



U.S. Department of Justice

Office of the United States Trustee
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OPERATING INSTRUCTIONS AND REPORTING REQUIREMENTS FOR CHAPTER 11 TRUSTEES AND DEBTORS-IN-POSSESSION

Title 28, section 586(a)(3) of the United States Code provides in part that the United States Trustee shall supervise the administration of cases filed under title 11, chapter 11 of the United States Code (“Bankruptcy Code”), within the region for which such United States Trustee is appointed. Pursuant to its supervisory authority, the United States Trustee for Region 9, comprised of the judicial districts for the states of Michigan and Ohio, has promulgated the following Operating Instructions and Reporting Requirements (“OIRR”) for debtors-in-possession and chapter 11 trustees.

Timely compliance with each of the following requirements is mandatory. Failure to comply with any requirement may result in the filing of a motion for dismissal or conversion of the case or a motion for appointment of a chapter 11 trustee or examiner.

Any request for amendment to or modification of any of these requirements must be made in writing and approved in writing by the Office of the United States Trustee.

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1. INITIAL REQUIREMENTS AND PROCEDURES

- A. The letter to the debtor and debtor’s counsel included in this mailing (“DIP letter”) is issued pursuant to and authorized by this section of the OIRR. For administrative convenience and efficiency, the letter identifies and designates those requirements of the OIRR that must be met at the very beginning of the case. The requirements set forth in the DIP letter are all found in and taken from ensuing sections of the OIRR. Timely compliance with all of the DIP letter requirements is mandatory.
- B. The Office of the U.S. Trustee will schedule a debtor-in-possession conference (“DIP conference”) within the first few weeks of the filing. The required items and documents designated in the DIP letter must be produced at or before the conference.
- C. Where the debtor remains in possession, the designated principal(s) who has (have) signed the petition, schedules and statement of affairs, and the person(s) in control of the debtor if different from or in addition to the signatories of the petition and schedules, must attend the DIP conference, as well as appear to testify at the first meeting of creditors. If variance from the foregoing procedure is contemplated for any reason, both the analyst and the attorney for the U.S. Trustee assigned to the case must be informed in writing as to who will appear and the reasons the principal(s) or person(s) in control is (are) unable to attend. Unilateral re-designation of persons in control and reassignment of the duties and responsibilities of the debtor-in-possession may be tantamount to the appointment of a chapter 11 trustee, a procedure that requires the specific approval of the Bankruptcy Court upon motion and after notice and a hearing. Section 1104(a) of the Bankruptcy Code.
- D. The U.S. Trustee will also schedule an organizational meeting of creditors or equity security holders (as distinguished from the section 341 or first meeting of creditors) immediately before or after the DIP conference, in part so that the debtor and debtor’s counsel may have an opportunity to meet with members of prospective committees at the early stages of the case.
- E. The debtor is required to fully comply with the requirements of the DIP letter within ten (10) days of the date of the DIP letter, or by the time of the DIP conference.

2. GENERAL REQUIREMENTS

- A. The debtor is required to comply in all respects with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (F.R.Bankr.P.) and Local Bankruptcy Rules (L.B.R.) promulgated by the United States Bankruptcy Court.

1. In addition to the list of the twenty largest unsecured creditors required for filing with the petition at the commencement of the case, within fifteen days of the filing date the debtor must also file schedules and a statement of financial affairs with the Clerk of the U.S. Bankruptcy Court pursuant to F.R.Bankr.P. 1007, containing a complete list of all creditors and their addresses in Schedules D, E, and F.
 2. Failure to file all required bankruptcy schedules and the statement of financial affairs within 15 days of the date of filing, or to obtain an extension of time from the court pursuant to L.B.R. 9006-1(a), may result in the dismissal of the case by the court without a hearing.
 3. Section 341 of the Bankruptcy Code requires a meeting of creditors in each case. Although this meeting is scheduled by the United States Trustee, notice is sent to all creditors by the Clerk of Court. Where the debtor remains in possession, the signatory(ies) of the petition and schedules, as well as the “person(s) in control” of the debtor within the meaning of F.R.Bankr.P. 9001(5), must attend. Other individuals, if familiar with the financial affairs and operations of the debtor and otherwise qualified to do so, may also appear at the section 341 meeting on behalf of the debtor. By law, corporate debtors must be represented by legal counsel throughout the chapter 11 proceedings, including at the section 341 meeting of creditors.
 4. After notice has been mailed, a section 341 meeting cannot be canceled or rescheduled to accommodate conflicts with the schedules of debtors, their counsel and other individuals required to attend the meeting. After the initial creditors’ meeting, the United States Trustee may continue the meeting to another date and time until the case is dismissed or converted or a plan is confirmed. As a rule, written notice of any such continued meetings is not provided.
 5. Notices and copies of all pleadings, stipulations and proposed orders must be served upon the United States Trustee as required by the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules. Such documents should be sent to the Office of the U.S. Trustee, 211 West Fort St., Suite 700, Detroit, MI 48226.
- B. The debtor must pay, in full when due, all obligations arising after the filing of the petition (“post-petition”). This includes not only general business expenses, but all post-petition obligations, including:
1. Wages;
 2. FICA taxes, both employees’ and employers’ portions;
 3. Withheld federal, state and local payroll taxes; and
 4. All other taxes.
- C. The debtor shall file all federal, state and local tax returns when due, or shall procure an extension from the appropriate taxing authority, unless otherwise allowed by the Bankruptcy Code or by order of the Court.
- D. After the case is filed, the debtor may not pay any professionals, such as attorneys, accountants, consultants, appraisers or auctioneers, unless a court order has been entered authorizing compensation and reimbursement of expenses after proper application by such professionals.

- E. The debtor may not pay obligations arising before the date of filing of the petition (“pre-petition”), except as allowed by the Bankruptcy Code or by order of the Court.
- F. The debtor shall promptly notify the United States Trustee, in writing, of any and all changes of address of the debtor during the pendency of the case.

3. BOOKS AND RECORDS

- A. The books and records of the debtor should be closed as of the date of the filing of the petition. Provision must be made for separate accounting with respect to pre-petition and post-petition accounts and transactions.

4. BANK ACCOUNT REQUIREMENTS

- A. All pre-petition bank accounts over which the debtor has possession, custody, control, ownership or access must be closed immediately upon the filing of the chapter 11 petition. The maintenance of any pre-petition bank account, without the express consent and authorization of the Office of the United States Trustee and/or the United States Bankruptcy Court is prohibited. The debtor shall furnish proof of the closing of all pre-petition accounts to the Office of the U.S. Trustee by the time specified and in the manner indicated in the DIP letter, and shall provide copies of final statements for all closed accounts as soon as they are available.
- B. Upon the filing of the petition, a minimum of three new bank accounts must be opened by the debtor. However, individuals and businesses that issue five (5) or fewer payroll checks per pay period need only to open a general account. Immediately upon receipt, the debtor shall provide to the United States Trustee the initial statement(s) for the required, newly opened account(s), and a voided copy of the first check from each account. The three mandatory debtor-in-possession accounts are as follows:
 - 1. General Account: All revenues and receipts and all other income (including wages) received by the chapter 11 debtor shall be deposited into this account. Under no circumstances may a debtor engage in cash or any other transactions that do not pass through this account.
 - 2. Payroll Account: At the time payroll is due to be paid, an amount equal to net payroll should be transferred from the General Account to this account, from which payroll is to be made.
 - 3. Tax Account: Proceeds for payment of tax obligations as they accrue must be deposited into this escrow account from the General Account for timely payment to applicable taxing authorities.
- C. The signature cards for the new bank accounts shall clearly indicate that the debtor is a “debtor in possession”. The face of the checks, as well as the bank statements issued for each account, must contain the case name and number and must clearly indicate that the debtor is a “debtor in possession”. It is the debtor’s responsibility to notify the bank to ensure that copies of the monthly bank statements are sent directly to the Office of the United States Trustee by the bank.
- D. It is also the responsibility of the debtor to ensure that if sums in excess of \$250,000 will be held in any debtor-in-possession account at any given time, that the excess funds are adequately collateralized through bonding or a pledge of securities by the financial institution holding the funds, as required by section 345 of the United States Bankruptcy Code. Accordingly, proof of such bonds or pledges must also be supplied to the Office of the U.S. Trustee by the institution maintaining any debtor-in-possession

account exceeding \$250,000. It is the debtor's responsibility to inquire at the outset whether funds will be adequately collateralized by the bank selected to maintain debtor-in-possession accounts.

- E. After the opening of the initial debtor in possession accounts as specified in paragraph (b) above, no additional debtor-in-possession bank accounts or any other bank accounts shall be opened by or on behalf of the debtor during the pendency of the chapter 11 proceedings without the prior authorization of the Office of the United States Trustee and/or the United States Bankruptcy Court.

5. INSURANCE REQUIREMENTS

- A. Unless the United States Trustee otherwise directs, the following types of insurance must be maintained and premiums paid when due:
 - 1. If the debtor has tangible assets susceptible to casualty loss (fire, theft, weather, vandalism, etc.), casualty insurance must be maintained.
 - 2. If the debtor has employees, workers' compensation insurance and unemployment insurance must be maintained.
 - 3. If the debtor conducts business operations, general liability insurance must be maintained, and if appropriate, product liability insurance as well.
 - 4. Any other coverages customarily required in the industry or business of the debtor.
- B. The United States Trustee must be provided with proof that the required insurance is being maintained. In fulfillment of this requirement, the debtor shall provide the United States Trustee with a copy of the first page of the binder of all policies pursuant to the DIP letter. Certificates of insurance or declaration sheets are also acceptable if necessary information is provided: type of coverage, property covered (if applicable), limits of coverage, expiration date, etc.
- C. Policies and attendant documents must be changed to specifically designate the loss payee/beneficiary for each and every policy as the debtor-in-possession, e.g., "ABC Corporation, Debtor-in-Possession". Affirmations that appropriate insurance coverage is being maintained must also be filed with the monthly operating reports, described in Section 8 below.
- D. The debtor shall immediately notify the United States Trustee of any change, cancellation or expiration of insurance coverage. Failure to maintain necessary coverage may constitute grounds for dismissal of the chapter 11 case or conversion to chapter 7.

6. COMPENSATION OF PRINCIPALS, OFFICERS AND DIRECTORS

- A. ALL compensation or other consideration paid or to be paid from the assets of the estate to principals, officers and directors must be disclosed to the United States Trustee at or before the section 341 meeting.
- B. The disclosure shall state the name and position or capacity of the individual, along with a detailed description of the individual's duties. The disclosure shall indicate the amount of compensation paid on a weekly or monthly basis, and all perquisites, benefits and considerations of any kind the individual will receive; e.g. use of company vehicles, payment of life or health insurance premiums, reimbursement of expenses, etc. The individual's salary history for the year immediately preceding the filing of the chapter 11 shall also be disclosed. The U.S. Trustee may request supplemental documentation to corroborate the prior salary history, e.g., check stubs, W-2 forms, 1099 forms, etc.

7. INVENTORY

Within fifteen (15) days after the filing of the petition, i.e., contemporaneously with the filing of the schedules and statement of affairs, the debtor shall provide the U.S. Trustee with an inventory of all physical assets and personal property of the debtor, including: fixtures, equipment, machinery, vehicles and inventory, all itemized and valued at debtor's cost.

8. OPERATING REPORTS

- A. Monthly operating reports for the preceding month must be signed and filed with the court and a copy served upon the Office of the United States Trustee by the 20th day of each month. F.R.Bankr.P. 2015. Copies of such reports shall also be served contemporaneously upon the chairperson of any creditors committee and its counsel. The debtor-in-possession is solely responsible for the accuracy of the financial information set forth in the operating reports. Falsification of any of the contents of the operating reports is punishable by law.
- B. Each monthly report, including the U.S. Trustee's copy, must contain a copy of the Transmittal and Certification form signed by the debtor-in-possession, verifying that necessary insurance is being maintained, that post-petition taxes are being paid timely, and that the financial information provided is accurate, complete and prepared in conformity with generally accepted accounting practices.
- C. In addition to providing an accounting of bankruptcy estate property, the operating reports are used to monitor case progress, enabling interested parties and the U.S. Trustee to assess whether reorganization is feasible on an ongoing basis.
- D. Monthly operating reports must be prepared using the enclosed financial reporting forms in conformity with the accompanying instructions. All reports and reporting forms must be completed (even if to reporting no activity). All reports must be prepared on an accrual basis of accounting.
- E. The monthly operating reports must be accompanied by reconciled bank statement(s). The signatory to the chapter 11 petition for relief should review and initial the reconciled bank statement(s).
- F. In addition to the Monthly Cash Statement and the Statement of Compensation forms included in this packet, the following operating report requirements applicable to all cases should be noted:
 1. Operating Statement (Profit & Loss Statement)

An operating statement prepared using accrual based accounting is required on a monthly basis.
 2. Balance Sheet

An accrual based balance sheet must be prepared and submitted every month. The Balance Sheet form included in this packet must be used for this purpose. No substitutions will be accepted.

3. Summary of Financial Operations

The Summary form, which is an extract of selected financial information including taxes payable, accounts payable and accounts receivable, must be completely prepared and submitted with each monthly operating report. No substitutions will be accepted.

- G. If warranted under the circumstances of the case, the United States Trustee may notify and require the debtor to file more detailed or additional reports in order to monitor the debtor's financial affairs, effectively. Title 28, section 586(a)(3) of the United States Code. F.R.Bankr.P. 2015.
- H. After the confirmation of a Chapter 11 plan, the reorganized debtor shall submit monthly post confirmation reports to the United States Trustee until an order closing, dismissing or converting the case is entered by the court.

FILING A FALSE DISBURSEMENTS REPORT, OR ANY FALSE FINANCIAL REPORT, MAY SUBJECT YOU TO FEDERAL CIVIL LIABILITY AND CRIMINAL PROSECUTION UNDER 18 U.S.C. SECTION 152, 1001 AND/OR 1621.

9. PRE AND POST PETITION TAXES

A. Pre-petition.

Any pre-petition tax return due, but not filed, as of the date the petition is filed, and for which there is any tax due, must be filed with the appropriate taxing authority. It is the responsibility of the debtor to ascertain whether there are such delinquent returns and to amend schedules to reflect any changes in tax liabilities.

B. Post-petition.

All post-petition taxes required to be paid and all post-petition tax returns required to be filed by the laws of the United States or any other state or political subdivision thereof, must be paid and filed by the debtor in a timely manner as required by the respective taxing authorities. With respect to post-petition taxes for which there is no specific prepayment requirement, but which enjoy a priority lien or encumbrance against assets of the estate as they accrue (most notably real estate taxes), the taxes are to be prorated on a monthly basis, and monthly cash deposits must be made to the tax escrow account that equal or exceed the prorated amounts.

10. QUARTERLY FEES

- A. All chapter 11 cases not closed by the Court are subject to the United States Trustee quarterly fee payment. Quarterly fees fund the United States Trustee program, and were considered an important factor in the passage of the Bankruptcy Judges, United States Trustee and Family Farmer Bankruptcy Act of 1986, (P.L. 99-554).
- B. The fee must be paid to the United States Trustee for every quarter (including any fraction thereof), from the time the petition is filed until the date an order is entered by the court closing, dismissing or converting the case. The fee is applicable to each and every case commenced under chapter 11, including cases being jointly administered with another case or cases.

- C. Cases pending for any portion of a calendar quarter, even a single day, will be required to pay the fee applicable for the entire quarter, as set forth in the schedule below.
- D. The debtor is responsible for the prompt and full payment of this fee. The amount varies depending upon the dollar amount of all disbursements made during the calendar quarter. A minimum fee of \$325 is due each quarter even if no disbursements are made during the quarter. Delinquent payment of fees will be subject to an assessment of interest.
- E. Classified as a priority administrative expense under section 507(a)(1) of the Bankruptcy Code, quarterly fees must be paid before a chapter 11 plan can be confirmed. Section 1129(a)(12) of the Bankruptcy Code specifically provides that the Court shall confirm a plan only if it provides that: "All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan".
- F. The debtor will receive a bill for quarterly fees approximately two weeks prior to the due dates for each quarter indicated below. The bill contains a "tear off" payment stub which should be returned along with the debtor-in-possession's (or chapter 11 trustee's) check to the following address:

U.S. Trustee Payment Center
P.O. Box 530202
Atlanta, GA 30353-0202

Overnight Courier Deliveries (i.e. FedEx or UPS) should be to:

US Trustee Payment Center
P.O. Box 530202
1075 Inner Loop Rd., 2nd Floor
Atlanta, GA 30337-6086

- G. Please make all checks payable to "U.S. Trustee". The account number for the case, which can be obtained from the statement included with the bill, should be written on the face of the check. Direct all inquiries regarding your account to the Bankruptcy Analyst assigned to the case.
- H. If any check is returned marked "Insufficient Funds", all future quarterly fee payments must be made by cashier's check, certified funds or postal money order.

QUARTERLY FEE SCHEDULE

<u>Total Quarterly Disbursement</u>	<u>Quarterly Fee Due</u>
zero	\$325.00
\$14,999.00 or less	\$325.00
\$15,000.00 to \$74,999.99	\$650.00
\$75,000.00 to \$149,999.99	\$975.00
\$150,000.00 to \$224,999.99	\$1,625.00
\$225,000.00 to \$299,999.99	\$1,950.00
\$300,000.00 to \$999,999.99	\$4,875.00
\$1,000,000.00 to \$1,999,999.99	\$6,500.00
\$2,000,000.00 to \$2,999,999.99	\$9,750.00
\$3,000,000.00 to \$4,999,999.99	\$10,400.00
\$5,000,000.00 to \$14,999,999.99	\$13,000.00
\$15,000,000.00 to \$29,999,999.99	\$20,000.00
\$30,000,000.00 or more	\$30,000.00

QUARTERLY FEE DUE DATES

<u>Quarter</u>		<u>Ending</u>	<u>Payment Due Date</u>
1st Quarter	Jan-Feb-Mar	March 31	April 30
2nd Quarter	Apr-May-Jun	June 30	July 31
3rd Quarter	Jul-Aug-Sep	Sept 30	Oct 31
4th Quarter	Oct-Nov-Dec	Dec 31	Jan 31

PLEASE NOTE: FAILURE TO PAY QUARTERLY FEES IS CAUSE FOR CONVERSION OR DISMISSAL OF THE CASE UNDER SECTION 1112(b)(10) OF THE BANKRUPTCY CODE.

11. PERIODIC STATUS CONFERENCES AND ON-SITE INSPECTIONS

During the pendency of the case, the United States Trustee may conduct status conferences with the debtor and counsel for the debtor, including the creditors' committee and its counsel when necessary and appropriate. The purpose of such discretionary conferences is to ascertain the financial status of the debtor, to determine when a plan may be filed, and generally to monitor the debtor's progress pursuant to title 28, section 586 (a)(3) of the United States Code. If circumstances warrant it, the U.S. Trustee's office may also conduct on-site inspections of the business premises of the debtor.

12. BUSINESS PLAN

Within sixty (60) days after the filing of the petition, the debtor-in-possession shall provide the United States Trustee with a detailed, written strategy for effectuating a successful business reorganization. The debtor's plan of action must include profit and loss projections for a six (6) month period.

13. OTHER REQUIREMENTS

In addition to the requirements of the United States Trustee detailed above, your attention is called to the following important provisions of the Bankruptcy Code and Rules:

- A. Use of Cash Collateral. Cash collateral may not be used by the debtor without procuring the consent of the secured creditor or court authorization after notice and a hearing. Section 363(c)(2) of the Bankruptcy Code. Cash collateral is defined as cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents in which the estate or an entity other than the estate have an interest. Section 363(a) of the Bankruptcy Code. Separate cash collateral accounts must be established and maintained by the debtor. Section 363(c)(4) of the Bankruptcy Code.
- B. Obtaining Credit. Absent court authorization after notice and a hearing, the debtor may not obtain creditor incur debt post-petition, other than in the ordinary course of business. Section 364 of the Bankruptcy Code and the subsections thereunder variously provide for obtaining credit or incurring debt with court approval: as an administrative expense; or with priority over all administrative expenses; or, secured by a lien on property of the estate. The United States Trustee requires service of a copy of any pleadings, stipulations and proposed orders relating to use of cash collateral and obtaining post-petition credit filed with the court. F.R.Bankr.P. 9034(f). Pursuant to L.B.R. 4001-2(c), if entry of an interim order for use of cash collateral or authorizing post-petition financing is sought on an expedited basis without a hearing, the order must be approved by the U.S. Trustee and the chairperson or counsel for each official committee that has formed prior to entry. In emergencies, such documents may be served upon the U.S. Trustee by telefax to (313) 226-7952.

- C. Use, Sale or Lease of Property of the Estate. Section 363(b) of the Bankruptcy Code provides for the use, sale, or lease of property of the estate when such use, sale or lease is not in the ordinary course of business, but only with court approval after notice and hearing. Any such authorized use, sale, or lease of property of the estate shall be specifically noted and accounted for on the monthly operating report and all net proceeds from such sales are to be deposited in the general debtor-in-possession account unless otherwise authorized by the Office of the United States Trustee and/or the United States Bankruptcy Court. Any pleadings, stipulations and proposed orders filed with the court relating to the use, sale or lease of estate property must also be served upon the U.S. Trustee, F.R.Bankr.P. 9034(f); and again, in emergencies such documents may be served upon the U.S. Trustee by telefax: (313) 226-7952. Please be further advised that the U.S. Trustee reviews motions and notices for the sale of estate property as a matter of course for contents, such as: adequacy of description of property to be sold, adequacy of valuation, disclosure of purchase price and terms, etc.

DANIEL M. McDERMOTT
UNITED STATES TRUSTEE
Region 9