

The Corporate Transparency Act Is in Effect: Important New Filings Required for Business Entities



Authors

Brian Kahle (left), Shareholder and Chair, Business Succession Group, Tucker Arensberg, Pittsburgh, Pa., USA
bkahle@tuckerlaw.com
+1.412.594.3939

Matthew Christoph (right), Associate, Tucker Arensberg, Pittsburgh, Pa., USA
mchristoph@tuckerlaw.com
+1.412.594.5503



If you have any questions about this topic or any other legal topics, contact attorney Thomas P. Peterson at +1.412.594.3914 or tpeterson@tuckerlaw.com. Please include your full name, company name, mailing address and email address in all correspondence.

Views expressed in Legal Perspectives do not necessarily reflect those of *Iron & Steel Technology*.

The law firm of Tucker Arensberg contributes this quarterly column focused on the legal issues that may impact our readers. Tucker Arensberg is a full-service law firm headquartered in Pittsburgh, Pa., USA. Servicing the legal needs of the iron and steel industry, Tucker Arensberg has also provided legal counsel to the Association for Iron & Steel Technology.

The United States has never had a centralized repository of data about who owns and operates legal entities within its borders. In 2024, that has now changed.

The Corporate Transparency Act (CTA) requires certain companies to file reports with the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) detailing information on the company and its "beneficial owners." The CTA was passed by Congress in 2021 as part of a continuing effort to improve national security by combating purported money laundering, terrorism, tax evasion and other financial crimes.

On 30 September 2022, FinCEN published its final regulations implementing the beneficial ownership reporting requirements under the CTA (the Final Rule). The Final Rule recently took effect on 1 January 2024, requiring that certain domestic and foreign companies file reports with FinCEN setting forth identifying information on the reporting company, the beneficial owners of the company, and — for newly formed entities — the company applicants. Additionally, once an initial report is filed, the company must promptly report any material changes pertaining to its beneficial ownership information (BOI).

FinCEN's centralized database, the Beneficial Ownership Secure System (BOSS), will capture and maintain information on the owners or control persons behind the

companies. At this time, the data in the BOSS database will not be of public record or searchable by the public. Subject to certain constraints and requirements under the "Access Rule" and other regulations forthcoming from FinCEN, various governmental authorities, taxing bodies, and law enforcement agencies will be able to request access to this information in connection with investigations or enforcement activities, as well as banks and other financial institutions in connection with customer due diligence.

This article will provide an overview of which entities may be required to file, the requisite information to be reported, timelines for submitting reports, and additional considerations for U.S. businesses and their stakeholders. As explained in this article, the large business exemption will exclude virtually all steel producers from these requirements. But many thousands of smaller businesses within or supporting the iron and steel industries will be covered, as will smaller business units owned by the larger producers.

Who Is Required to File With FinCEN Beginning in 2024?

The CTA requires both domestic and foreign entities to file reports with FinCEN. If an entity was formed by submitting a filing with a state-level department or agency, it most likely will be a "reporting

company” within the scope of the CTA. These entities include corporations, limited liability companies (LLCs), limited partnerships (LPs), limited liability partnerships (LLPs), and even business trusts. In many states, a general partnership does not require a filing at the state level to do business, thus a general partnership may fall outside the definition of a reporting company. Likewise, common law trusts, in and of themselves, would not require a state filing and in turn would not have a reporting obligation to FinCEN.

There are tens of millions of legal entities operating within the United States. As one can imagine, this new law will affect large companies, small family businesses, and other entities designed only as holding companies, such as to hold real estate. Even if an entity has only one owner and that entity is disregarded for federal income tax purposes — such as a single-member LLC — that entity still will have to file BOI reports with FinCEN.

Importantly, under the CTA and Final Rule, the reporting obligation or duty to timely file and update or correct reports falls on the reporting company itself. Some reporting companies may be exempt from filing, however, if meeting the criteria of one of 23 specific exemptions under the Final Rule.

Is My Company Exempt?

The Final Rule specifically exempts 23 types or categories of entities from reporting. These include entities such as non-profits (once approved by the IRS as tax-exempt), publicly traded companies, certain banks or trust companies, companies that are already required to file reports with FinCEN, companies required to register with the Securities and Exchange Commission (SEC), Commodity Exchange Act registered companies, or pooled investment vehicles. Subsidiaries controlled or wholly owned by certain exempt entities are likewise exempt from reporting, but parent companies of exempt companies are not, unless the parent itself fits one of the reporting exemptions. Within a company group, it will be necessary to separately consider each part of the organizational chart, including any holding company or affiliate entity such as a real estate or equipment leasing company, as it may be a reporting company unless independently exempt.

The Final Rule provides an exemption for a “large operating company.” To fit this exemption, a company must have both a physical operating presence and more than 20 full-time employees in the U.S., and the company must have demonstrated on its IRS Form 1120, 1120-S, or 1065 for the prior year more than US\$5,000,000 in gross receipts or sales (net of returns and allowances) from sources within the United States. The gross receipts or sales may be demonstrated by a consolidated return if an entity is part of an affiliated group of corporations, but the requirements pertaining to its employees and domestic operating presence must be satisfied by the specific entity under consideration for the exemption.

It is anticipated that the large operating company exemption will be the most common exemption that would preclude an entity’s obligation to file BOI reports with FinCEN. Importantly, if the exemption is met but full-time employees or domestic sales later fall below the required thresholds, the exemption will be lost. The company will then be a reporting company required to file within 30 days of losing the exemption and must report any changes to its BOI going forward. Later, if the company can meet the exemption again, its report may be amended to indicate to FinCEN that the company is thereafter exempt from the ongoing reporting obligation.

What Information Must Be Reported to FinCEN?

The reports filed with FinCEN will include information about the “reporting company” itself and its “beneficial owners.”

Reporting company information includes the company’s full legal name, any names under which it does business (d/b/a names), its principal business address, the jurisdiction of its formation, and its taxpayer identification number (EIN, TIN or foreign equivalent).

For new entity formations after 1 January 2024, FinCEN will also require “company applicant” information. This includes the name, date of birth, street address and government-issued identification of the one or two individuals most directly involved in filing the formation or registration documents for the new company. This often will be the company’s outside legal counsel that oversees the state filing along with the paralegal who completes the filing.

Beneficial owner information includes the name, date of birth, street address and government-issued identification of any individual who (i) exercises “substantial control” over the company, or (ii) owns or controls 25% or more of the company. Thus, there are two types of beneficial owners that must be determined via control or ownership. Those who exercise “substantial control” are defined as senior officers; ones who have authority over appointment or removal of senior officers; the board of directors; those who direct, determine, or have substantial influence over important decisions; and any other person who has substantial control (direct or indirect) over the reporting company. “Senior officers” are defined as the president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer who performs a similar function, although typically not secretary or treasurer. Under the test for “substantial control,” a general partner, director or senior officer very likely will be a beneficial owner even if they hold little or no equity in the enterprise.

In analyzing the ownership test for beneficial ownership, one must carefully review the capitalization table of the entity. And if someone holds equity through a trust, another entity (e.g., personal holding company), custodian, or similar arrangement, additional scrutiny will also be required.

When Must Reports Be Filed With FinCEN?

For existing companies (i.e., formed before 31 December 2023), the initial report must be filed before 31 December 2024. For new companies formed during 2024, the initial report must be filed within 90 days of formation. For new companies formed on or after 1 January 2025, the initial report must be filed within 30 days of formation.

Importantly, reporting companies must also file updates to their BOI reports if there are any changes in the information previously reported to FinCEN (e.g., a partner buy-out, a stock sale, mergers and acquisitions, a change in senior officers or directors, and similar events). The company must file updates with FinCEN within 30 days of the material change.

Reports are completed through the FinCEN website at: www.fincen.gov/boi, and additional resources for businesses and their owners are available there.

Penalties for Non-Compliance

The penalties for noncompliance with the CTA can be severe. Companies that fail to file their required reports or that file false or misleading information may be subject to civil fines of up to US\$500 per day, criminal fines of up to US\$10,000, and/or imprisonment for up to two years.

Conclusion

The CTA as implemented through the Final Rule is a significant new law that requires existing and new companies to disclose information about their beneficial owners. Companies must start preparing now to comply with the CTA and evaluate whether they are a reporting company, or if they are exempt from reporting. If the entity is a reporting company, they must identify each beneficial owner of their enterprise, whether via ownership or control, and gather the requisite BOI to file the initial report with FinCEN. They must also timely report any changes in that information.

It is recommended that companies develop additional governance and compliance policies and procedures under the CTA to ensure monitoring and updating of beneficial ownership information on an ongoing basis and in a timely manner. Provisions fostering compliance should be considered for organizational documents, certain employment agreements, or agreements for transfers of ownership interests.

If one has an ownership interest in a closely held entity, such as an LLC, corporation, or limited partnership, or if you exert significant control over any such entity through service as a senior officer, director, LLC manager, or perhaps as a trustee, then you very well may be subject to the requirements of the CTA as a beneficial owner. Take action to ensure your company's compliance today. ♦



LECHLER MIST ELIMINATORS

- Separation of small droplets with minimal pressure loss
- Capable of managing substantial volumes of entrained liquid
- Custom housing available
- Robust built-in cleaning system

ENGINEERING
YOUR SPRAY SOLUTION



Lechler, Inc.
Saint Charles, IL.

www.lechlerusa.com/en/metallurgymisteliminators

