

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing accompanies this form.

**FILED**  
11-15-16 3:18 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Department of Consumer and Business Services, Insurance Regulation  
Agency and Division

836  
Administrative Rules Chapter Number

Definition of Small Employer

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

OAR 836-053-0015 relating to the definition of small employer.

**Statutory Authority:**

ORS 743B.005; 743B.020

**Other Authority:**

**Statutes Implemented:**

ORS 743B.020

**Need for the Rule(s):**

ORS 743B.020 requires the Department to adopt by rule the method for determining whether an employer is a small employer for purposes of group health benefit plans. ORS 743B.005 links the definition of "small employer" to a federal definition that currently defines a small employer as an employer having at least one but not more than 50 employees, but allows the department to further modify that definition in accordance with guidance issued by three federal agencies. The federal law also includes an option that allows states to define small employer as an employer with 1 to 100 employees.

The Department defines small employers in OAR 836-053-0015 as those with "an average of at least one but not more than 50 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year." This definition is applicable from January 1, 2016 through December 31, 2017.

The proposed amendments would abolish the sunset provision and maintain the current definition of small employer indefinitely.

**Documents Relied Upon, and where they are available:**

ORS 743B.005 and ORS 743B.020 are available at [https://www.oregonlegislature.gov/bills\\_laws/Pages/ORS.aspx](https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx). OAR 836-053-0015 is available at [http://arcweb.sos.state.or.us/pages/rules/oars\\_800/oar\\_836/836\\_053.html](http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_836/836_053.html).

**Fiscal and Economic Impact:**

No fiscal impact is anticipated for the Division of Financial Regulation (DFR). The proposed changes would maintain the current definition for a small employer for purposes of group health benefit plans and therefore would not effect small employers, consumer employee of small group health plans, agents or other stakeholders.

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

Based on available information, these proposed rules would have no financial impact on state agencies or local governments, because they create no new mandates for state or local government entities.

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:**

A rules advisory committee was convened that included small businesses offering group health insurance and organizations representing small business. Estimates from the Oregon Employment Department indicated there are over 97,000 firms with 1-50 employees in Oregon. There are currently 160,000 covered lives in the small group market. All employers meeting the definition would be subject to the rule. The majority of the committee supported maintaining the current definition of small employer and abolishing the sunset provision, indicating that increasing the definition of small employer would have negative economic impacts both for those currently considered small group and also for those from 51-100 if the definition were to expand.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

The proposed rule effectively results in no change and would not require additional resource for compliance.

**c. Equipment, supplies, labor and increased administration required for compliance:**

The proposed rules creates no new requirements.

**How were small businesses involved in the development of this rule?**

Members of the advisory committee consisted of small businesses offering group health insurance and organizations representing small business and small business selling health insurance.

**Administrative Rule Advisory Committee consulted?: Yes**

**If not, why?:**

<u>01-12-2017 5:00 p.m.</u>	<u>Karen Winkel</u>	<u>karen.j.winkel@oregon.gov</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address