other licenses held. New regulations would include language explaining to applicants that their signature on the application certifies that they have read and understood the statutes and regulations. Depositing of the application fee by the Department does not indicate the issuance of the license or approval of the application. Applicants will be notified if their application is incomplete and they have 1 year to submit any missing	§ 54.1-2356	The intent of this section is to provide a listing of information that must be included as part of the application. This information is required to verify demographic information necessary to ensure the identification of the individual submitting the application and the address of the individual. Additional information is required to verify experience, education, licensure in other jurisdictions, and past criminal history (if any). Paragraphs B through D of this section provide information on incomplete applications, expiration date of the application, responsibility of signing and the fact that the acceptance of an application fee does

	information or they will have to reapply.		not indicate approval of that application.
18 VAC 120-50-40	General qualifications for certifications section. All applicants must be at least 18 years old, complete required course (unless exempted), pass examination (unless exempted), have necessary experience, follow the rules at the examination site, sign the application, clarify any information to the Department if needed, disclose all felonies and any misdemeanors within the last 3 years, and disclose any disciplinary action on any other license held.	§ 54.1-2356	This section provides general qualifications and additional information with regards to how the Department looks at the documentation that was submitted in the previous section, as well as a provision addressing exam center conduct and other clarifying information on these qualifications.
18 VAC 120-50-50	Evidence of ability and proficiency section. To qualify to sit for the exam an applicant must have one of the following criteria: 1) One year of experience and completion of an approved training program. 2) Holds a current professional engineer license and one year of experience. 3) Completion of an approved apprenticeship program. 4) Three years of experience.	§ 54.1-201, § 54.1-2356	<p>This section identifies the minimum requirements for certification. The Department formed a regulatory advisory committee consisting of representatives from the industry, including mechanics, private fleet representatives, education providers and government fleet representatives. These requirements were determined to be reasonable for the qualifications of the person completing the work and the risks associated with the work being performed.</p> <p>By its nature natural gas is a dangerous substance and, accidents in the handling, storage, or installation of natural gas vehicle equipment generally involve the loss of life, substantial damage to facilities, or both. Since many of the vehicles that use natural gas are of the public variety (buses, refuse trucks, delivery trucks) the threat of death or bodily injury to a group of citizens would be more likely in the event of an</p>

			<p>error made by a mechanic that the threat posed by most other regulatory programs.</p> <p>This advisory group looked at the requirements for certification by private organizations, such as ASE, as well as those in place in Oklahoma, the only other state with a regulatory program that is currently active, before making the recommendations to the Department, most of which were adopted. Additional language was modeled after what is currently in place in other regulatory programs.</p>
18 VAC 120-50-60	Qualifications for licensure by reciprocity or substantial equivalency section. The Director can determine if an individual that holds a license outside of Virginia is substantially equivalent to our certification if they have passed an exam to acquire that license and that license has no disciplinary history.	§ 54.1-2358	This section of the regulations is to provide the Director with the ability to issue certificates to individuals who have completed a program that is substantially equivalent to Virginia's. This can be very advantageous to both the applicant and the Commonwealth. The applicant is spared the cost of repeating an education program from a provider that is approved in Virginia and the Commonwealth is able to bring another certified individual into the workforce without having to wait for them to repeat training from a board approved provider.
18 VAC 120-50-70	Application denial section. The Director can deny issuance of a certificate to an applicant if they do not comply with the entry requirements.		This section is necessary to provide the Director with the authority to deny applications that do not meet the established entry requirements.
18 VAC 120-50-80	Fees for certification section. All fees are nonrefundable. The initial application fee is \$150 and	§ 54.1-113	Initial fees are determined based on anticipated costs using methods similar to

	<p>due with the application. There is an option to expedite an application by paying an additional \$250 to have it reviewed within 2 business days. Examination fees are separate and paid to the exam vendor.</p>		<p>those used in periodic fee reviews required by § 54.1-1113 of the Code of Virginia. Candidates for certification will be applying for approval to sit for the examination. Once approved by the Agency, the applicant will then contact the examination vendor and set up the exam.</p> <p>There is no way to anticipate the amount of time that will be required to process the applications. Workloads have not been established, licensing personnel will likely be shared with other regulatory programs, so it is certainly possible that an application could be queued for review for 10-20 working days. The expedited services option allows an individual to pay an additional fee to guarantee that the application is reviewed and processed within 2 business days. This gives an individual an option of waiting the amount of time that is in place at the submission of the application or to speed up the review process. Expedited applications are handled separately from regular applications so the processing of an expedited application does not have any bearing on the amount of time normal applications are queued. This expedited process is currently in use by another regulatory board that has found favorable feedback from applicants appreciative of having the option available to them.</p>
<p>18 VAC 120-50-90</p>	<p>Renewal and reinstatement fees section. All fees are</p>		<p>As with initial fees, renewal and reinstatement fees are</p>

	<p>nonrefundable. The renewal fee is \$100 and is due prior to the certificate expiration date. The reinstatement fee is \$150 and is due if money is received the date after the certification expires up to 1 year.</p>		<p>established based on anticipated costs and will be reviewed at every biennium.</p>
<p>18 VAC 120-50-100</p>	<p>Other fees section. Wall certifications are \$40. Duplicate pocket cards are: \$0 for the first request, \$25 for the second request within the same renewal cycle, and \$50 for the third request within five years. The third and subsequent requests may result in an investigation being opened to determine if there is a violation.</p>		<p>During meetings of the workgroup established by the Agency to assist with the development of these regulations, it was conveyed that the option of having a certification large enough to be framed and displayed should be made available. All certificate holders will receive a pocket card at no extra charge when the application is approved, but many like the initial certification to be larger and able to be displayed. Several other programs at the agency have wall certificates available as an option.</p> <p>Fees for duplicate licenses are meant to offer deterrence to those individuals that want duplicate cards to distribute or use improperly. The limit on duplicate cards in a given period is also in place as an anti-fraud measure. Other regulatory boards have had instances where excessive requests for duplicate licenses have resulted in fraudulent use of the license and these boards are exploring the possibilities of implementing similar fees.</p>
<p>18 VAC 120-50-110</p>	<p>Renewal section. Certifications are renewed every two years. The Department will mail a renewal notice, but failing to receive the notice doesn't relieve the regulant from paying on time. Certifications can be renewed up</p>		<p>The purpose of this section is to provide information regarding the renewal process. It places the responsibility of renewing the certification on the regulant and provides</p>

	to 60 days prior to the expiration. Submitting the renewal fee the regulant attests that they are adhering with all regulations and statutes. The Director may deny renewal if they are not in compliance with the regulations and statutes. Failure to timely pay and monetary penalty or fee will result in a delay of renewing, reinstating or issuing a new license.		language allowing the Director to deny renewal in certain instances.
18 VAC 120-50-120	Reinstatement section. If the renewal fee is not received prior to the expiration date, a reinstatement fee is due. The date the money is received by the Department will determine if the license can be reinstated or if a new application is required. A new application is required if no money is received prior to one year after the expiration date of the certification. Anyone that holds themselves out as certified but are not certified may be subject to criminal prosecution. The Director may deny reinstatement if the regulant is not in compliance with the regulations and statutes. Failure to timely pay and monetary penalty or fee will result in a delay of renewing, reinstating or issuing a new license.		The purpose of this section is to provide a process where an individual may reinstate an expired license without having to apply for a new license.
18 VAC 120-50-130	Status of regulant during the period prior to reinstatement section. A regulant that reinstates a certification shall have the same certificate number and will show as continuously certified. The new expiration date will be two years from the previous expiration date.		The purpose of this section is to ensure that an individual who has allowed a license to expire and then reinstates that license, comes under the authority of the Director during the time the license was expired.
18 VAC 120-50-140	Grounds for disciplinary action section. The Director may discipline a regulant that has been found to be in violation of the regulations and may put them on probation, fine them, revoke or suspend a current certification or refuse to renew a certification.		This section outlines the sanctions available to the Director in the event that a regulant violates any of the provisions of the regulations.

<p>18 VAC 120-50-150</p>	<p>Maintenance of certification section. Address and name changes should be reported within 30 days on a Department form. The Department is not responsible for the failure of a regulant to receive notices or correspondence if they failed to report the changes.</p>		<p>This section of the regulations outlines requirements for the reporting of address changes.</p>
<p>18 VAC 120-50-160</p>	<p>Certifications are not transferable to another individual.</p>		<p>Provides that certifications may not be transferred to another individual.</p>
<p>18 VAC 120-50-170</p>	<p>Prohibited acts section with 11 prohibited acts listed. 1) Failure to comply with statutes or regulations. 2) Providing inaccurate or incomplete information. 3) Negligence and/or incompetence. 4) Misconduct. 5) Failure to respond to the Department or providing false information to an investigator. Failing or refusing to claim certified mail from the Department. 6) Misrepresentation or false promises. 7) Assisting another to violate statutes or regulations. 8) Allowing another to use your certification. 9) Being convicted, after initial certification. 10) Failure to inform the Department within 30 days of any conviction, after initial certification. 11) Failure to ensure that all work is consistent with applicable statutes and regulations.</p>		<p>This section lists acts that are prohibited by the regulations and that may result in disciplinary action being taken by the Director. Most of these prohibited acts are common throughout most regulatory boards and include acts that involve lying, misrepresentation, assisting others in bad acts, being convicted, being negligent or incompetent, or failing to follow published standards.</p>
<p>18 VAC 120-50-180</p>	<p>Requirements for formal vocational training providers, instructor qualification and course requirements section. All education providers must get approval from the Director. The application for course providers should have the following: 1) Name of the provider. 2) Name of a contact person, their address and phone number. 3) Course hours. 4) Course schedule. 5) Instructor information. 6) Course fees. 7) Course syllabus. Each instructor should have</p>		<p>This section of the regulations outlines the requirements that must be met by training providers and instructors in order to obtain approval from the Director. Only courses and instructors of approved providers that meet these requirements may be used to meet the educational requirements for certification. They include requirements with regards to instructor experience and certification, record keeping</p>

	<p>either 1) Virginia Natural Gas Automobile Mechanic or Technician Certification or comparable certification or 2) Three years of experience in the subject matter they are teaching. All courses expire after three years. Each provider must maintain student records for five years. The provider must give each student a certificate of completion. The provider must teach current laws, regulations and industry practices.</p>		<p>and a provision that providers must teach current laws, regulations, and practices.</p>
<p>18 VAC 120-50-190</p>	<p>Fees for education providers are \$190 per course.</p>		<p>Fees are established by using anticipated costs and will be reviewed on a biennial basis.</p>
<p>18 VAC 120-50-200</p>	<p>Documentation that a provider has been approved by the Director must be on site at the location of the class.</p>		<p>Provides that an education provider must have documentation of approval by the Director onsite at the location of the class.</p>
<p>18 VAC 120-50-210</p>	<p>Termination of approval section. The Director may withdraw the approval of any education provider for the following reasons: 1) They no longer meet the standards. 2) Soliciting information to discover past, current or future examination questions. 3) Distributes or communicates any examination questions without receiving approval to do so. 4) Advertising fraudulently, deceptively or misrepresenting themselves. 5) Sitting for the exam for any purpose other than to obtain a certification. 6) Preventing access to class facilities or student record when someone from the Department conducts an audit. 7) Failing to submit a student roster to the Department within seven days.</p>		<p>This section outlines the reasons that the Director may withdraw the approval of any course provider. These are similar to the prohibited acts in 18 VAC 120-5-170, but are specific to education providers.</p>
<p>18 VAC 120-50-220</p>	<p>Course content section. Courses should be a minimum of 24 classroom hours and 4 must be hands-on training. No online classes or correspondence course will be approved. They must be in the classroom. Each</p>		<p>This section provides the minimum course requirements that must be in place for a course to be approved.</p> <p>Subject matter experts</p>

	<p>course should have the following subjects taught: 1) conversions, repairs, and maintenance 2) safety 3) NFPA 52 4) principals of natural gas 5) natural gas fuel line safety and inspection 6) natural gas fuel container mounting 7) fundamentals of natural gas engines and 8) a practical lab.</p>		<p>provided information to the Director with regards to the seven subject areas that are critical for a certificate holder to complete to have the minimum competency to ensure that he may operate safely. The practical lab is necessary in order that a certificate holder demonstrate a practical knowledge of the material as well as a theoretical knowledge of the material.</p>
<p>18 VAC 120-50-230</p>	<p>Reporting of changes section. Any changes to an education provider's contact information or course information must be reported within 30 days except for course schedule changes. Schedule changes must be reported within 10 days.</p>		<p>This section provides the requirement for education providers to report any scheduling changes no less than ten days prior to the scheduled course and to report all other changes within 30 days of the change.</p>