

Draft Rule Text

DATA BROKERS REGISTRY

PROPOSED 441-830-0010

Definitions: As used in OAR 441-830-0010 to 441-830-0130

- 1) **Brokered personal data:** any of the following computerized data elements about a resident individual, if categorized or organized for sale or licensing to another person:
 - a. The resident individual's name or the name of a member of the resident individual's immediate family or household;
 - b. The resident individual's address or an address for a member of the resident individual's immediate family or household;
 - c. The resident individual's date or place of birth;
 - d. The maiden name of the resident individual's mother;
 - e. Biometric information about the resident individual;
 - f. The resident individual's Social Security number or the number of any other government-issued identification for the resident individual; or,
 - g. Other information that, alone or in combination with other information that is sold or licensed, can reasonably be associated with the resident individual.
- 2) **Business entity:**
 - a. A resident individual who regularly engages in commercial activity for the purpose of generating income;
 - b. A corporation or nonprofit corporation, limited liability company, partnership or limited liability partnership, business trust, joint venture or other form of business organization the constituent parts of which share a common economic interest;
 - c. A financial institution, as defined in ORS 706.008; or,
 - d. Another person that controls, is controlled by or is under common control with a person described in sub-subparagraphs b) and c) of this subparagraph.
 - i. "Business entity" does not include the state or a state agency, a local government, as defined in ORS 174.116, a public corporation or a business entity or other person during a period in which the business entity or person is acting solely on behalf of and at the direction of the state, a state agency, the local government or a public corporation.
- 3) **Collect** buying, renting, gathering, obtaining, receiving, or accessing any personal information pertaining to a consumer by any means. This includes receiving information from the consumer, either actively or passively, or by observing the consumer's behavior.
- 4) **Data broker:** a business entity or part of a business entity that collects and sells or licenses brokered personal data to another person.
- 5) **License:** a grant of access to, or distribution of, data by one person to another person in exchange for consideration. "License" does not include a use of data for the sole benefit of a data provider where the data provider maintains control over the use of the data.
- 6) **Resident individual:** a natural person who resides in this state.
- 7) **Registering:** providing the necessary information and paying applicable fees as defined in 441-830-0020 with the Department of Consumer and Business Services.

- 8) **Sell:** selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer's personal information by the business to a third party for monetary or other valuable consideration.

441-830-0020 **Application Requirements**

(1) Except as defined in (4) (a) of section 441-830-0010, each person registering as data broker shall submit to the director all the following required application materials and information electronically:

(a) submitted electronically through a means as defined on the department's website and approved by the director.

(b) be registered to do business in the state of Oregon with an active registered agent.

(c) Payment of fees for application or renewal, as applicable, under OARs 441-830-0050 as applicable, paid through a means as defined by the director.

(d) Any information or documentation required to be submitted in connection with an application that cannot be filed through the department's website shall be transmitted to the department in a form and manner approved by the director.

(2) any application submitted and approved after October 1 will not expire until December 31 the following year.

441-830-0030 **Deficiencies in Data Broker Registry Application, Renewal, Filing or Amendment**

(1) If an applicant submits an application, renewal, filing, or amendment, which is incomplete in any respect, the director shall notify the applicant or registrant of the deficiencies through email. The applicant or licensee shall correct a deficiency associated with an application, renewal, filing, or amendment within 30 days of being notified through email.

(2) If the applicant fails to complete the application or respond to deficiencies within 30 days, the application will be considered abandoned. Any fees paid by the applicant under OAR 441-830-0050 will not be refunded due to abandonment. An applicant whose application is abandoned under this rule may reapply to register as a data broker.

(3) Failure to maintain an active business registration in the state of Oregon will result in the automatic suspension of data broker registration.

441-830-0040 **Renewal of Data Broker Registration**

(1) Registration as a data broker shall expire on December 31 of each calendar year. At least 30 days prior to the expiration of the data brokers registration, the data broker shall submit a

renewal request for the license electronically through a means as defined by the department's website and shall:

- (a) Complete a renewal request with an attestation that the records are true and accurate;
- (b) Pay any applicable renewal fees prescribed under 441-830-0050; and
- (c) verify that data broker is in good standing with the Oregon Secretary of State.

(2) If a data broker submits an application for renewal which is incomplete in any respect, the director shall notify the data broker of the deficiencies on the application. The data broker shall have 30 days from the date of the notice or the end of the renewal period, whichever occurs last, to complete the application for renewal. If the data broker fails to complete the application for renewal, and the registration shall be terminated on the expiration date by reason of failure to renew.

441-830-0050 Fees Payable to the Director

A data broker shall pay to the director the following fees at the time of application or renewal:

- (1) A nonrefundable application or renewal fee of \$600.
- (2) The fee for late renewals is \$50.

441-830-0060 Rules for Use of an Assumed Business Name

(1) In addition to any requirements for registering an assumed business name with the Secretary of State, a data broker who intends to use an assumed business name to identify the person's data broker business shall also comply with the following before doing business under the assumed business name:

- (a) If the assumed business name contains words or phrases described in ORS 56.023, the data broker must obtain specific written approval from the director under ORS 705.635 and OAR 441-005-0010.
 - (b) The data broker must list the name as any other trade names in the application.
- (2) Regardless of the lack of any ownership interest in the assumed business name, the data broker is responsible for all actions of those acting under the assumed business name which relate to brokering data.

441-830-0070 Disclosure of Significant Developments

(1) A data broker registrant must notify the director within 10 days following the occurrence of any of the following significant developments:

- (a) Filing for bankruptcy or reorganization;
 - (b) A data breach;
 - (c) The data broker registrant receives notice of a final order issued in this or another state that:
 - (A) Demands that the data broker registrant cease and desist from any act;
 - (B) Suspends or revokes a license or registration; or
 - (C) Constitutes any other formal or informal regulatory action against the data broker registrant;
 - (d) The data broker registrant ceases doing business; or
 - (e) Any change in assumed business name registered with Secretary of State.
- (2) A licensee must notify the director within 30 days following:
- (a) Any changes in the information required on the data broker registration application form under OAR 441-830-0020 or 441-830-0040, including, but not limited to address changes, phone number changes, e-mail addresses, consumer opt-out procedures and other contact information;
 - (b) Any other material changes to information submitted in registration application under OAR 441-830-0020 or 441-830-0040.
- (3) The director may request additional information regarding any of the occurrences outlined in this rule. (4) Failure to disclose significant developments will result in the termination of the data brokers registration.

441-830-0090 Data Broker Duty to Protect Personal Information

- (a) A data broker has a duty to make all reasonable efforts to secure consumers information pursuant to ORS Chapter ORS 646A. oregonlegislature.gov/bills_laws/ors/ors646a.html

OR

- (a) Duty to protect personally identifiable information.

(1) A data broker shall develop, implement, and maintain a comprehensive information security program that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards that are appropriate to:

(A) the size, scope, and type of business of the data broker obligated to safeguard the personally identifiable information under such comprehensive information security program;

(B) the amount of resources available to the data broker;

(C) the amount of stored data; and

(D) the need for security and confidentiality of personally identifiable information.

(2) A data broker subject to this subsection shall adopt safeguards in the comprehensive security program that are consistent with the safeguards for protection of personally identifiable information and information of a similar character set forth in other State rules or federal regulations applicable to the data broker.

441-830-0100 **Investigation and examinations by director**

(1) For discovering violations of this chapter and ORS ??? and securing information required by the Director of the Department of Consumer and Business Services under this chapter, the director at any time may investigate or examine the business, including the books, accounts, records, files and software used in the business, of every person registered or required to be registered under ORS?:

(2) For purposes of subsection (1) of this section:

(a) A person registered or required to be registered under this chapter shall give the director free access to the person's place of business, books, accounts, safes and vaults.

(b) The director may:

(A) Make an investigation or examination without prior notice.

(B) Compel the attendance of witnesses and examine the witnesses under oath.

(C) Require the production of documents or records.

(D) Have free access to the place of business and to the books, accounts, safes and vaults of the licensee.

(3) Each person examined under this section shall pay the actual cost of an investigation or examination to the director, including an hourly rate of \$75 an hour for each person used in performance of the investigation or examination.

441-830-0110 **Termination or suspension of data broker registration**

- (1) Data broker registration may be terminated or suspended based on any of the following:
- a. Failure to respond to a director's inquiry for data

- b. Failure to cooperate during an investigation or examination
- c. Failure to pay any fees invoiced by the director
- d. Engaged in dishonest, fraudulent or illegal practices or conduct in a business
- e. Any violation of the statute or rule in OAR: 441-830-0010 to 441-830-0130
- f. The data broker registrant receives notice of a final order issued in this or another state that:
 - i. Demands that the data broker registrant cease and desist from any act;
 - ii. Suspends or revokes a license or registration; or
 - iii. Constitutes any other formal or informal regulatory action against the data broker registrant;

441-830-0130 Civil Penalties for failing to register as a Data Broker Registration

Any violation of the statute XXXX and any rules set forth in OAR: 441-830-0010 to 441-830-0130 will result in a civil penalty:

- (A) in an amount that does not exceed \$500 for each of a data broker's violations of a requirement under this section or each violation of a rule the department adopted under this section; or,
- (B) In the case of a continuing violation, in the amount of \$500 for each day in which the violation continues.
- (C) The total amount of penalties that the department imposes on a data broker may not exceed \$10,000 during any calendar year.