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## Proposed 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>	July 22, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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 requires the Board of Agriculture and Consumer Services (Board) to adopt a regulation governing the keeping of dogs and cats by a pet shop and establishes specific provisions this regulation must include. As required by Chapter 1284 of the 2020 Acts of Assembly, the proposed regulation requires a regulated person or facility to register with the Department of Agriculture and Consumer Services (VDACS). This regulation also establishes standards of adequate care, exercise, feed, shelter, space, treatment, water, proper cleaning, and lighting. This regulation requires at least one unannounced inspection by the State Animal Welfare Inspector annually. Finally, the regulation establishes remedies for each finding 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.

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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This regulatory action was mandated by Chapter 1284 of the 2020 Acts of Assembly.

### 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's 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.*

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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. Chapter 1284 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 in a given inspection.

### 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.*

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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. A VDACS inspector will inspect all pet shops for compliance with Virginia's Comprehensive Animal Care Law, and, once the proposed regulation becomes effective, the inspector will inspect for compliance with the regulation's requirements as well.

### Requirements More Restrictive than Federal

*Identify and describe any requirement of the regulatory change, which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

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There are no applicable federal requirements.

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

*Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

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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.

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

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:                  a) fund source / fund detail;                  b) delineation of one-time versus on-going expenditures; and                  c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>VDACS's existing animal shelter inspection program will implement and administer the proposed regulation. The new requirements will be handled by existing staff reprioritizing work assignments. No new costs to the state will be associated with this proposed regulation.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no anticipated costs, savings, or revenue for other state agencies associated with the proposed regulation.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There are no direct benefits to any state agency.</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>The proposed regulation will not result in any costs, savings, or revenue for localities, as it only affects private pet shops that sell dogs or cats.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The proposed regulation is not expected to benefit localities.</p>

**Impact on Other Entities**

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Retail pet shops that sell dogs or cats will be impacted by the proposed regulation.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:                  a) is independently owned and operated and;                  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are currently approximately 20 pet shops in the Commonwealth that sell dogs or cats. VDACS estimates that most of these pet shops are small businesses.</p>

<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> <li>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</li> <li>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</li> <li>c) fees;</li> <li>d) purchases of equipment or services; and</li> <li>e) time required to comply with the requirements.</li> </ul>	<p>Affected pet shops are required to pay an annual registration fee of \$250 to VDACS and will be subject to annual inspection. Additionally, some pet shops may incur additional costs to come into compliance with the proposed regulatory requirements.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Regulation of pet shops is likely to improve the welfare of dogs and cats sold by these pet shops.</p>

### Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

There are no viable alternatives to this regulation. The promulgation of this regulation is required by Chapter 1284 of the 2020 Acts of Assembly.

### Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

The promulgation of this regulation is required by Chapter 1284 of the 2020 Acts of Assembly. This regulation will have minimal adverse impact on small businesses. A pet shop that sells dogs or cats will be required to pay a registration fee of \$250 and be inspected by VDACS staff.

**Periodic Review and Small Business Impact Review Report of Findings**

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.*

*In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

This form is not being used to report the result of a periodic review or small business impact review that was announced during the NORIA stage.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency 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>
Molly Armus, The Humane Society of the United States	The commenter suggests specific standards of care for inclusion in the regulation.	The proposed regulation includes the specific care requirements that are established in detail in Virginia’s Comprehensive Animal Care Law. Additionally, the proposed regulation includes certain requirements, with which animal shelters must currently comply.
David Foley, Virginia Pet Advocate Alliance	The commenter suggests that regulations should follow animal shelter regulations and use similar forms.	The proposed regulations utilize identical language and follow a similar format to the animal shelter regulations and will utilize a similar inspection form.
Daphna Nachminovitch, People for the Ethical Treatment of Animals (PETA)	The commenter suggests that the regulations should mirror animal shelter regulations.	The proposed regulations utilize identical language and follow a similar format to the animal shelter regulations and will utilize a similar inspection form.
Paige Wernig, Pet Industry Joint Advisory Council	The commenter would like a representative on the committee developing regulations.	The proposed regulations are drafted by VDACS, utilizing input from stakeholders received during the public comment period.

**Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall website at <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to:

Carolynn Bissett  
 102 Governor St.  
 Richmond, Virginia 23219  
 (Phone) 804-786-2483  
 (Fax) 804-371-2380  
[carolynn.bissett@vdacs.virginia.gov](mailto:carolynn.bissett@vdacs.virginia.gov).

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

**Detail of Changes**

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.*

**Promulgating New VAC Chapter(s) without Repeal and Replace**

<b>New chapter-section number</b>	<b>New requirements to be added to VAC</b>	<b>Other regulations and laws that apply</b>	<b>Change, intent, rationale, and likely impact of new requirements</b>
105-10	The proposed section establishes definitions.	None	The proposed definitions will assist regulants in understanding the regulation. The proposed definition of pet

			shop will clarify which businesses are subject to the proposed regulation.
105-20	The proposed section establishes a registration deadline and prescribes the timeframe within which a pet shop must register after receiving a written warning from the department.	Section 3.2-6501.1 of the Comprehensive Animal Care Law requires that pet shops register and pay a registration fee.	The proposed section will assist pet shops in complying with the registration requirement and assist VDACS in addressing a pet shop's failure to register.
105-30	The proposed section states that no pet shop shall offer dogs or cats for sale to any research facility.	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.	The agency has proposed this section of the regulation to comply with the requirement of the Comprehensive Animal Care Law but does not have any information regarding the General Assembly's intent in establishing this restriction.
105-40	The proposed section 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.	Section 3.2-6501.1 of the Comprehensive Animal Care Law 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.	The proposed section meets the General Assembly's desire to outline standards of care for pet shops that sell cats and dogs.
105-50	The proposed section states that each pet shop is subject to at least one unannounced annual inspection conducted by the animal care inspector.	Section 3.2-6501.1 of the Comprehensive Animal Care Law requires that the regulation require at least one unannounced annual inspection.	The proposed section 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.
105-60	The proposed section prescribes the response by VDACS and a pet shop when VDACS identifies a noncompliance during an inspection.	Section 3.2-6501.1 of the Comprehensive Animal Care Law requires that the regulation detail compliance actions for issues of noncompliance.	The proposed section is intended to clarify inspection compliance actions taken by VDACS when it identifies issues of noncompliance by pet shops.