

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #1

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JUL 7 12 12 PM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: Office of the Attorney General

TITLE NUMBER: 142

RULE TYPE: Legislative

W. Va. Code Section 46A-6-103

; CITE AUTHORITY

§ W. Va. Code Section 46A-7-102(1)(e)

AMENDMENT TO AN EXISTING RULE: YES \_\_\_ NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 23

TITLE OF RULE BEING PROPOSED: Legislative Rule Pertaining to the  
Prevention of Unfair or Deceptive Acts or Practices in Mobile Home Parks

DATE OF PUBLIC HEARING: 8/10/94 TIME: 9:00 a.m.

LOCATION OF PUBLIC HEARING: Charleston Civic Center  
West Virginia Room 105  
200 Civic Center Drive  
Charleston, WV 25301

COMMENTS LIMITED TO: ORAL x, WRITTEN \_\_\_, BOTH \_\_\_

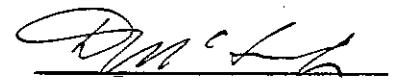
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

Tom Rodd, Director  
Consumer Protection Division  
812 Quarrier Street  
Charleston, WV 25301

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

  
Authorized Signature

TITLE 142  
LEGISLATIVE RULE  
ATTORNEY GENERAL

SERIES 23  
LEGISLATIVE RULE PERTAINING TO THE  
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR  
PRACTICES IN MOBILE HOME PARKS

**STATEMENT OF CIRCUMSTANCES**

West Virginia law (W. Va. Code § 37-5-1 et seq.) regarding mobile home sales and services is inadequate in protecting consumers. The underlying issue is that owner's have tremendous leverage over the residents of the park because the residents usually have very little assets but have considerable expenses in moving out of a park. By virtue of this situation, there is an inequity of bargaining power.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**  
*Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Mobile Home Parks*

**Rule Title:** \_\_\_\_\_

**Type of Rule:**  **Legislative**     **Interpretive**     **Procedural**

**Agency:** Office of the Attorney General Consumer Protection Division

**Address:** 812 Quarrier Street, 6th Floor  
Charleston, West Virginia 25301

**1. Effect of Proposed Rule**    *Not Applicable*

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	HEREAFTER
<b>ESTIMATED TOTAL COST</b>	\$	\$	\$	\$	\$
<b>PERSONAL SERVICES</b>					
<b>CURRENT EXPENSE</b>					
<b>REPAIRS &amp; ALTERNATIONS</b>					
<b>EQUIPMENT</b>					
<b>OTHER</b>					

**2. Explanation of above estimates:**  
*No cost to State or local government.*

**3. Objectives of these rules:**    *Promotion of Consumer Protection*

**Rule Title:** Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Mobile Home Parks

**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government.**

*Will promote private adjudication of consumer issues, reducing burden on state regulations.*

**B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.**


*Will promote consumer confidence and assist responsible businesses, leading to job growth.*

**C. Economic Impact on Citizens/Public at Large.**

*Will assist consumers and businesses with certainty in consumer law, promoting sustainable and responsible business development.*

**Date:** 6/30/94

**Signature of Agency Head or Authorized Representative**



**TITLE 142  
LEGISLATIVE RULE  
ATTORNEY GENERAL**

**SERIES 23  
LEGISLATIVE RULE PERTAINING TO THE  
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR  
PRACTICES IN MOBILE HOME PARKS**

**BRIEF SUMMARY**

Consumers who reside in mobile home parks usually have very little assets but considerable expenses in moving in or out of a park. Series 23 covers common problems experienced by residents of mobile home parks.

The proposed rule would make it an unfair or deceptive act or practice to require the consumer to purchase a mobile home from the owner of the park. The proposed rule would also set disclosure requirements for rent and security deposits, and provides the consumer with protection when there is a sale of a mobile home or transfer of tenancy.

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TITLE 142  
LEGISLATIVE RULE  
ATTORNEY GENERAL

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 23  
LEGISLATIVE RULE PERTAINING TO THE  
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR  
PRACTICES IN MOBILE HOME PARKS

§ 142-23-1. General

1.1 Rule Designation.-- This rule legislative.

1.2 Scope.-- This legislative rule covers certain unfair or deceptive acts or practices covering mobile home parks transaction in West Virginia, its counties, and all political subdivisions.

1.3 Authority.-- W Va. Code § 46A-6-103 Code § 46A-7-102(e).

1.4 Filing Date.-

1.5 Effective Date.-

1.6 Repeal of Former Rule.-- Not applicable

1.7 Penalties.-- Except as otherwise indicated, a violation of this rule constitutes a violation of Article 6 of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-101 et seq.

1.8 Construction -- This rule shall be liberally construed to effectuate the purpose of Article 6 of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-101 et seq.

1.9 Severability -- If, for any reason, any section, subsection, sentence, clause, phrase, or provision of this rule or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, sentences, clauses, phrases, or provision or its application to any other person or circumstance, and to this end each and every section, subsection, sentence, clause, phrase, or provision of this rule is hereby declared severable.

§ 142-23-2. Definitions

2.1 "Factory-built home" includes modular homes, mobile homes, house trailers and manufactured homes;

2.2 "House trailers" means all trailers designed or intended for human occupancy and commonly referred to as mobile homes or house trailers, and shall include fold down camping and travel trailers as these terms are defined in section one [§ 17A-6-1], article six, chapter seventeen-a of this code, but only when such

camping and travel trailers are located in a factory-built home rental community, as defined in this section, on a continual, nonrecreational basis;

2.3 "Manufactured home" has the same meaning as the term is defined in section two [§ 21-9-2], article nine, chapter twenty-one of this code which meets the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and the federal manufactured home construction and safety standards and regulations promulgated by the secretary of the United States department of housing and urban development;

2.4 "Mobile home" means a transportable structure that is wholly, or in substantial part, made, fabricated,, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and built prior to enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and usually built to the voluntary industry standard of the American National Standards Institute (ANSI) -- A119.1 Standards for Mobile Homes.

2.5 "Mobile home park" means any tract of land containing two or more factory built home sites on a continual, non recreational basis, and structures incidental thereto, but does not include premises used solely for display or storage of uninhabited factory built homes, or premises occupied by a landowner or his family.

2.6 "Modular home" means any structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation on a building site and designed for long-term residential use and is certified as meeting the standards contained in the state fire code encompassed in the legislative rules promulgated by the state fire commission pursuant to section five-b [§ 2-3-5b], article three, chapter twenty-nine of this code;

2.7 "Operator" means any person engaged in the service or business of renting sites in a mobile home park to tenants. "Operator" includes owners, officers, representatives, agents and employees.

2.8 "Person" means any individual, corporation, partnership, association, business organization or entity engaged in a transaction for a person, family, household, or agricultural purpose.

2.9 "Rental agreement" means an agreement between an operator and a tenant for the rental of a site.

2.10 "Security deposit" means the total of all payments and deposits given by a tenant to the operator as security for the performance of the tenant's obligations, and includes all rent payments in excess of one month's prepaid rent.

2.11 "Site" means any plot of land which is rented or offered for rental for the accommodation of a factory built home used for residential purposes.

2.12 "Television service" means the transmission of television signals through a system in which television broadcast signals are received by an antenna, satellite dish or other device and transmitted to mobile homes in the mobile home park through coaxial cable or other means. "Television service" does not include the reception of television signals through an antenna or satellite dish owned by a tenant.

2.13 "Tenant" means any person renting a site from an operator.

2.14 "Utility service means:

2.14.1 Electricity, water, sewer, telephone, and natural gas;

2.14.2 Liquefied petroleum gas other than liquefied petroleum gas in portable containers;

2.14.3 Fuel oil supplied through a permanent central system in the mobil home park; and

2.14.4 Television service.

#### **§ 142-23-3 Tie-in Sales; Separate or Discriminatory Charges**

It shall be an unfair and deceptive act or practice for any operator to:

3.1 Require, as a condition to the rental of any site, the purchase of a factory built home from the operator or any dealer, manufacturer, or agent named by the operator.

3.2 Represent to any person that the purchase of a factory built home from the operator or any dealer, manufacturer, or agent named by the operator will give the purchaser an advantage over others in the rental or continued occupancy of a site.

3.3 Discriminate or threaten to discriminate in rental charges or in any other respect against a tenant for failure of the tenant to purchase a factory built home from the operator or any dealer, manufacturer, or agent named by the operator.

3.4 Solicit or receive any payment or other thing of value from any seller of a factory built home for agreeing to rent a site to the purchaser of such mobile home.

3.5 Solicit or receive any payment or other thing of value from any person upon the representation or understanding that such consideration will give that person an advantage over others in the rental or continued occupancy of a site.

3.6 Use a factory built home site to display a factory built home offered for sale, or rent a site to a dealer for purposes other than accommodation of a factory built home occupied as a residence, if the use or rental of the site results in there being no site in the mobile home park available to a prospective tenant who does not purchase a factory built home from the operator or renting dealer.

## § 142-23-4 Rental Agreement Requirements

4.1 It shall be an unfair and deceptive act or practice for any operator to fail to provide a written rental agreement to the tenant at the time the rental agreement is executed, signed and dated by the parties. If a factory built home is purchased from or through the operator, a copy of the rental agreement shall be furnished to the tenant before the tenant signs the factory built home purchase contract and attached as an exhibit to said contract. The rental agreement shall conspicuously set forth all terms and conditions affecting the rental of the site, and shall include:

4.1.1 The terms of the tenancy including the amount of rent for each rent paying period and all property, services and facilities provided by the operator and included in the rent.

4.1.2 The language of the provisions of W. Va. Code § 37-15 and this rule in summary form.

4.1.3 The amount of any security deposit, installation charge, or other charge payable by the tenant under the rental agreement but not included in the rent, including charges for utility services provided through the operator's facilities. If utility service charges are based on the amount of utility service used, the rental agreement shall set forth either the specific rate or the method by which the charges are to be computed.

4.1.4 Rules and regulations shall be included in or attached to the main body of the rental agreement.

4.1.5 A description of the physical improvements and maintenance to be provided by the tenant and operator during the tenancy.

4.1.6 The amount of the monthly parking fee assessed by local units of government and payable by the tenant. If the monthly fee is not known, an approximation shall be given.

4.1.7 A notice that the operator and tenant are subject to state and federal laws prohibiting discrimination.

4.2 It shall be an unfair and deceptive act or practice for the initial, and each succeeding rental agreement, to be for a term of less than one year, unless a shorter term is requested in writing by the tenant and agreed to by the operator. Under any agreement for a rental term of two months or more, rental payment shall, at the option of the tenant, be payable in equal monthly installments. Provided that the owner may terminate the rental agreement upon thirty days notice for failure to comply with material terms of the rental agreement, condemnation of the mobile home park, or charge of use of the mobile home park. A notice of termination shall set forth the reasons relied upon for termination with specific facts to permit determination of the date, place, witnesses, and circumstances concerning the reasons.

4.3 It shall be an unfair and deceptive act or practice for the operator to fail, at the time the rental agreement is entered into, and throughout the term of the

rental agreement, to make available to the tenant the name, address, and telephone number of a person who may be contacted concerning the maintenance of facilities and services provided by the operator. Such information shall be included in the tenant's copy of the rental agreement or in a separate written notice furnished to the tenant.

4.4 It shall be an unfair and deceptive act or practice for rent and other charges under the rental agreement to be increased during the term of the rental agreement, except for:

4.4.1 Mobile home parking fees assessed by local units of government.

4.4.2 Charges for utility services delivered and billed directly to the tenant by a public utility or other outside sources.

4.4.3 Charges for utility services purchased by the operator and delivered and billed to the tenant by the operator but not included in the rent, if the increase is solely to cover an increase in charges to the operator by the supplier of the utility service.

#### **§ 142-23-5 Rental Agreement and Practices; Limitations**

5.1 It shall be an unfair and deceptive act or practice for an operator to charge an entrance fee or exit fee in return for allowing the movement of a factory built home into or out of a mobile home park, for the privilege of renting or occupying a factory built home sit, or the like. This subsection does not apply to:

5.1.1 Periodic payments for the rental of a site, pursuant to the rental agreement.

5.1.2 A security deposit not exceeding the amount of two months' rent.

5.2 Restrictions on choice of vendors. It shall be an unfair and deceptive act or practice for an operator to restrict the choice of vendors from whom a tenant may purchase his/her factory-built home, except in connection with the initial renting of a newly constructed factory built home site not previously rented, or goods and services. This section does not apply to:

5.2.1 Snow removal, lawn care, or similar sit maintenance services performed by the operator upon the failure of a tenant to fulfill the tenant's site maintenance obligations under the rental agreement. No charges may be imposed for site maintenance services performed by the operator under this paragraph unless the tenant, if available, is given prior notice and a reasonable opportunity to perform the tenant's obligation under the rental agreement,. Charges for site maintenance services shall be set forth in the rental agreement.

5.2.2 Services involving the transportation of a mobile home to or from a site within the mobile home park, if the operator can show that the person providing the service has damaged the park during a previous move and failed to compensate the operator for the damages.

5.2.3 A nondiscriminatory prohibition against sales solicitations within the mobile home park.

5.3. Prohibited fees: It shall be an unfair and deceptive act or practice to require the tenant to pay any recurring charges, except fixed rent, utility charges or recurrable residential charges for services by its operator.

5.3.1 Charges for a utility service provided through the operator's facilities, if not included in the rent, shall be based on the amount of the utility service used by tenants. Charges for television services provided through the operator's facilities may be assessed in the form of a uniform charge to subscribing tenants, subject to par. Charges or the method of computing charges for utility services provided through the operator's facilities shall be set forth in the rental agreement.

5.3.2 If television service is provided by the operator but not included in the rent, the operator may not limit a tenant's access to television service provide by an outside source.

5.3.3 Charges for utility services provided through the operator's facilities, if based on amounts used, shall be periodically invoiced in writing to tenants. Invoices shall specify both the charge and the amount of the utility service used.

5.3.4 Charges for utility service provided through the operator's facilities, if not included in the rent, shall be competitive with retail prices charged for the same or equivalent services by public utilities or other local sources. If a utility service is provided directly to tenants by a public utility or other local sources. If a utility service is provided directly to tenants by a public utility or other outside source, no additional charge may be assessed for the service by the operator.

5.4 It shall be an unfair and deceptive act or practice for an owner to charge any fee not authorized in the rental agreement.

5.5 No waiver. It shall be an unfair and deceptive act or practice to attempt to secure a waiver of tenant rights hereunder. Any such provision is void.

#### **§ 142-23-6 Changes in Rental Terms or Park Rules**

It shall be an unfair and deceptive act or practice for any operator

6.1 To pursue any change or increase in rent or fees, or any other substantial change in the terms or conditions of tenancy in connection with the renewal of any rental agreement, without furnishing a copy of the proposed new agreement, or amendments to the existing agreement to the tenant, in writing , at least 28 days prior to the date on which the proposed new agreement is to take effect. All changes shall be specifically brought to the tenant's attention by a separate statement on the proposed rental agreement or in a separate written document attached to the rental agreement. The operator or a representative of the operator shall meet with the tenants, or any group of tenants, on the proposed changes, at their request.

6.2 To create or change any rules and regulations which substantially affect the rights or duties of tenants or the operator during the term of the rental agreement. This includes, but is not limited to:

6.2.1 Rules setting standards and requirements for skirting, weatherproofing or frostproofing, and auxiliary buildings or sheds.

6.2.2 Rules limiting occupancy of mobile homes with respect to the number or age of occupants.

6.2.3 Vehicle parking rules imposed by the park operator.

6.2.4 Rules restricting or regulating overnight guests.

6.2.5 Rules restricting or regulating pets.

6.2.6 Rules requiring tenants to repair or maintain their factory built homes.

6.2.7 Rules defining the tenant's and operator's rights and responsibilities with regard to maintenance of the site.

6.2.8 Rules restricting or regulating tenants' outdoor antennas or satellite dishes.

6.3 Notice of proposed changes in rental terms and conditions or park rules and regulations under this section may be furnished to the tenant in person or by mail. Notice by mail shall be considered actual notice.

**§ 142-23-7 Sale of Mobile Home; Transfer of Tenancy**

It shall be an unfair and deceptive act or practice for

7.1 An operator to require any tenant to designate the operator, or any person named by the operator, as agent for the sale of a tenant's factory-built home, or unreasonably restrict the sale of a tenant's factory built home, or unreasonably restrict the sale of a tenant's factory built home by the tenant or an agent of the tenant's own choosing, or collect a commission on the sale of a factory-built home located in the mobile home park unless the tenant expressly employed the owner therefor.

7.2 An operator to deny a resident the opportunity to enter into a contract, and may not include, exclude or alter any terms of a lease to continue to locate a factory-built home in the park solely or in any part on the basis of the age of the factory-built home.

7.3 An operator to require the removal of a factory built home from a park solely or in any part on the basis of the age of the factory built home, regardless of whether the ownership or occupancy of the factory built home has changed or will change.

7.4 An operator to require the removal of a factory built home from a park solely or in any part because the ownership or occupancy of the factory built home

has changed or will change. An operator may refuse to enter into an initial lease with a prospective resident for any other lawful reason.

7.5 An operator to solicit or receive any payment or other thing of value as a condition to the assignment or sublease of a rental agreement by a tenant, or as a condition to the transfer of tenancy to a buyer of the tenant's factory built home, or as a fee for interior improvements except to the extent that the tenant employs the operator therefor;

7.6 An operator to sell for placement in a mobile home park owned or operated by the operator, any factory built home purchased from a tenant who was prohibited from selling the home directly for placement in the mobile home park.

7.7 An operator to refuse to rent a site to the purchaser of a tenant's factory built home except for a lawful reason. This does not prohibit the screening of prospective tenants by an operator.

7.8 An operator to limit a tenant's ability to post, on the tenant's factory built home or on the site on which the mobile home is located, a "For Sale" sign or other advertisement announcing the tenant's offer to sell the tenant's home.

#### **§ 142-23-8 Mobile Home Relocation**

8.1 It shall be an unfair and deceptive act or practice for a tenant to be required to relocate a factory built home within a park during the term of the rental agreement, or to assume the cost of any required relocation under a new or renewal rental agreement, except in the emergency or where the tenant has violated the relevant terms and conditions of the rental agreement. This does not apply to a factory-built home which has been vacated by the tenant. Any required relocation, except in emergency, be preceded by written notice setting forth the reason for such relocation.

#### **§ 142-23-9 Termination of Tenancy**

9.1 It shall be an unfair and deceptive act or practice to refuse to renew the tenancy of a resident of a mobile home park, except upon any of the following grounds:

9.1.1 Failure to comply with the material terms of the rental agreement.

9.1.2 Condemnation of the community, or

9.1.3 Change of use of the community.

9.2 It shall be an unfair and deceptive act or practice for an operator to pursue termination of a rental agreement or refuse, upon expiration of a lease, to renew the lease or to enter into a new rental agreement or to selectively increase rent or decrease services for the reason that:

9.2.1 The tenant has complained to any governmental authority relative to health or safety, or file suit alleging such violation.

9.2.2 The tenant has made a complaint to or filed suit against the landlord, or testified against the landlord.

9.2.3 The tenant has organized or become a member of a tenant's organization.

9.2.4 The operator wishes to make a site available to a person purchasing a factory built home from the operator or an agent of the operator.

**§ 142-23-10 Prohibited Practices; general**

It shall be an unfair and deceptive act or practice for

10.1 An operator to make any false, deceptive, or misleading representation to induce a factory built home sale or site rental, or make any representation inconsistent with or contrary to the written rental agreement.

10.2 An operator to impose any term or condition, or any rule or regulation which the operator knows or reasonably ought to know is in conflict herewith.

10.3 An operator to require any tenant to make permanent improvements to the mobile home park or any of its facilities, or assess any separate charge therefor.

10.4 An operator to enter a tenant's factory built home without the tenant's permission and reasonable prior notice to the tenant. This does not prohibit the operator from entering a tenant's factory-built home if the tenant cannot be contacted and the operator reasonably believes that entry is necessary because of emergency, or to preserve and protect the home or the park.

CONS1QL



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25305

DARRELL V. MCGRAW, JR.  
ATTORNEY GENERAL

(304) 558-2021  
FAX (304) 558-0140

July 6, 1994

Judy Cooper, Director  
Administrative Law Division  
Secretary of State  
Building 1, Room 157-K  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

Dear Ms. Cooper:

Please accept this letter as my authorization for the filing of the enclosed proposed legislative rules. I also authorize a public hearing on these rules to be held August 10, 1994. These regulations are subject to review after your public hearing and after anticipated public hearings by this Office in the fall.

The enclosed proposed legislative rules to which my authorization extends are:

- (a) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Mobile Home Parks;
- (b) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Security Interests and Repossession Practices;
- (c) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Advertising and Sales;
- (d) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Landlord Tenant Transactions;
- (e) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Motor Vehicle Repairs;
- (f) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Motor Vehicle Sales;
- (g) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices by Private Proprietary Institutions; and
- (h) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Door-to-Door Sales.

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

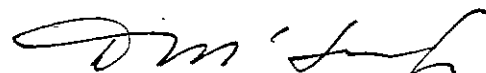
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Judy Cooper, Director  
July 6, 1994  
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Thank you for your cooperation.

Very truly yours,

A handwritten signature in cursive script, appearing to read "D. M. Smith".

Enclosures