

CALIFORNIA DEPARTMENT OF JUSTICE
TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 20.5. DATA BROKER REGISTRATION

NOTICE OF PROPOSED RULEMAKING

Notice published September 11, 2020

The Department of Justice (Department) proposes to amend and adopt section 999.400 of Title 11, Division 1, Chapter 20.5 of the California Code of Regulations concerning Data Broker Registration.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed regulatory action. However, the Department will hold a virtual public hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period closes on October 26, 2020 at 11:59 p.m. Only written comments received by the provided time will be considered. Submit written comments to:

Department of Justice
California Justice Information Services Division
Attn: Danielle Hofmeister
P.O. Box 160608
Sacramento, CA 95816-0608
DataBrokerRegulation@doj.ca.gov

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Authority: Civil Code section 1798.99.82.
Reference: Civil Code section 1798.99.82.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

Assembly Bill (AB) 1202 (Chapter 753, Statutes of 2019) requires a business that meets the definition of a “data broker” to annually register with the Attorney General (AG), and, in doing so, complete all of the following: (1) pay a registration fee in an amount determined by the AG, not to exceed the reasonable costs of establishing and maintaining the required informational internet website; (2) provide the name of the data broker and its primary physical, email, and internet website addresses; and (3) provide any additional information or explanation the data broker chooses to provide concerning its data collection practices. The AG is required to create a page on the Department’s website where the information provided by data brokers shall be made accessible to the public. (See <https://oag.ca.gov/data-brokers>.) A data broker that fails to register as required is subject to injunction and is liable for civil penalties, fees, and costs in an action brought in the name of the people of the State of California.

Effect of the Proposed Rulemaking:

The Department adopted an emergency regulation (Office of Administrative Law file #2019-1210-04) to establish the fee for the registration system that became effective January 1, 2020. This proposed regulation will adjust the fee that was established in the related emergency regulation and make permanent the fee provision. This fee adjustment is necessary to align the fee with the actual costs incurred by the Department since January 1, 2020, and update the number of data brokers the Department anticipates will register annually based on the number of registrants since January 1, 2020.

Anticipated Benefits of the Proposed Regulation:

This rulemaking ensures the Department has access to critical funding to ensure Californians’ right to privacy and safety by implementing a necessary fee to support a system of registration for data brokers. This registration system provides Californians with a necessary tool to help control the collection and sale of their personal information and provides access to crucial information, to which they are entitled under California law.

Comparable Federal Regulations:

There are no existing federal regulations or statutes comparable to this proposed regulation.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that this proposed regulation is not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that this is the only regulation that concerns the registration of data brokers.

Forms Incorporated by Reference:

None.

Materials Relied Upon:

None.

Other Statutory Requirements:

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department's Initial Determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: The Department anticipates this regulation will result in approximately \$200,000 in revenue to the Department that will be used to pay the reasonable costs to maintain the data broker registry.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary costs or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on representative person or business: This regulation imposes an annual registration fee of \$400.00 on data brokers plus processing fees payable to the Department's vendor.

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete: The Department has made an initial determination that the proposed action would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This regulation only codifies requirements pertaining to businesses that satisfy the definition of "data broker" in subdivision (d) of Civil Code section 1798.99.80.

The Department analyzed recent historical data and trends to determine projected economic impacts that businesses may incur to comply with this regulation over its lifetime. The Department also considered the economic impact associated with the registration fee.

However, these impacts would not result in an adverse economic impact because the cost of this fee is nominal in proportion to the profits of data brokers.

Results of the Economic Impact Assessment (EIA):

The Department concludes that it is (1) unlikely that the proposal will create or eliminate jobs within the state, (2) unlikely that the proposal will create new businesses or eliminate existing businesses within the state, (3) unlikely that the proposal will result in the expansion of businesses currently doing business within the state.

Benefits of the proposed action: This rulemaking ensures the Department has access to critical funding to ensure Californians' right to privacy and safety by implementing a necessary fee to support a system of registration for data brokers. This registration system provides Californians with a necessary tool to help control the collection and sale of their personal information and provides access to crucial information, to which they are entitled under California law.

Business report requirement: None.

Small business determination: The Department has determined that this regulation may affect small businesses to the extent that a company required to register as a data broker and pay the registration fee qualifies as a "small business" under Government Code section 11342.610, which includes a business activity in services, where annual gross revenues do not exceed \$2 million. But this regulation will only have a slight effect because the fee imposed by this regulation is nominal compared to the company's profits.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Department of Justice
California Justice Information Services Division
Attn: Danielle Hofmeister
P.O. Box 160608
Sacramento, CA 95816-0608
(916) 210-5336
DataBrokerRegulation@doj.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Department of Justice
California Justice Information Services Division
Attn: Kelly Brannigan
P.O. Box 160608
Sacramento, CA 95816-0608
(916) 210-5270
DataBrokerRegulation@doj.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulation (the “express terms” of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department’s website at <https://oag.ca.gov/hdc/regs>. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the Department analyzes all timely and relevant comments received during the 45-day public comment period, the Department will either adopt this regulation substantially as described in this notice or make modifications based on the comments. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulation as revised. Requests for copies of any modified regulations may be sent to the attention of the name and address provided above. The Department will accept written comments on the modified regulation for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons will be available on the Department’s website at <https://oag.ca.gov/hdc/regs>. Please refer to the contact information listed above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department's website at <https://oag.ca.gov/hdc/regs>.