



January 16, 2024

The Corporate Transparency Act (CTA) – In Effect January 1, 2024, Without Further Congressional Action
From EMA

In December 2020, Congress passed the Corporate Transparency Act (CTA) as part of the National Defense Authorization Act (NDAA). According to the Financial Crimes Enforcement Network (FinCEN), the purpose of the CTA is to “better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity” by [creating a federal framework](#) for reporting, storing, and disclosing beneficial ownership information of “reporting companies.”

While the CTA was ostensibly targeted to foreign-owned companies, domestic companies – particularly small businesses – who meet the broad definition of reporting company will be affected by the CTA’s disclosure provision. The CTA took effect on January 1, 2024.

Compliance with the reporting requirements depends on the formation date of each reporting company. For entities formed prior to January 1, 2024, reports must be filed no later than January 1, 2025. If there is a change to the information previously submitted to FinCEN, an entity must file an updated report within 30 calendar days of the change occurring. The same applies for any situations where a reporting company becomes aware of an inaccuracy in a report.

For entities formed on or after January 1, 2024, reports must be filed within 30 calendar days of when it receives actual notice that its creation has become effective or when the secretary of state or similar office provides public notice of its formation, whichever occurs first.

What is a “Reporting Company?”

Under the CTA, a reporting company is defined as a corporation, a limited liability company, or other entity that is 1) formed by filing documents with a secretary of state or similar office of a state or Indian tribe or 2) formed under the law of a foreign country and registered to do business in the United States.

FinCEN has provided an extensive list of entities exempted to the term “reporting company.” Three such exempt entities include publicly traded companies, public utility companies, and entities that employ more than 20 employees, operate at a

physical office in the United States, and filed federal tax returns demonstrating more than \$5 million in gross receipts or sales. For purposes of the exemption, a "full-time employee" in any given month provides at least 30 service hours, regardless of whether the employee is paid by salary or by the hour. Even with the exemptions, tens of millions of entities will be required to file beneficial ownership reports with FinCEN. The filing requirements will affect a broad range of entities, including but not limited to, smaller private companies and joint ventures that are not exempt.

What is Required to Be Reported and When?

Reporting companies will be required starting in 2024 to deliver to FinCEN a report containing the following information about the reporting company:

- Entity's full legal name
- Trade names
- A complete current address
- The jurisdiction it was formed in or jurisdiction in which a foreign company first registers
- Internal Revenue Service Taxpayer Identification Number and Employer Identification Number

More notably, reporting companies must also furnish the following information to FinCEN about each beneficial owner and company applicant of the reporting company:

- Full legal name
- Date of birth
- Current business or residential address
- A unique identifying number from an acceptable identification document (i.e., passport, driver's license, etc.) or FinCEN identifier

The CTA defines "beneficial owner" as an individual, who directly or indirectly, exercises substantial control over the reporting company or owns or controls at least 25 percent of the ownership interests of the reporting company. An individual exercises "substantial control" over an entity if the individual 1) serves as a senior officer, 2) has authority over the appointment or removal of a senior officer or a majority of the board of directors, or 3) directs, determines, or has substantial influence over important business decisions.

The CTA also excludes certain individuals and entities from the term "beneficial owner," including minor children, individuals acting as agents, employees, individuals with a future inherited interest, and creditors. However, the parents of minor children – who would meet the beneficial owner standard but for the exception noted – must have their information reported, according to the CTA.

A "company applicant" is an individual who directly files the formation documents for the reporting company.

Violations and Penalties

A false, fraudulent, or incomplete beneficial ownership report constitutes a reporting violation only if it is the willful act of an individual. Failure to comply with the CTA reporting requirements can lead to significant civil and criminal penalties, including a maximum civil penalty of \$500 per day (up to \$10,000) and imprisonment for up to two years.

Who Has Access to the Reports?

FinCEN is required to maintain the information in these reports in a confidential, secure, and non-public database. Under the CTA, beneficial ownership information is neither publicly accessible nor subject to requests under the Freedom of Information Act. However, the CTA authorizes FinCEN to disclose beneficial ownership information to a) federal agencies engaged in national security, intelligence, or law enforcement, b) state, local, or tribal law enforcement for purposes of criminal or civil investigations, c) federal agency issued in response to a request for assistance to a foreign investigation or prosecution, d) financial institutions requesting this information, with the consent of the reporting company, to facilitate compliance with customer due diligence regulations, and e) federal functional regulators or other appropriate regulatory agencies. FinCEN is currently engaged in the rulemaking process for rules on protection and confidentiality regarding these reports.

The Protecting Small Business Information Act of 2023 (H.R. 4035), filed by Speaker Pro Tem and House Financial Services Chairman Patrick McHenry (R-NC) last year, delays the CTA's reporting requirements from taking effect until Treasury finalizes its rulemaking process. Many trade and professional association groups including EMA have lobbied in support of H.R. 4035.

EMA encourages energy marketers to check with their attorneys and accountants about whether they must report.

Update on DOL's Final Rule on Independent Contractor Classification *From EMA*

On Jan. 9, 2024, the U.S. Department of Labor's (DOL) Wage and Hour Division announced its final rule on [Employee or Independent Contractor Classification](#). The announcement marks the end of a rulemaking process that started with the DOL's Oct. 22 notice of proposed rulemaking (NPRM) on workers classification under the Fair Labor Standards Act (FLSA). Officials received more than 55,000 public comments in response to the NPRM. The new rule replaces a 2021 policy issued by the Trump administration and is based off an [administrative interpretation](#) issued by the DOL under the Obama administration. Like the NPRM, the final rule preserves the use of an "economic realities" test that analyzes an employee's classification through the totality of the circumstances of the worker-employer relationship.

EEMA is concerned with the final rule as its member companies' contract with common carriers to haul motor fuels. Typically, the energy marketer has engaged a company to pull and deliver products, as well as manage automatic fuel deliveries, and this arrangement should not be problematic. Where there could be some pause is if the common carrier uses independent operators as drivers. This is one area where the DOL rule would come into play. The likelihood is that hauling costs would go up if the independent operators working with the common carrier are now considered employees. Additionally, if an EMA member company uses an independent operator to deliver fuels or packaged goods (e.g., lubricants)

for the company, including using the EMA members' trucks, they are also likely to be captured by the DOL final rule. Outside of transportation, there are issues under the DOL rule where the energy marketer uses independent contractors for sales or other non-transportation roles (e.g., accounting or environmental compliance). "The bottom line is that this Rule will likely lead to higher consumer costs at the pump," said EMA President Rob Underwood.

The DOL's initial attempt to withdraw the Trump-era rule was stalled after a federal judge found that the DOL violated the Administrative Procedure Act (APA) by failing to properly seek comment or consider policy alternative before delaying and revoking the rule. The new rule was published in the Federal Register on Jan. 10, and it will go into effect on March 11./p>

[CLICK HERE](#) for further information.

Attendee Registration Open for 2024 Southeast Petro-Food Marketing Expo

Members may go to the Southeast Petro Expo website to register for the upcoming Expo, March 6-7, 2024. Go to <https://www.sepetro.org> and click on the Attendee tab at the top of the homepage. Scroll down to the Attendee Registration button to enter your information.

While on the website, check out the online directory on the home page and set up your Show Planner so you can make sure you visit all the firms you need to while at the Expo. The online directory allows you to search by exhibiting company name, category, etc.

Also check out the *Seminars* page with info on the various educational seminars that will be presented the first morning of the show. Room Blocks can be found under the Hotels tab at the top of the home page. Most blocks end 30 days prior to the show so please make reservations early! Many hotels are already sold out.

VPCMA will be hosting our annual hospitality reception at the Sheraton hotel Wednesday, March 6th immediately after the show. We look forward to seeing you there!

[Southeast Petro-Food Marketing Expo](#)