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The Corporate Transparency Act: Reporting Requirements

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The Corporate Transparency Act (CTA) took effect on January 1, 2024, with the goal of combatting money laundering, illicit financial transactions, and financial terrorism. The CTA established the Financial Crimes Enforcement Network (FinCEN) in the U.S. Department of Treasury to oversee a national registry of information on owners of entities that are exempt from conventional disclosure regulations. CTA requires many businesses formed or operating in the United States to report information about their "beneficial owners" to FinCEN. This new law will affect many farms and small businesses.

Which businesses must report under the CTA?

A business that must report under the new law is a "Reporting Company." A domestic Reporting Company is a corporation, limited liability company, limited partnership or any other entity formed by filing documents with a secretary of state or similar office under the laws of a U.S. state. A foreign Reporting Company is an entity formed in a foreign country and registered to operate in a U.S. state.

In Ohio, a sole proprietorship and a general partnership are not considered a Reporting Company under CTA because they do not register with the Ohio Secretary of State.[1] Additionally, the CTA excludes 23 specific types of entities from reporting requirements. See Table 1 for the list of excluded entities.

Large operating company exemption

The CTA primarily targets small businesses. Large operating companies that meet each of the following conditions are exempt from CTA reporting requirements:

1. Employs more than 20 full-time employees in the United States; and
2. Has an operating presence at a physical office within the United States; and
3. Filed a federal income tax or information return in the United States for the previous year demonstrating more than $5 million in gross receipts or sales.

What must a business report?

A Reporting Company must report "beneficial ownership information" (BOI). A "beneficial owner" is any individual who, directly or indirectly:

1. Exercises substantial control over a Reporting Company; **or**
2. Owns or controls at least 25 percent of the ownership interests of a Reporting Company.

CTA states that an individual "exercises substantial control" over a Reporting Company if the individual meets any of these four criteria:

1. Is a officer;
2. Has authority to appoint or remove certain officers or a majority of directors;
3. Is an important decisionmaker; **or**
4. Has any other form of substantial control over the Reporting Company.

A Reporting Company can have one or multiple beneficial owners, and there is no limit on the number of beneficial owners a company must report.

[1] Based on Ohio business registration laws. Business registration requirements vary from state to state. Check the laws of the state in which your business was registered.

What information does the BOI report require?

A Reporting Company must state its:

- Full legal name.
- Any trade name or "doing business as" name.
- Complete current U.S. address.
- Jurisdiction of formation (usually state of registration).
- IRS taxpayer identification number.

A Reporting Company must provide the following information for each beneficial owner:

- Full legal name.
- Date of birth.
- Complete current address.
- Unique identifying number and issuing jurisdiction from one of the following, along with its image:
  - U.S. passport.
  - State driver's license.
  - Identification document issues by a state, local government or tribe.

What is the reporting deadline?

A Reporting Company that existed on the law's effective date of January 1, 2024 has one year to file its report, while businesses formed after that date have different deadlines, as follows:

Registration date Filing deadline

As of January 1, 2024 January 1, 2025

After January 1, 2024, 90 calendar days after
and before January 1, receiving notice of the
2025 company's registration

On or after January 1, 30 calendar days after
2025 receiving notice of the
company's registration

When is BOI required to be updated?

If there is any change to the required information about the business or its beneficial owners in a previously filed BOI report, the Reporting Company must file an updated BOI report no later than 30 days after the date on which the change occurred.

The following are examples of changes that would require an updated BOI report:

- A change to the Reporting Company, such as registering a new "doing business as" name.
- A change in beneficial owners, such as a new Chief Executive Officer, a sale that changes who meets the ownership interest threshold of 25 percent, or the death of a beneficial owner.
  Note: When a beneficial owner dies, resulting in changes to the reporting company's beneficial owners, report those changes within 30 days of when the deceased beneficial owner's estate is settled. The updated report should, to the extent appropriate, identify any new beneficial owners.
- A change to a beneficial owner's name, address, or unique identifying number.
  Note: If a beneficial owner obtained a new driver's license or other identifying document that includes the changed name, address, or identifying number, the Reporting Company also must file an updated BOI report with FinCEN, including an image of the new identifying document.

What is the process for reporting?

A Reporting Company must submit its report online through the FinCEN website at www. fincen.gov/boi. This portal collects all required information and transmits it to FinCEN. Currently, the electronic portal is the only option for reporting.

Who can report for the Reporting Company?

Any of the owners can file the report or a Reporting Company can designate a third-party to report, such as an attorney or accountant. To avoid missed reports, a business should clearly identify the person responsible for reporting.

Are there penalties for failing to report?

The CTA establishes penalties for failing to report. Penalties can be up to $500 for each day of the ongoing violation, with a maximum of $10,000. Additionally, the law stipulates the potential for imprisonment for up to two years. Imprisonment is likely to only be used when the failure to report can be linked to an intent to perpetrate crimes or fraud.

Resources on the CTA from FinCEN

FinCEN has developed a resource site that provides detailed explanations regarding BOI and reporting requirements. The site is available at https://www.fincen.gov/boi/small-business-resources.

What does this all mean for farm businesses?

The CTA and the BOI reporting requirements may seem like an intrusion of privacy. It is, in fact, an intrusion of privacy, but Congress has determined that the intrusion is necessary to protect against money laundering, illicit financial transactions, and financial terrorism. Right or wrong, the CTA is now law and farm businesses must follow it to avoid penalties.

The process of BOI reporting should not be overly difficult using the FinCEN online portal. But the reporting will take time, especially for entities with many owners. While the entity should already have each owner's name, address, and ownership percentage, collecting an image of each owner's identification document could be time consuming.

The CTA is not a one-time issue. Business owners must also adapt to the ongoing reporting requirements. Each time an ownership change occurs that creates a change in beneficial owners, the business must update its BOI report. Also, each time a beneficial owner's information changes, such as a new address or a new driver's license, the reporting must be updated. The updated reporting must be completed within 30 days of the change. This broad array of potential changes with a relatively short reporting window will require business owners to be vigilant with reporting.

Prior to the CTA, farmers could establish a business entity and have very few further reporting requirements other than filing an annual tax return. Now farmers with a Reporting Company, which will likely be most farm entities, will have more reporting obligations as ownership changes occur and beneficial owner information changes. All businesses required to report under the CTA should develop a plan to file the initial report, monitor reportable changes, and file updated reports. Attorneys, accountants, lenders, and other professionals working with farms should also help remind their clients of the need for the initial reporting and future, updated reports. The CTA reporting is a significant change in business entity management and it may take the entire business team to ensure compliance.

Table 1. Entities Exempt from CTA Reporting
Securities reporting issuer
Bank
Depository institution holding company
Broker or dealer in securities
Other Exchange Act registered entity
Venture capital fund adviser
State-licensed insurance producer
Accounting firm
Financial market utility
Tax-exempt entity
Large operating company
Governmental authority
Credit union
Money services business
Securities exchange or clearing agency
Investment company or investment adviser
Insurance company
Commodity Exchange Act registered entity
Public utility
Pooled investment vehicle
Entity assisting a tax-exempt entity
Subsidiary of certain exempt entities

Where to find the laws

The Corporate Transparency Act is in 31 U.S.C. § 5336 and its regulations are at 31 CFR 1010.380.