

Draft Rule Text

DATA BROKERS REGISTRY

PROPOSED ~~441-830-0010 to 441-830-0110~~~~441-830-0010~~

Definitions: As used in OAR 441-830-0010 to 441-830-~~0130~~0110

- 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) 3) **(a) Data broker:** a business entity or part of a business entity that collects and sells or licenses brokered personal data to another person. **(b) “Data broker” does not include:**
 - i. A consumer reporting agency, as defined in 15 U.S.C. 1681a(f), a person that furnishes information to a consumer reporting agency, as provided in 15 U.S.C. 1681s-2, or a user of a consumer report, as defined in 15 U.S.C. 1681a(d), to the extent that the consumer reporting agency, the person that furnishes information to a consumer reporting agency or the user of a/ consumer report engages in activities that are subject to regulation under the federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.;

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- ii. A financial institution, an affiliate or a nonaffiliated third party, as those terms are defined in 15 U.S.C. 6809, to the extent that the financial institution, affiliate or nonaffiliated third party engages in activities that are subject to regulation under Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 to 6809, and regulations adopted under Title V of the Gramm-Leach-Bliley Act;
- iii. A business entity that collects information about a resident individual if the resident individual is or was:
 1. A customer, subscriber or user of the business entity's goods or services;
 2. An employee or agent of the business entity or is in a contractual relationship with the business entity;
 3. An investor in the business entity;
 4. A donor to the business entity; or
 5. In another relationship with the business entity the nature of which is similar to the relationships described in this sub-subparagraph; or
 6. A business entity that performs services for, acts on behalf of or acts as an agent of a business entity described in sub-subparagraph (iii) of this subparagraph.

~~5)4) 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)5) 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) To register with the department, a data broker shall submit to the director electronically:

- a. The name of the data broker;
- b. The street address and mailing address, if different;
- c. Main telephone number of the data broker;
- d. The data broker's primary website; and
- e. Name, phone numbers and electronic mail address of contact person(s).

(2) A data broker shall include with the application form a declaration in which the data broker:

- a. States whether resident individuals may opt out of all or a portion of the data broker's collection, sale or licensing of the resident individuals' brokered personal data;

b. Identifies which of the data broker's activities of collecting, selling or licensing brokered personal data a resident individual may opt out of or which portion of the resident individual's brokered personal data the resident individual may opt out of providing or permitting the data broker to collect, sell or license;

c. Describes the method by which a resident individual may exercise the choices described in subparagraphs (a) and (b) of this paragraph; and

d. States whether a resident individual may authorize another person to exercise the choice described in subparagraph (a) of this paragraph on the resident individual's behalf and, if so, how to do so.

(3) To register with the department, a data broker shall:

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

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

(3) Transmit to the director any information or documentation required to be submitted in connection with an application that cannot be filed electronically in a form and manner approved by the director.

(4) Any application submitted and approved after November 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 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 additional 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 shall disclose to the director of any breach of security as required in ORS 646A.604 within 30 days of any such breach.

(2) A data broker registrant shall 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.

(c) Any change in assumed business name registered with Secretary of State.

441-830-0080 **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 the Oregon Consumer Information Privacy Act, ORS 646A.600 et seq.

441-830-0090 **Investigation and examinations by director**

(1) The director may investigate an any business required to be registered under this statute for violations of 441-830-0040, 441-830-0050, 441-830-0060, and 441-830-0070 and ORS Chapter 646A.

(2) For the purposes of fulfilling the investigations as outlined in (1), the director may:

(A) Make an investigation without prior notice.

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

(C) Require the production of documents or records.

(3) A person registered or required to be registered under this chapter shall respond to the director's reasonable inquiry related to any requirements of the statute or rule in OAR: 441-830-0040, 441-830-0050, 441-830-0060, and 441-830-0070.

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

441-830-0100 **Termination or suspension of data broker registration**

(1) A data brokers registration may be terminated or suspended for any violation of the statute or rule in OAR: 441-830-0010 to 441-830-0130.~~sss~~

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441-830-~~0130~~0110 **Civil Penalties for failing to register as a Data Broker Registration**

Any violation of ~~the statute XXXX and any~~the 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.

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