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## Final Regulation Agency Background Document

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	2 VAC 5 - 105
<b>VAC Chapter title(s)</b>	Regulations Pertaining to Pet Shops Selling Dogs or Cats
<b>Action title</b>	Promulgate regulation required by Chapter 1284 of the 2020 Acts of Assembly
<b>Date this document prepared</b>	May 24, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

Chapter 1284 of the 2020 Acts of Assembly (Act) requires the Board of Agriculture and Consumer Services (Board) to adopt a regulation governing the keeping of dogs and cats by a pet shop. The Act establishes the specific provisions that this regulation must include. As mandated by the Act, the proposed regulation must require a regulated person or facility to register with the Department of Agriculture and Consumer Services (VDACS). This regulation must also establish standards of adequate care, exercise, feed, shelter, space, treatment, water, proper cleaning, and lighting. This regulation must require at least one unannounced inspection by the State Animal Welfare Inspector annually. Finally, the regulation must establish remedies for each finding of noncompliance in a given inspection.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

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"Board" means the Board of Agriculture and Consumer Services.

"Inspector" means a State Animal Welfare Inspector employed pursuant to Va. Code § 3.2-5901.1 or his representative.

"VDACS" means the Department of Agriculture and Consumer Services.

### **Statement of Final Agency Action**

*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.*

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The Board approved the final language for 2 VAC 5-105, *Regulations Pertaining to Pet Shops Selling Dogs or Cats*, on May 18, 2023.

### **Mandate and Impetus**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

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This regulatory action was mandated by Chapter 1284 of the 2020 Acts of Assembly. There are no changes to the information previously reported in the "Mandate and Impetus" section of the agency background document for the previous stage of this regulatory action.

### **Legal Basis**

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

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Section 3.2-109 of the Code of Virginia (Code) establishes the Board as a policy board.

Section 3.2-6501.1 of the Code, which was established by Chapter 1284 of the 2020 Acts of Assembly, requires the Board to adopt a regulation for the keeping of dogs and cats by a pet shop.

### **Purpose**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety, or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

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Chapter 1284 of the 2020 Acts of Assembly requires the Board to adopt a regulation for the keeping of dogs and cats by a pet shop. The general welfare of the public is protected when regulations are promulgated in compliance with statutory requirements. The goal of the statutory and regulatory requirements is to standardize welfare requirements for dogs and cats sold by retail pet shops.

## Substance

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

Chapter 1284 of the 2020 Acts of Assembly requires the Board to adopt a regulation governing the keeping of dogs and cats by a pet shop and establishes the specific provisions that this regulation must include. The Act requires that the regulation require a regulated person or facility to register with VDACS. The regulation must also establish standards of adequate care, exercise, feed, shelter, space, treatment, water, proper cleaning, and lighting. The regulation must require at least one unannounced inspection by the State Animal Welfare Inspector annually. Finally, the regulation must establish remedies for each finding of noncompliance in a given inspection.

The Board amended the proposed text of Section 30 to include a limitation that no pet shop shall employ a person convicted of animal cruelty pursuant to Section 3.2-6570 of the Code. The Board also amended the proposed text of Section 40 to require each pet shop to develop protocols for veterinary care, infection and disease control, and care of medically managed animals or neonates. The amendments also eliminate the qualifier "gross" from "repeated violations" under Subsection B of 2 VAC 5-105-60.

## Issues

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

Chapter 1284 of the 2020 Acts of Assembly requires the Board to adopt a regulation governing the keeping of dogs and cats by a pet shop and establishes specific provisions this regulation must include. Identifying potential requirements has proven to be a contentious issue for the interested stakeholders. The regulation will affect pet shops, which will be regulated by VDACS. Certain pet shops that are currently in operation may not be in compliance with the requirements or may incur increased costs in order to come into compliance with the requirements.

The regulation will also affect VDACS, which will be responsible for ensuring compliance with the requirements established in the new regulation. Once this regulation becomes effective, a VDACS inspector will inspect all pet shops for compliance with Virginia's Comprehensive Animal Care Laws and this regulation.

## Requirements More Restrictive than Federal

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than*

*applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

There are no applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

There are no changes to the information previously reported in the “Agencies, Localities, and Other Entities Particularly Affected” section of the agency background document for the previous stage of this regulatory action.

**Other State Agencies Particularly Affected**

No state agency or locality will be particularly affected by this regulation.

**Localities Particularly Affected**

No state agency or locality will be particularly affected by this regulation.

**Other Entities Particularly Affected**

Private retail pet shops selling dogs or cats are the only entities affected by this regulation. They will be required to pay a registration fee and be subject to inspections for regulatory compliance.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
95 of the comments	Expressed no specific recommendations for the proposed regulation but provided commenters’ opinions including (i) opposition to animal sales and puppy mills, (ii) rescue pets for adoption instead of puppies for sale, and (iii) animals need to be classified as sentient beings, not property	The agency thanks the commentors for their interest in the proposed regulation.
192 of the comments	Expressed desire for pet shop regulations to be the same as the animal shelter regulations.	The agency thanks the commentors for their interest in and recommendations for the proposed regulation. The pet shop regulations are based on the animal shelter

		regulations (2 VAC 5-111) and mostly match them.
	Expressed desire to require that pet shops have veterinary protocols like animal shelters do.	The agency thanks the commentors for their interest in and recommendations for the proposed regulation. The agency has added this requirement in the final regulations.
	Expressed desire that those people convicted of animal cruelty not be able to be permitted.	The agency thanks the commentors for their interest in and recommendations for the proposed regulation. The agency has added the requirement that a pet shop shall not employ a person who has been convicted of animal cruelty.
100 of the comments	Expressed that VDACS should assess civil penalties.	The agency thanks the commentors for their interest in the proposed regulation. The agency does not have the statutory authority to assess civil penalties.
	Expressed that VDACS should shut down pet shops and the selling of dogs and cats.	The agency thanks the commentors for their interest in the proposed regulation. The agency does not have the statutory authority to prohibit the sale of dogs and cats.

**Detail of Changes Made Since the Previous Stage**

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

<b>Current chapter-section number</b>	<b>New chapter-section number, if applicable</b>	<b>New requirement from previous stage</b>	<b>Updated new requirement since previous stage</b>	<b>Change, intent, rationale, and likely impact of updated requirements</b>
N/A	105-30		*No pet shop shall employ a person convicted of animal cruelty pursuant to Va. Code § 3.2-6570.	This change was requested by stakeholders during the public comment period.
N/A	105-40		*Each pet shop shall, in consultation with a veterinarian, which may include the State Veterinarian, develop protocols for veterinary care, infection and disease control, and the care of medically managed animals or neonates.	This change was requested by stakeholders during the public comment period and will require pet shops to consult with a veterinarian to develop three protocols: application of veterinary care, infection and disease control, and care of medically managed animals or neonates.
N/A	105-60		*Deleted "gross"	This change was requested by a Board member to clarify that

			repeated violations need not be gross to be subject to enforcement.
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**Detail of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

<b>Current chapter-section number</b>	<b>New chapter-section number, if applicable</b>	<b>Current requirements in VAC</b>	<b>Change, intent, rationale, and likely impact of updated requirements</b>
N/A	105-10	N/A	The definitions will assist regulants in understanding the regulation. The proposed definition of pet shop will clarify which businesses are subject to the proposed regulation.
N/A	105-20	N/A	Section 3.2-6501.1 of the Comprehensive Animal Care Law requires that pet shops register and pay a registration fee. *Section 20 of the regulation will assist pet shops in complying with the registration requirement and assist VDACS in addressing a pet shop's failure to register.
N/A	105-30	N/A	Section 3.2-6501.1 of the Comprehensive Animal Care Law requires that the proposed regulations state that no pet shop shall offer dogs or cats for sale to any research facility. *Section 30 of the regulation complies with the requirement of the Comprehensive Animal Care Law, but the agency does not have any information regarding the General Assembly's intent in establishing this restriction.  *Section 30 of the regulation prohibits a pet shop from employing a person convicted of animal cruelty. The agency included this prohibition in response to stakeholder concerns.
N/A	105-40	N/A	Section 3.2-6501.1 of the Comprehensive Animal Care Law

			<p>requires that regulations state standards of care. Section 3.2-6503 of the Comprehensive Animal Care Law outlines standards of care for companion animals, which include dogs and cats.</p> <p>*Section 40 of the regulation outlines standards of care that pet shops must meet in their care of the dogs and cats they offer for sale. These standards of care are identical to those currently required for pet shops and that are detailed in Section 3.2-6503 of the Comprehensive Animal Care Law.</p>
N/A	105-50	N/A	<p>Section 3.2-6501.1 of the Comprehensive Animal Care Law requires that the regulation require at least one unannounced annual inspection.</p> <p>*Section 50 of the regulation is intended to clarify the minimal inspection cycle for pet shops and to clarify that pet shops must be in compliance with the Comprehensive Animal Care Law in addition to the proposed regulation.</p>
N/A	105-60	N/A	<p>*Section 60 of the regulation is intended to clarify inspection compliance actions taken by VDACS when it identifies issues of noncompliance by pet shops.</p>