

COMMENTS ON PROPOSED FINAL FORM RULEMAKING

by the American Canine Association. Inc.

on the proposed regulation to Oklahoma's

TITLE 532 BOARD OF COMMERCIAL PET BREEDERS CHAPTER 1 ORGANIZATION, OPERATION, AND PURPOSES

General Comments

There are several broad comments regarding the overall impact that the proposed regulations would have on dog breeding operations in Oklahoma. Before analyzing the specific regulatory sections that the Board has proposed, the process of determining how to adequately address the issue of the inhumane treatment of dogs must start with an understanding of the problem.

For far too long, government has engaged in a "solution looking for a problem" public policy-making position. Emotionally charged issues are given an emotional response, and unintended negative consequences emerge. It appears that this is precisely the issue in this instance.

When the General Assembly passed Senate Bill 1712, it did so in response to the animal rights activists movement promise to "shut down puppy mills" in Oklahoma. Progressive minded lawmakers, alongside other animal rights activists, claimed that large breeding operations were detrimental to the health, safety and welfare of dogs and, as such, needed to be regulated into nonexistence. Using the moniker "puppy mills," they declared war on professional breeders and successfully enacted sweeping and economically burdensome changes to Oklahoma's Professional Kennels.

Senate Bill 1712 created Title 532 Board of Commercial Pet Breeders, which enacted severely restrictive requirements on operations that have 11 or more dogs. These family breeding operations are now required to comply with a vast majority of new, extraordinary and costly mandates, and are subject to a myriad of additional requirements that are not imposed on other dog breeders. The American Canine Association (ACA) strongly believes that many of these requirements are invidiously discriminatory and violate both the Oklahoma and United States Constitutions.

The proposed regulations that have now been promulgated are a continuation of the efforts of the animal activists to "strangle" both small and large breeding operations. The ACA believes that public policy issues should be addressed reasonably, rationally, and logically. There is no dispute that dogs should be treated humanely; indeed, all reputable breeders believe that the care and attention to their dogs is of the utmost importance. However, when cases of abuse arise, breeders who deeply care about their animals are unfairly targeted.

It is the Board of Commercial Pet Breeders duty to promulgate regulations, and it appears that the current approach used by the Board is flawed. The result of this is proposed regulations, under which the Board seeks to further regulate dog kennels and to criminalize certain aspects of animal husbandry as well as implement punitive measures to ensure compliance.

While not expressly enumerated, there can be little doubt that these regulations are intended for one specific purpose: to put legitimate dog breeding operations out of business. In order to achieve this, the Board imposed restrictions and mandates above and beyond those that operate veterinary hospitals, public schools, restaurants, or nursing homes must comply with; did not consider the financial impact to businesses as required; and failed to consider proper animal husbandry practices and veterinary science standards.

Proponents of Oklahoma's regulations, many of whom previously pushed for the passage of Pennsylvania's newly adopted kennel regulations, say "They don't want to hurt the good breeders, just raise the bar on the "puppy mill" bad kennels." They claimed that Pennsylvania's regulations would have a negative effect on only 5 to 10% of the Pennsylvania's kennels. In fact, 90 to 95% of Pennsylvania's kennels will be forced to formally close their business when Pennsylvania's new kennel regulations take full effect in July of 2011. Not only are the majority of Oklahoma's proposed kennel regulations virtually identical to the Pennsylvania regulations, in some areas they are even more restrictive and burdensome.

The ACA, alongside many other organizations, strongly urges the Board to realize the economic and social devastation that these regulations will absolutely cause on the affected community and to rewrite the regulations.

Specific Comments

The Final Form Regulations state: "When temperatures inside the kennel facility rise above 85 F, the kennel owner is given a four hour window (consistent with the Federal Animal Welfare Act regulations) in which to reduce humidity and/or temperature." The Board then added: "to achieve a heat index of 85 Heat Index" (**532:15-2-2. Housing facilities, Sub-section (d)**). The Federal Animal Welfare Act makes no reference to Heat Index.

So what is an 85 Heat Index? An 85 Heat Index is reached at 79.5 degrees Fahrenheit and 100% Relative Humidity (*Exhibit A*). Primary enclosures are washed down and sanitized throughout the day. 100% Relative Humidity will be measurable during this process. The Board only has the Authority under the Statute to require commercial kennels to mechanically manipulate the air when temperatures are above 85 degrees Fahrenheit.

Veterinary experts Bob Page, DVM and Tom Stevenson, DVM have stated that puppies are unable of maintaining enough body heat to sustain them until they are over two weeks of age. A puppy's normal body temperature is between 99.5 degrees Fahrenheit and 102.5 degrees Fahrenheit. If a puppy's core body temperature drops below 95 degrees Fahrenheit their digestive tract shuts down, followed by their kidney and liver. The mother dog licks the puppy

after birth to remove amniotic fluids and then throughout each day to simulate urination and defecation.

The Board's requirements under these paragraphs fails to recognize that new born puppies cannot maintain their own body temperature until after 3 weeks of age. Supplemental radiant heat or infrared heat lamps are routinely utilized to create an average air temperature between 91 and 96 degrees Fahrenheit in the whelping pen area. This is done for the safety, health and well being of the young litter.

After studying the proposed regulations we clearly see the impact the regulations will have on the regulated community. In our analysis we used as an example a kennel housing 35 adult dogs, 65 puppies and having 1500 square feet of interior floor space with 8 foot ceilings; the proposed regulations are problematic in the following areas:

The proposed regulations mandate a minimum 100 cubic feet per minute (CFM) of ventilation per pet housed in the kennel (**532:15-2-2. Housing facilities, Section (d) Ventilation**) Using our example kennel of 35 adult dogs and 65 puppies (100 pets), the kennel would have to ventilate a minimum of 10,000 cubic of air each minute. Our example kennel has 1500 square feet of flooring with 8 foot ceilings equaling 12,000 cubic feet of air. This means the proposed regulations require a minimum of 45 complete air changes an hour. (*Exhibit "B"*)

The proposed regulations state: "Breeders shall maintain the humidity level between 30-70% when the temperature inside the facility is below 85 degrees Fahrenheit." (**532:15-2-2. Housing facilities, Section (d) Ventilation**).

The daily kennel sanitization process utilizes veterinarian approved sanitizers with water wash down or a steam jetty system. A kennel may be cleaned 1 to 3 times daily. An operator's time with a water-based cleaning system is between 3 and 4 hours daily. During the kennel cleaning and sanitation process, relative humidity levels of 100 % will temporarily occur. These same relative humidity levels occur in each of our homes when we shower in our bathrooms, or stand over a boiling pot on the kitchen stove.

But let's compound these temporary cleaning and sanitation times of a kennel with an example that includes many days when it is raining outside and the outside relative humidity is 100%. Under the proposed regulations, the kennel's ventilation system must be able to climate control the outside air prior to blowing it into the kennel. At a regulation minimum compliance rate of 10,000 cubic feet per minute, equaling 45 complete air changes an hour, and never allowing the air inside the kennel to rise above 70 percent relative humidity. This requirement makes it economically impossible for a small business to be in compliance due to highly expensive industrial grade dehumidifiers, heaters, air conditioners, and massive duct work that each kennel would be forced to install. In fact, the proposed regulations would make it illegal and give lifetime criminal charges against any kennel owner if a 70.1 % relative humidity occurred at any time in a 24 hour period.

Furthermore, different breeds of dogs have different needs. It should be the Oklahoma licensed attending veterinarian who sets the standards for the kennel when temperatures are above 85 degrees Fahrenheit. Upon inspection, the compliance officer would be able to tell that the veterinarian's recommend protocols are being implemented by the facility.

Under **532:15-2-2. Housing facilities, Section (d) Ventilation** the proposed regulation sets an arbitrary maximum ammonia level of 10 parts per million (ppm). Human exposure maximum levels are 25 parts per million as set forth by OSHA. What scientific animal study did the Board use that concluded ammonia levels above 10 ppm are harmful or endangers the health and safety of the animal? And if a study is claimed, which accredited university or college conducted the study.

Under **532: 15-2-3. Primary enclosures,(a) Size requirements for dogs** the proposed regulation require 20 square feet of floor space for a 25 inch dog. Of the 20 square feet of floor space the dog itself encompassed approximately 2 square feet, allowing 18 square feet of free space. Where this section is lacking is that if you place a second dog in that pen, the floor must now be 40 square feet. If each dog physically takes up two square feet of flooring each, each dog now has 36 square feet of free space. The regulation should be written on both a scientific basis and to encourage breeders to place dogs in socially compatible pairs or groups so they can play together every day and exercise their bodies and minds.

Under **532:15-2-2. Housing facilities, Section (f) Outdoor floors** and **532: 15-2-3. Primary enclosures, Section (c) Flooring requirements** there was no foresight given for the invention or technical enhancement of new or different types of flooring that might improve the health, safety, and welfare of the animals housed.

Under **532:15-2-4. Waste removal and sanitization** there is no option for installation of a septic system or the paid use into a public sewer system.

532:15-2-7. Exercise requirements. This section required the kennel operator to place an animal from one pen into another pen for at least one hour a day. Science shows that this gives absolutely no guarantees that the animal will exercise. What studies have shown is that when multiple dogs or cats are housed together and enrichment tools, such as toys and/or multi flooring levels are built in to the pen structure, that playing and exercising takes place throughout the day.

Furthermore, sanitation takes place by using 180 degree Fahrenheit steam or chemical sterilization. How can you sanitize grass on a daily basis without immediately killing it? If you attempt to sterilize compacted dirt, it would just turn the "exercise area" into a mud pen. This section appears to be written based on emotional intent, not veterinary science or practical common sense. It places the health, safety, and welfare of the animals at great risk. And as with the other flooring sections mentioned before, there was no foresight given for the invention or technical enhancement of new or different types of flooring that might improve the health, safety, and welfare of the animals housed.



Forcing a nine week old puppy or kitten, or any animal to be placed in a pen during rain, sleet, ice, snow, freezing wind chills, 100 + degree Fahrenheit temperatures in the shade during the summer months is inhumane and uncontestable. Yet this section does exactly that.

This section does not take into account the design or automation within the kennel. Does the kennel have indoor primary enclosures with connecting outside runs where the dogs can exercise themselves several hours each day if they wish?

It does not take into account that different breeds have different needs. Bulldogs like to sleep 18 to 20 hours each day. Grey Hounds can run for hours. It should be the facility's attending veterinarian that should establish each facilities exercise program specific for the types of breeds housed.

532:15-2-10. Other facility and employee requirements, Section (b) Employee requirements. This section mandates that a 40 hour/week employee be hired for every 24 adult dogs in the kennel. This is another section that has no scientific basis. It does not take into account that different breeds have different needs. Breeds such as Dachshunds, Dobermans, Weimaraner, Great Dane, and Jack Russell Terriers need little to no grooming. Poodles, Maltese, and York Shire Terriers need to be clipped every month or so.

Estimated Cost to the Regulated Community

The American Canine Association also contracted Gil Schonour, P.E., President of Progressive Engineering & Design, Inc. to take an existing building with 1500 square feet of flooring and 8 foot ceiling and engineer it so that it would be in compliance with the regulations regarding humidity, temperature, and ammonia levels. The blueprints of a kennel housing 35 adult dogs and 65 puppies are shown in Exhibit "C" The detailed refurbishing costs for the commercial equipment necessary for each of Oklahoma's kennels under the newly proposed regulation are shown in Exhibit "D". As you will see the total cost is \$510,372.00.

Conclusion

As previously stated, the debate over the humane treatment of dogs in large kennel operations has been an emotionally driven, politically difficult course. The ACA, along with many other interested parties, has attempted to maintain civil discourse and science-based policy making as the foundation to the reforms that became necessary after a number of celebrated kennel cases were highlighted.

However difficult, state government agencies cannot and should not be used by any organization or activist group(s) to legislate and/or regulate legitimate businesses out of existence. Many of the commercial kennels targeted by the proposed regulations have longstanding positive records with the United States Board of Agriculture. Furthermore, many kennels never had issues. Now, despite these reputable breeders following the law, they must bear the burden of significant, additional rules.

The burden of these significant rules, from an economic standpoint, will undoubtedly result in many small business owners losing their livelihood. Take for example the estimated costs identified above. It is entirely possible for many small businesses to close when faced with a half million dollar kennel refurbishing cost or the cost to install additional ventilation and/or humidity control devices.

The heavy-handed proposed regulations drafted by the Board fail on its face value to make meaningful legal arguments as to how it works in conjunction with Title 532, Chapter 1; instead, it takes the restrictions enacted by the General Assembly and greatly expands and adds to them. Such action is not permitted by law. Agencies which cannot achieve policy objectives through the General Assembly should not then attempt to enact those failed objectives by regulation.

Additionally, in a time when the conservation of our nation's limited energy resources is extremely important, these proposed regulations literally throw "out the window" enormous amounts of energy by mandating strict climate control levels, and at the same time require complete outside air exchanges every 72 seconds. These regulations are more burdensome and restrictive than those for human hospitals, adult retirement nursing home, veterinary hospitals, or any other animal breeding facilities.

Finally, the Board fails to give appropriate attention to animal science. Regulations without context are arbitrary, and many of the provisions of the proposed regulations were created only after the scientific basis. In some instances, the requirements run afoul of modern veterinary standards.



Bob Yarnall, Jr.
President and CEO
American Canine Association, Inc.

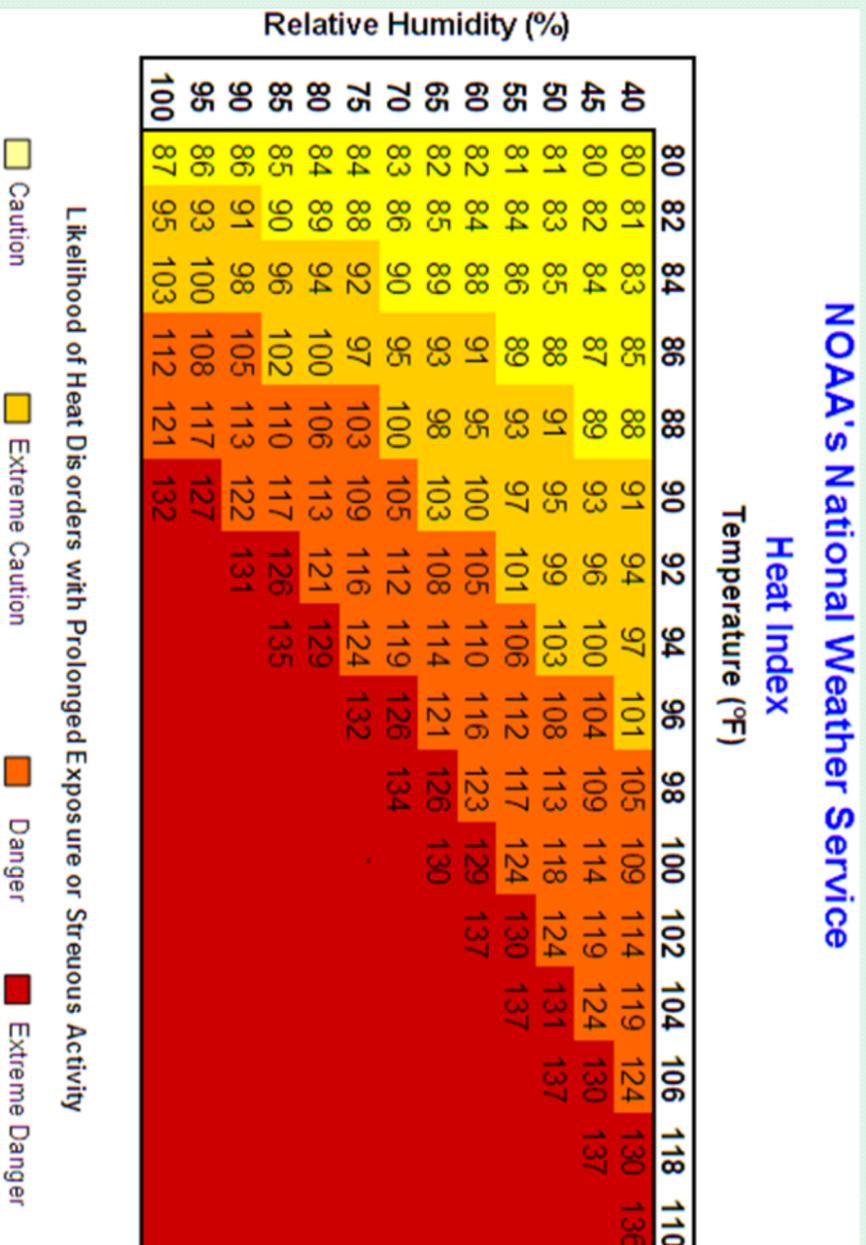
EXHIBIT A

Kennel Requirements for Pennsylvania Commercial Kennels 2010



Ventilation:

Heat Index reference chart



$$79.5 (F) \times 100 \% \text{ Relative Humidity} = 85 (HI)$$

EXHIBIT B

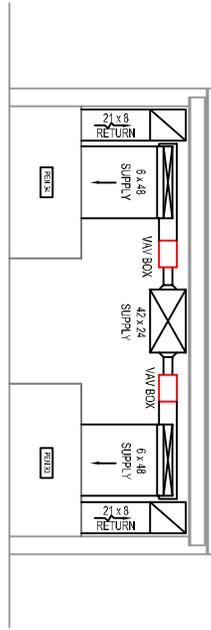
Final Form Proposed Regulations for Oklahoma Commercial Kennels 2010



Ventilation:

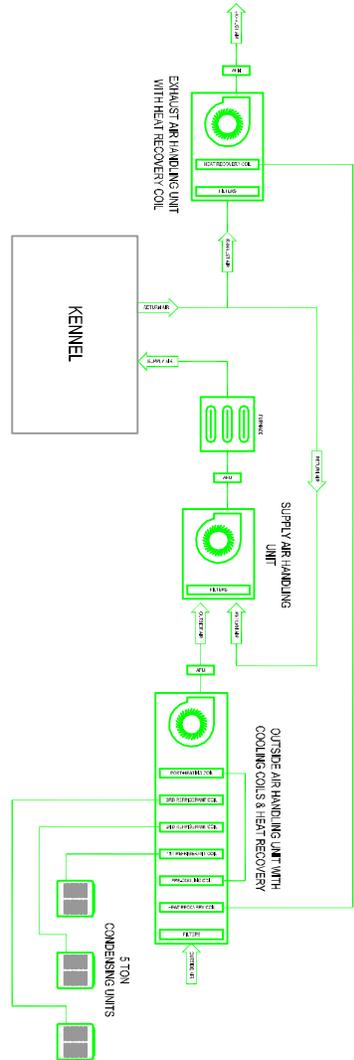
The size of the kennel building for this estimate is 1500 square feet with 8 foot ceilings. Total cubic square feet = 12,000
Total canines housed= 100

Temperature	Kennel Cubic Feet	CFM Outside Air Per Canine	Total Cubic Feet Outside Air Per Hour for Kennel	Total Number of Complete Air Changes Per Hour for Kennel
50 to 85 Degrees Fahrenheit	12,000	100	600,000	45



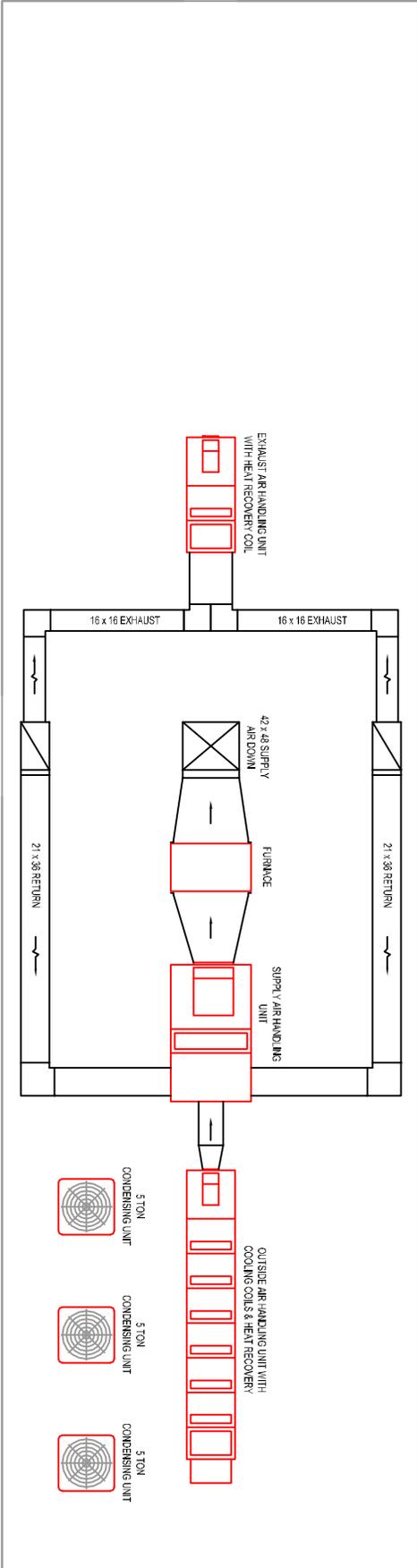
ELEVATION

SCALE: 3/32" = 1'-0"



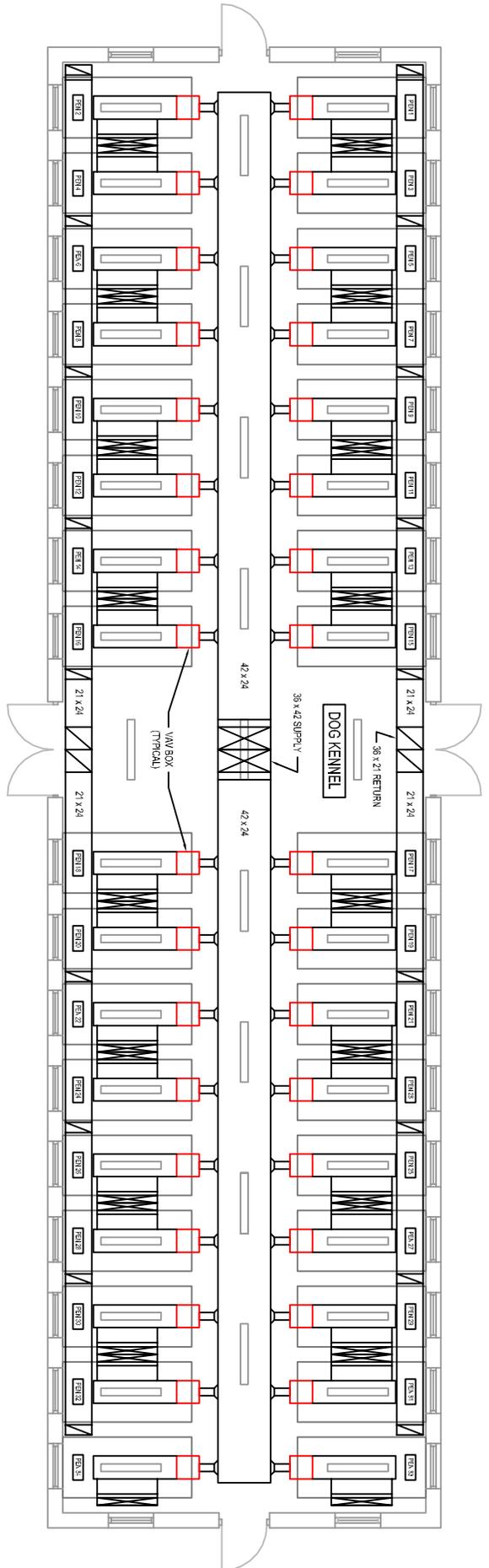
SYSTEM DIAGRAM

NO SCALE



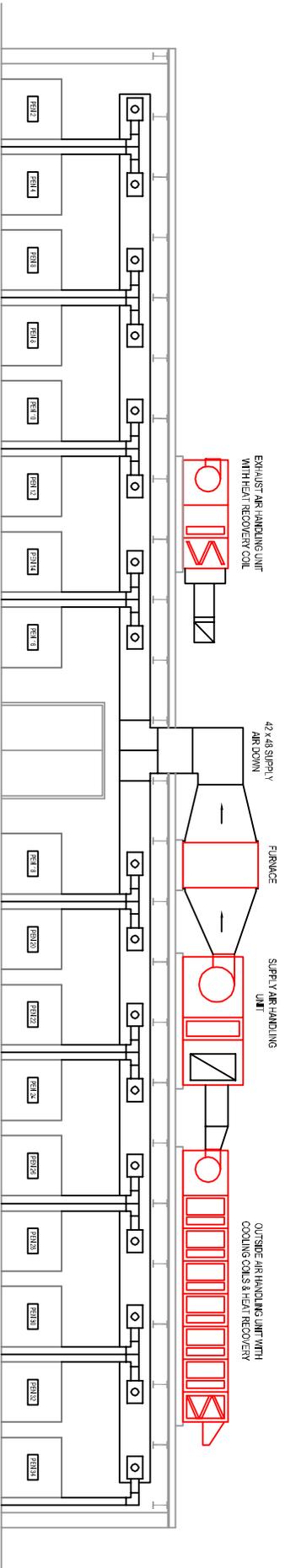
ROOF PLAN

SCALE: 3/32" = 1'-0"



FLOOR PLAN

SCALE: 3/32" = 1'-0"



ELEVATION

SCALE: 3/32" = 1'-0"

Commercial Kennel HVAC System Construction Cost Estimate					
Equipment	Specification	Item		Cost	
		Quantity	Unit	Each	Total
Air Handling Units	Sub Total				\$ 127,500
Outside Air Unit	3,000 CFM w/ total capacity of 17.5 Tons	1	ea	\$ 65,000	\$ 65,000
Mixing Box	w/ 8SF of MERV 8 filters				
Heat Recovery Coil	7.5SF coil - 8 row w/ access door				
Pre-Cooling Coil	7.5SF coil - 8 row w/ access door				
Refrigeration Coil	7.5SF coil - 4 row w/ access door				
5 Ton Condensing Unit	220 volt single phase	3	ea	\$ 7,500	\$ 22,500
Post-Reheat Coil	7.5SF coil - 8 row w/ access door				
Fan Section	3" Static Pressure w/ 2.5 HP motor				
Supply Air Unit	10,000CFM	1	ea	\$ 25,000	\$ 25,000
Filter Section	w/ 25SF of MERV 8 filters				
Fan Section	3" Static Pressure w/ 7.5 HP motor				
Duct Furnace	165MBH Gas, Propane or #2 Fuel Oil	1	ea	\$ 5,000	\$ 5,000
Exhaust Air Handling Unit	3,000 CFM	1	ea	\$ 10,000	\$ 10,000
Filter Section	w/ 8SF of MERV 8 filters				
Heat Recovery Coil	7.5SF coil - 8 row w/ access door				
Fan Section	2" Static Pressure w/ 2 HP motor				
Air Distribution System	Sub Total				\$ 109,998
Roof Top					
Ductwork					
Outside Air	5 ft 18 x 18 @ 1.5 Lb/SF	45	Lb	\$ 7.50	\$ 338
Supply Ductwork	20 ft 42 x 48 @ 1.5 Lb/SF	450	Lb	\$ 7.50	\$ 3,375
Return Ductwork	70 ft 21 x 36 @ 1.5 Lb/SF	997.5	Lb	\$ 7.50	\$ 7,481
Exhaust Ductwork	50 ft 16 x 16 @ 1.5 Lb/SF	400	Lb	\$ 7.50	\$ 3,000
Insulation	2" thick closed cell UV weather rated				
Outside Air		30	SF	\$ 10.00	\$ 300
Supply		300	SF	\$ 10.00	\$ 3,000
Return		665	SF	\$ 10.00	\$ 6,650
Exhaust		267	SF	\$ 10.00	\$ 2,667
Space					
Supply Ductwork					
	100 ft 42 x 24 @ 1.5 Lb/SF	1650	Lb	\$ 7.50	\$ 12,375
	200 ft 18 x 12 @ 1.5 Lb/SF	1500	Lb	\$ 7.50	\$ 11,250
	200 ft 48 x 6 @ 1.5 Lb/SF	2700	Lb	\$ 7.50	\$ 20,250
Return Ductwork					
	200 ft 21 x 24 @ 1.5 Lb/SF	2250	Lb	\$ 7.50	\$ 16,875
	100 ft 21 x 8 @ 1.5 Lb/SF	725	Lb	\$ 7.50	\$ 5,438
VAV Boxes	12" inlet / 1,600CFM	34	ea	\$ 500.00	\$ 17,000
Controls	Sub Total				\$ 100,500
Airflow Measuring Stations	Volue Probe fan inlet with transmitter	3	ea	\$ 5,000	\$ 15,000
VAV Box Controllers		34	ea	\$ 750.00	\$ 25,500
Interface Displays		34	ea	\$ 250.00	\$ 8,500
AHU Controllers		3	ea	\$ 2,500	\$ 7,500
Global Controller	Tritium web based interface	1	ea	\$ 3,500	\$ 3,500
Front End PC	Niagara license w/ M&V programming alarm	1	ea	\$ 5,500	\$ 5,500
Programming		1	ea	\$ 25,000	\$ 25,000
Mis Devices		1	ea	\$ 10,000	\$ 10,000
Electrical	Sub Total				\$ 43,800
Panel	400 amp 220 volt single phase	1	ea	\$ 7,500	\$ 7,500
Power Wiring					
Air Handling Units		3	ea	\$ 1,500	\$ 4,500
VSDs		3	ea	\$ 2,500	\$ 7,500
Condensing Units		3	ea	\$ 2,000	\$ 6,000
Furnace		1	ea	\$ 1,000	\$ 1,000
VAV Boxes		34	ea	\$ 350	\$ 11,900
Lighting		45	ea	\$ 120	\$ 5,400
Piping					
Fuel		250	Ft	\$ 18	\$ 4,500
General Contracting	Sub Total				\$ 22,000
Pen Construction	Perforated Plexiglas supply & return plenum	34	ea	\$ 500	\$ 17,000
Roof Curbs, Supports & Penetrations		1	ea	\$ 5,000	\$ 5,000
Total					
Sub Total					\$ 408,298
25 % Contingency					\$ 102,074
Total					\$ 510,372