

Small Business Reorganization Act
Subchapter V of Title 11

- Effective February 19, 2020
- Eligibility—a person (§101(41) engaged in commercial or business activity with aggregate or non-contingent liquidated secured and unsecured debts of not more than \$2,725,625. (§101(51D))
- A trustee is appointed in every SBRA case. (§1183)
- Trustee’s duties are covered under §1183(b).
- A SBRA Standing Order will be entered in each case. (Local procedure)
- Operating Order will include an initial meeting with the Bankruptcy Administrator. (Local procedure)
- Claims deadline 60 days after order for relief. (Local procedure)
- Court will hold a status hearing approximately 45 days after filing and debtor must file a status report not later than 14 days prior to the status hearing. (§1188)
- Debtor will file a Monthly Operating Report (Form 425C) (§1187(b))
- Plan must be filed 90 days after order for relief, but court can extend the deadline upon a showing by the debtor of circumstances for which the debtor should not be justly held accountable. (§1189)
- Plan must comply with all provisions of §1129(a) except (15) for confirmation as a consensual plan. (§1191(a))
- Plan may be confirmed as a non-consensual plan if §1129(a) other than (8),(10) and (15) is met as long as the plan does not discriminate unfairly, and is fair and equitable with respect to each class of claims or interests that is impaired under and has not accepted the plan.(§1191(b))

- The trustee serves until a plan confirmed under §1191(a) is substantially consummated, or until all payments are made under the plan if the plan is confirmed under §1191(b). (§1183(c) & §1192)
- Discharge—If the plan is confirmed under §1191(a), §1141(d) applies. If the plan is confirmed under §1191(b), the discharge is not entered until the debtor/trustee complete payments under the plan. (§1181(c) & §1192)
- Trustee will hold payments until confirmation or denial of confirmation. If the plan is confirmed, the trustee will distribute payments pursuant to the plan. If the plan is not confirmed, the trustee will return payments to the debtor after deducting payments for unpaid and allowed administrative expenses, adequate protection payments to a secured creditor, and trustee's fee. (§1194)
- Not applicable in SBRA—quarterly fees, Creditors Committee, Disclosure Statements, and Absolute Priority Rule (§1181(a), (b)). Also not required is Official Form 122B for Individuals (Chapter 11 Statement of Current Monthly Income).
- Trustees will be compensated pursuant to 11 U.S.C. §330 on a reasonable hourly rate. (Conforming amendments to SBRA)
- Debtor serves as debtor-in-possession unless and until removal for cause, including dishonesty, incompetence, or gross mismanagement of the affairs of the debtor. (§1185)
- In addition to the duties under §704(a)(2),(5),(6),(7),(9) and §1106(a)(3),(4),(7), the trustee appears at the status conference under §1188 and other hearings; ensures that debtor commences timely payments under the plan; performs duties under §704(a)(8) and §1106(a)(1),(2),(6) if the debtor is removed as debtor in possession; performs duties under §704(c) relating to domestic support obligations, and facilitates the development of a consensual plan of reorganization. (§1183(b))
- Debtor's duties include compliance with §308 and §1116(1), (2), (3), (4), (5), (6) and (7). (§1187)
- Property of the estate includes property under §541, as well as property acquired post-petition and earnings from services performed by the debtor after commencement of the case. (§1186).
- A plan shall include: a) a brief history of the business operations of the debtor; b) a liquidation analysis; c) projections with respect to the ability of the debtor to make

payments under the proposed plan of reorganization; d) provide for the submission of all or such portion of future earnings or future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan; e) may modify rights of holders of claims secured only by a security interest in the debtor's principal residence if the new value received was used in the business and not to acquire the home. (§1190).

- Only debtor may file or modify a plan. (§1189 & §1193)
- A professional is not disqualified for employment under §327 solely because that person holds a pre-petition claim against the debtor of less than \$10,000. (§1195)
- Revised Forms are available on uscourts.gov or from your bankruptcy software provider.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In re:

«Debtor_name»

CASE NO. «Case_number»

Debtor

**SMALL BUSINESS REORGANIZATION
CHAPTER 11 OPERATING ORDER**

To ensure the successful, orderly administration of this case, the Court assigns certain responsibilities to the debtor to comply with the provisions of Subchapter V of Chapter 11 and the Rules of Bankruptcy Procedure.

On the effective date of this Order the debtor is **ORDERED** to comply with the following:

A. MEETING WITH BANKRUPTCY ADMINISTRATOR: At the place and time below, unless otherwise agreed upon by the Bankruptcy Administrator, the debtor and its attorney shall meet with the Bankruptcy Administrator, or his designee, for the debtor to verify that all provisions of this Order required to be done by that date have been done and that all mechanisms are in place to assure future compliance.

DATE: «DIP_date»
TIME: «DIP_time»
PLACE: 155 St. Joseph Street
Room 205
Mobile, AL 36602

B. SMALL BUSINESS STATUS REPORT: Not later than 14 days before the status conference under §1188(a), the debtor shall file with the court and serve on the trustee and all parties in interest a report that details the efforts the debtor has taken and will undertake to attain a consensual plan of reorganization.

C. SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS: The debtor shall file all schedules and statement of financial affairs with the petition or within 14 days after entry of the order for relief unless, after notice and hearing, the court grants an extension.

D. TAX RETURNS: The debtor shall timely file all state and federal tax returns and other required government filings, and, subject to §363(c)(2), timely pay all taxes entitled to

administrative expensive priority except those being contested by appropriate proceedings being diligently prosecuted. By the date set out in paragraph A above, the debtor shall file with the court copies of federal and state tax returns for the year preceding the filing of the Chapter 11 petition. Within five (5) business days of the filing of the federal and state tax returns which become due subsequent to the filing of the Chapter 11 petition, the debtor shall file with the court copies of said returns.

E. PROOF OF INSURANCE: The debtor shall maintain insurance customary and appropriate to the industry, and shall file with the Clerk of Court, Declaration Pages for all insurance policies (including property damage, liability and workmen's compensation insurance) showing a general description of the property insured, the name of the insurer, name and address of the issuing agent, the amount of coverage, type of insurance, date of expiration, policy number, and amount of premium. Proof of insurance shall include a cover pleading with the style of the case.

(a) If worker's compensation insurance is required by law, the debtor shall maintain said insurance in full force and effect.

(b) Should any of the insurance policies listed be cancelled or not renewed before their expiration dates, the debtor shall notify the Bankruptcy Clerk's Office and the Bankruptcy Administrator, in writing no later than three (3) days after receipt of the notice of cancellation or failure to renew.

G. CASH COLLATERAL: The debtor is cautioned to comply with 11 U.S.C. §552, concerning motions for use of cash collateral.

H. OBTAINING CREDIT: The debtor is cautioned to comply with 11 U.S.C. §364, concerning motions for post-petition financing for which court approval is required.

I. USE, SALE, OR LEASE OF PROPERTY; LABOR CONTRACTS: The debtor is cautioned to comply with 11 U.S.C. §363, concerning the use, sale, or lease of property; 11 U.S.C. §365 regarding assuming or rejecting leases or executory agreements; and 11 U.S.C. §1113 concerning collective bargaining agreements.

J. INSPECTION OF PROPERTY AND RECORDS: The debtor shall permit the Bankruptcy Administrator or his designee reasonable inspection of its business premises, properties, books and records.

K. REPORTS TO THE BANKRUPTCY ADMINISTRATOR: The debtor shall file with the Clerk of Court a Monthly Small Business Operating Report (Form 425C) and other reports as required by the Federal Rules of Bankruptcy Procedure or by local rule.

L. PROFESSIONAL PERSONS: The debtor shall file applications in accordance with 11 U.S.C. §327 for authority to employ any professional persons including, but not limited to attorneys, accountants and appraisers.

M. BANKRUPTCY ADMINISTRATOR'S DESIGNEE: Any reference in this Order to the "Bankruptcy Administrator" includes such designee as the Administrator may select.

N. DEBTORS OTHER THAN INDIVIDUALS: Though the debtor has been referred to herein in the neuter gender, such reference shall be construed in the appropriate gender. If the debtor is not an individual, the responsible party executing forms shall be designated the "debtor" within the meaning of Bankruptcy Rule 9001(5).

O. AMENDMENT OF THIS ORDER: After this Order becomes effective, it may be amended upon proper motion for good cause shown, with a copy of said motion being served upon the Bankruptcy Administrator.

Dated: February 11, 2020

U.S. Bankruptcy Judge

Fill in this information to identify the case:

Debtor Name _____

United States Bankruptcy Court for the: _____ District of _____

Case number: _____

Check if this is an amended filing

Official Form 425C

Monthly Operating Report for Small Business Under Chapter 11

12/17

Month: _____

Date report filed: _____
MM / DD / YYYY

Line of business: _____

NAISC code: _____

In accordance with title 28, section 1746, of the United States Code, I declare under penalty of perjury that I have examined the following small business monthly operating report and the accompanying attachments and, to the best of my knowledge, these documents are true, correct, and complete.

Responsible party: _____

Original signature of responsible party _____

Printed name of responsible party _____

1. Questionnaire

Answer all questions on behalf of the debtor for the period covered by this report, unless otherwise indicated.

Yes No N/A

If you answer *No* to any of the questions in lines 1-9, attach an explanation and label it *Exhibit A*.

- | | | | |
|--|--------------------------|--------------------------|--------------------------|
| 1. Did the business operate during the entire reporting period? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Do you plan to continue to operate the business next month? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Have you paid all of your bills on time? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Did you pay your employees on time? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Have you deposited all the receipts for your business into debtor in possession (DIP) accounts? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Have you timely filed your tax returns and paid all of your taxes? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Have you timely filed all other required government filings? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Are you current on your quarterly fee payments to the U.S. Trustee or Bankruptcy Administrator? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Have you timely paid all of your insurance premiums? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

If you answer *Yes* to any of the questions in lines 10-18, attach an explanation and label it *Exhibit B*.

- | | | | |
|---|--------------------------|--------------------------|--------------------------|
| 10. Do you have any bank accounts open other than the DIP accounts? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. Have you sold any assets other than inventory? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. Have you sold or transferred any assets or provided services to anyone related to the DIP in any way? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. Did any insurance company cancel your policy? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. Did you have any unusual or significant unanticipated expenses? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. Have you borrowed money from anyone or has anyone made any payments on your behalf? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. Has anyone made an investment in your business? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

17. Have you paid any bills you owed before you filed bankruptcy?
18. Have you allowed any checks to clear the bank that were issued before you filed bankruptcy?

2. Summary of Cash Activity for All Accounts

19. **Total opening balance of all accounts** \$ _____
 This amount must equal what you reported as the cash on hand at the end of the month in the previous month. If this is your first report, report the total cash on hand as of the date of the filing of this case.

20. **Total cash receipts**
 Attach a listing of all cash received for the month and label it *Exhibit C*. Include all cash received even if you have not deposited it at the bank, collections on receivables, credit card deposits, cash received from other parties, or loans, gifts, or payments made by other parties on your behalf. Do not attach bank statements in lieu of *Exhibit C*.
 Report the total from *Exhibit C* here. \$ _____

21. **Total cash disbursements**
 Attach a listing of all payments you made in the month and label it *Exhibit D*. List the date paid, payee, purpose, and amount. Include all cash payments, debit card transactions, checks issued even if they have not cleared the bank, outstanding checks issued before the bankruptcy was filed that were allowed to clear this month, and payments made by other parties on your behalf. Do not attach bank statements in lieu of *Exhibit D*.
 Report the total from *Exhibit D* here. - \$ _____

22. **Net cash flow** + \$ _____
 Subtract line 21 from line 20 and report the result here.
 This amount may be different from what you may have calculated as *net profit*.

23. **Cash on hand at the end of the month** = \$ _____
 Add line 22 + line 19. Report the result here.
 Report this figure as the *cash on hand at the beginning of the month* on your next operating report.
 This amount may not match your bank account balance because you may have outstanding checks that have not cleared the bank or deposits in transit.

3. Unpaid Bills

Attach a list of all debts (including taxes) which you have incurred since the date you filed bankruptcy but have not paid. Label it *Exhibit E*. Include the date the debt was incurred, who is owed the money, the purpose of the debt, and when the debt is due. Report the total from *Exhibit E* here.

24. **Total payables** \$ _____
(Exhibit E)

4. Money Owed to You

Attach a list of all amounts owed to you by your customers for work you have done or merchandise you have sold. Include amounts owed to you both before, and after you filed bankruptcy. Label it *Exhibit F*. Identify who owes you money, how much is owed, and when payment is due. Report the total from *Exhibit F* here.

25. **Total receivables** \$ _____
 (Exhibit F)

5. Employees

26. What was the number of employees when the case was filed? _____
 27. What is the number of employees as of the date of this monthly report? _____

6. Professional Fees

28. How much have you paid this month in professional fees related to this bankruptcy case? \$ _____
 29. How much have you paid in professional fees related to this bankruptcy case since the case was filed? \$ _____
 30. How much have you paid this month in other professional fees? \$ _____
 31. How much have you paid in total other professional fees since filing the case? \$ _____

7. Projections

Compare your actual cash receipts and disbursements to what you projected in the previous month. Projected figures in the first month should match those provided at the initial debtor interview, if any.

	<i>Column A</i>	-	<i>Column B</i>	=	<i>Column C</i>
	Projected		Actual		Difference
	Copy lines 35-37 from the previous month's report.		Copy lines 20-22 of this report.		Subtract Column B from Column A.
32. Cash receipts	\$ _____		\$ _____		\$ _____
33. Cash disbursements	\$ _____		\$ _____		\$ _____
34. Net cash flow	\$ _____		\$ _____		\$ _____
35. Total projected cash receipts for the next month:					\$ _____
36. Total projected cash disbursements for the next month:					- \$ _____
37. Total projected net cash flow for the next month:					= \$ _____

8. Additional Information

If available, check the box to the left and attach copies of the following documents.

- 38. Bank statements for each open account (redact all but the last 4 digits of account numbers).
- 39. Bank reconciliation reports for each account.
- 40. Financial reports such as an income statement (profit & loss) and/or balance sheet.
- 41. Budget, projection, or forecast reports.
- 42. Project, job costing, or work-in-progress reports.