

State of Wisconsin  
**Department of Employee Trust Funds**  
**Employee Trust Funds Board**  
**Wisconsin Retirement Board**  
**Teachers Retirement Board**

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**FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #17-031**

**An order to repeal ETF 50.30 (1) (a) to (c) and 50.40 (2); to renumber and amend ETF 50.30 (1) (intro.) and 50.40 (1); to amend ETF 50.30 (1), 50.44 (1) and (2) (a), 50.48 (4) (a) and (c), 50.54 (1), 50.56 (1) (j), (2) (e) and (3) (b), and 50.60 (2) (b); to repeal and recreate ETF 50.46 (2) (d); and create ETF 50.30 (1g), 50.30 (3m) and 50.48 (7), relating to closing the Long-Term Disability Insurance program (LTDI) to new claims and re-opening the Wis. Stat. §40.63 Disability Annuity Program (40.63) to all eligible employees effective January 1, 2018.**

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The scope statement for this rule, SS 025-17, was approved by the Governor on March 6, 2017, published in Register No. 735A2, on March 13, 2017, and approved by ETF Secretary Robert Conlin on March 23, 2017.

**Agency Person to be Contacted for Questions**

Please direct any questions about the proposed rule to David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 264-6936. E-mail address: [david.nispel@etf.wi.gov](mailto:david.nispel@etf.wi.gov).

**Statement Explaining Need for Rule**

This rule-making is needed to close the Long-Term Disability Insurance program (LTDI) to new claims and re-open the Wis. Stat. §40.63 Disability Annuity Program (40.63) to all eligible employees effective January 1, 2018. This is part of the department’s effort to streamline, simplify and modernize the disability programs offered to Wisconsin Retirement System members.

**Analysis Prepared by the Department of Employee Trust Funds**

1. Statutes interpreted:  
Sections 40.63, Stats.
2. Statutory authority:  
Sections 40.03 (1) (i), 40.03 (2) (i) and 227.11 (2) (a), Stats.
3. Explanation of agency authority:  
By statute, the ETF Secretary is expressly authorized, with approval by the Employee Trust Funds Board, to promulgate rules that are required for the efficient administration of the fund or of any of the benefit plans established by ch. 40 of the Wisconsin Statutes. Also by statute, the Employee Trust Funds Board may determine that some or all of the disability annuities and death benefits provided from the Wisconsin retirement system shall instead be provided through group insurance plans to be established by the group insurance board either as separate plans or as integral parts of the group life and income continuation insurance plans established under ch. 40 of the Wisconsin Statutes. By this rule, the ETF Board has determined that disability benefits claimed after December 31, 2017, shall no longer be provided through the Long-Term Disability Insurance group insurance plan that was established by the Group Insurance Board.

In addition, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

4. Related statutes or rules:

There are no other related statutes or administrative rules directly related to this rule.

5. Plain language analysis:

The purpose of this rule is to close the Long-Term Disability Insurance program (LTDI) to new claims and re-open the Wis. Stat. §40.63 Disability Annuity Program (40.63) to all eligible employees effective January 1, 2018. Closing the LTDI program entails moving oversight of the program's runout from the Group Insurance Board to the Employee Trust Funds Board.

6. Summary of, and comparison with, existing or proposed federal statutes and regulations:

There are no existing or proposed federal regulations that directly pertain to this proposed rule.

7. Comparison with rules in adjacent states:

**Minnesota State Retirement System.** General employees disability benefit is calculated the same as retirement benefits, with no reduction in benefit if under normal retirement age. To qualify for disability benefits, employee must meet the definition of disability and have three years of service; five years if hired on or after June 30, 2010. The disability benefit will end in the month of death unless survivor coverage is selected.

**Iowa Personnel System.** Regular disability benefits equal the amount of the retirement benefit earned at the time employment was terminated, without reduction for retiring before normal retirement age. To qualify for disability benefits an employee must be vested; have ended all IPERS-covered employment and must be receiving Social Security Disability or Railroad Retirement benefits.

**Illinois State Employee Retirement System.** Non-occupational disability benefits are 50% of final average compensation or monthly rate of pay, whichever is greater for employees hired before 1/1/2011. Disability benefits are 50% of final average compensation for employees after 12/31/2010. Occupational Disability benefits are 75% of final average compensation or monthly rate of pay, whichever is greater for employees hired before 1/1/2011. Occupational Disability benefits are 75% of final average compensation for employees hired after 12/31/2010. To qualify for non-occupational disability benefits an employee must have 18 months of creditable service, must use all accrued sick days, and must be on a medical leave of absence. To qualify for occupational disability benefits an employee must be a member of SERS, must not be working, and must file a claim for Workers' Compensation.

**Michigan Civil Service Commission.** For full-time employees, long-term disability benefits equal 66.6667% of monthly rate of basic earnings. Bonuses, overtime pay and other extra compensation are not included. For less than full-time employees, the gross monthly payment is based on the number of basic hours paid in the prior fiscal year. Employees must wait 14 calendar days from the date of disability.

8. Summary of factual data and analytical methodologies:

ETF evaluated the programmatic implications of continuing to operate both the LTDI and 40.63 Disability Annuity and concluded that the option most beneficial to ETF and Wisconsin Retirement System members is to close the LTDI program to new claims. In addition, ETF's disability actuary, Milliman, Inc., analyzed the impact of closing the LTDI program.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

This rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System. Please see attached economic impact analysis.

10. Effect on small business:  
The rule has no effect on small businesses.

**Regulatory Flexibility Analysis:**

The proposed rule has no effect on small businesses because only governmental employers and their employees may participate in the benefit programs under ch. 40 of the statutes administered by the Department of Employee Trust Funds.

**Fiscal Estimate and Economic Impact Statement:**

Please see the attached Fiscal Estimate and Economic Impact Statement.

**Text of Proposed Rule**

**SECTION 1.** ETF 50.30 (1) (intro.) is renumbered ETF 50.30 (1), and as renumbered is amended to read:

**ETF 50.30 (1)** A person may be eligible for a disability annuity under s. 40.63, Stats., provided the person ~~meets all of the following requirements:~~ is not receiving benefits under subch. III.

**SECTION 2.** ETF 50.30 (1) (a) to (c) are repealed.

**SECTION 3.** ETF 50.30 (1g) is created to read:

**ETF 50.30 (1g)** For purposes of eligibility under s. 40.63 (1), Stats., and notwithstanding s. ETF 50.46 (2) (b), an election of coverage filed under s. ETF 50.46 (1) to receive benefits under subch. III will not cause a person to be ineligible for a disability annuity if a claim is filed on or after January 1, 2018.

**SECTION 4.** ETF 50.30 (3m) is created to read:

**ETF 50.30 (3m)** For purposes of s. 40.63 (1) (a), Stats., only, if a participant was previously receiving a long-term disability insurance benefit under subch. III, which was terminated for reasons other than fraud, misrepresentation, error, mistake or failure to provide required information, the participant is deemed to have received full creditable service for any month for which the previous long-term disability insurance benefit was paid.

**SECTION 5.** ETF 50.40 (1) is renumbered ETF 50.40, and as renumbered is amended to read:

**ETF 50.40 Purpose.** The purpose of this subchapter is to provide long-term disability insurance coverage to participating employees as of October 15, 1992, who elect its benefits as provided in s. ETF 50.46 and to all persons who become participating employees on or after October 16, 1992, who are receiving benefits under this subchapter or who have filed a claim for benefits with the department before January 1, 2018.

**SECTION 6.** ETF 50.40 (2) is repealed.

**SECTION 7.** ETF 50.44 (1) is amended to read:

**ETF 50.44 (1) PARTICIPATING EMPLOYEES ON OR AFTER OCTOBER 16, 1992.** Except as provided in sub. (2), this subchapter applies to any person becoming a participating employee on or after October 16, 1992, regardless of any prior employment by a participating employer, who is receiving benefits under this subchapter or has filed a claim for benefits with the department before January 1, 2018.

**SECTION 8.** ETF 50.44 (2) (a) is amended to read:

**ETF 50.44 (2) (a)** This subchapter does not apply to a person who is a participating employee on October 15, 1992, and continuously employed by one or more successive participating employers from that date until terminating employment or taking a final leave of absence due to a medically determinable impairment, unless the person elects to be covered by this subchapter as provided in s. ETF 50.46, and the person files a claim for benefits with the department before January 1, 2018.

**SECTION 9.** ETF 50.46 (2) (d) is repealed and recreated to read:

**ETF 50.46 (2) (d)** An election to be covered under this subchapter will not be accepted unless a claim for benefits has been filed with the department before January 1, 2018.

**SECTION 10.** ETF 50.48 (4) (a) is amended to read:

**ETF 50.48 (4) (a)** The department shall report its determination to grant or deny each application for LTDI benefits to the employer and the claimant. A claimant or employer who wishes to contest the department's findings shall make a timely appeal to the group insurance employee trust funds board. If no timely appeal is filed, the department's determination to grant or deny the application for LTDI benefits shall be final.

**SECTION 11.** ETF 50.48 (4) (c) is amended to read:

**ETF 50.48 (4) (c)** If the department's denial is based solely on par. (b) 1. or 3., or both, and the claimant ~~may appeal to the group insurance board. The group insurance~~ appeals the denial, the employee trust funds board's decision shall include a finding as to whether the employer's responses on the employer statement form were reasonable and correct. If the ~~group insurance employee trust funds~~ employee trust funds board determines that the employer's responses were unreasonable and incorrect, the ~~group insurance employee trust funds~~ employee trust funds board decision shall include an order to the employer to amend the statement and an order to the department to process the LTDI application when the amended statement is received.

**SECTION 12.** ETF 50.48 (7) is created to read:

**ETF 50.48 (7)** Claims filed under this subchapter that are received by the department after December 31, 2017 will not be accepted.

**SECTION 13.** ETF 50.54 (1) is amended to read:

**ETF 50.54 (1) Plan administrator.** The department shall administer the plan established by this subchapter on behalf of the ~~group insurance~~ employee trust funds board unless otherwise expressly

provided in an administrative services contract between the ~~group insurance~~ employee trust funds board and an outside administrator, ~~in which the employee trust funds board concurs.~~

**SECTION 14.** ETF 50.56 (1) (j) is amended to read:

**ETF 50.56 (1) (j)** The duration of LTDI benefits for recipients whose LTDI benefit effective date is on or after the date the recipient attains age 61 shall be periodically reviewed and may be revised based on the actuary's determinations, as approved by the employee trust funds board, so as to provide LTDI benefits meeting equal cost standards under federal age discrimination law. As part of the regular 3-year general investigation under s. 40.03 (5) (b), Stats., beginning with the investigation based on data through 1996, the actuary shall determine the appropriate duration for LTDI benefits beginning at and after age 61. The employee trust funds board shall be responsible for approving any change to the duration of LTDI benefits. If the duration of LTDI benefits is changed, the duration of LTDI benefits being paid as the result of an application received by the department prior to the effective date of the change shall not be affected. Any such revision shall be effective upon promulgation as an amendment to this rule by the ~~group insurance~~ employee trust funds board.

**SECTION 15.** ETF 50.56 (2) (e) is amended to read:

**ETF 50.56 (2) (e)** If the department alters the amount of monthly LTDI benefits under par. (c) or terminates payment of LTDI benefits under par. (d), the department shall send notice of the action to the recipient. The notice shall be in the form of a written determination stating the reasons for the termination. The recipient may file a timely appeal of the alteration or termination with the ~~group insurance~~ employee trust funds board as provided in ch. ETF 11. If no timely appeal is filed, the alteration or termination of LTDI benefits is final.

**SECTION 16.** ETF 50.56 (3) (b) is amended to read:

**ETF 50.56 (3) (b)** If the department terminates payment of LTDI benefits under this subsection, the department shall send notice of the termination to the recipient. The notice shall be in the form of a written determination stating the reasons for the termination. The recipient may file a timely appeal of the termination with the ~~group insurance~~ employee trust funds board, as provided in ch. ETF 11. If no timely appeal is filed, the termination of LTDI benefits is final.

**SECTION 17.** ETF 50.60 (2) (b) is amended to read:

**ETF 50.60 (2) (b)** The initial amount of the required monthly premium shall be as determined and certified by the actuary. The actuary shall determine and certify future required premiums annually at the same time contribution rates are determined under s. 40.05, Stats., for the Wisconsin retirement system, based on the information available at the time the determination is made and on the assumptions the actuary recommends and the ~~group insurance~~ employee trust funds board approves.

**SECTION 18. EFFECTIVE DATE.** This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

**[See PDF for images and correct formatting for the following]**



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**WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE**

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**Scott Grosz**  
*Clearinghouse Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Margit S. Kelley**  
*Clearinghouse Assistant Director*

**Jessica Karls-Ruplinger**  
*Legislative Council Deputy Director*

**CLEARINGHOUSE REPORT TO AGENCY**

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 17-031**

AN ORDER to repeal ETF 50.30 (1) (a) to (c) and 50.40 (2); to renumber and amend ETF 50.30 (1) (intro.) and 50.40 (1); to amend ETF 50.30 (1), 50.44 (1) and (2) (a), 50.48 (4) (a) and (c), 50.54 (1), 50.56 (1) (j), (2) (e) and (3) (b), and 50.60 (2) (b); to repeal and recreate ETF 50.46 (2) (d); and to create ETF 50.30 (1g), 50.30 (3m) and 50.48 (7), relating to closing the Long-Term Disability Insurance program (LTDI) to new claims and reopening the Wis. Stat. s. 40.63 Disability Annuity Program (40.63) to all eligible employees effective January 1, 2018.

Submitted by **DEPARTMENT OF EMPLOYEE TRUST FUNDS**

04-20-2017 RECEIVED BY LEGISLATIVE COUNCIL.

05-12-2017 REPORT SENT TO AGENCY.

SG:DWS

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]  
Comment Attached            YES             NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]  
Comment Attached            YES             NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]  
Comment Attached            YES             NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]  
Comment Attached            YES             NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]  
Comment Attached            YES             NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]  
Comment Attached            YES             NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]  
Comment Attached            YES             NO



### **Response to Legislative Council Staff Recommendations**

No comments or recommendations from the Legislative Council Staff.

### **List of Persons Who Appeared or Registered at the Public Hearing.**

No persons appeared or registered either for or against the rule at the public hearing on May 30, 2017.

### **Summary of Public Comments.**

No person wished to testify concerning the rule. The record was held open for written comments until 4:30 p.m. on May 30, 2017, but no comments were received.

### **Modifications to Rule as Originally Proposed as a Result of Public Comments.**

None.

### **Modifications to the Analysis Accompanying the Proposed Rule.**

None.

### **Modifications to the Initial Fiscal Estimate.**

None.

### **Board Authorization for Promulgation.**

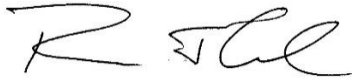
This final draft report on Clearinghouse Rule #17-031 has been duly approved for promulgation and submission to the Governor and Legislature by the Department of Employee Trust Funds and by the Employee Trust Funds Board, Wisconsin Retirement Board and Teachers Retirement Board at their meetings on June 22, 2017.

### **Effective Date.**

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Respectfully submitted,

**DEPARTMENT OF EMPLOYEE TRUST FUNDS**

A handwritten signature in black ink, appearing to read "R Conlin". The signature is written in a cursive style with a large initial "R".

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Robert J. Conlin  
Secretary

Date: 8/10/2017

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original   <input type="checkbox"/> Updated   <input type="checkbox"/> Corrected</p>	<p>2. Date April 20, 2017</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) ETF 50</p>	
<p>4. Subject Closing the Long-Term Disability Insurance program (LTDI) to new claims and re-opening the Wis. Stat. §40.63 Disability Annuity Program.</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR   <input type="checkbox"/> FED   <input type="checkbox"/> PRO   <input type="checkbox"/> PRS   <input type="checkbox"/> SEG   <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected</p>
<p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect   <input type="checkbox"/> Increase Existing Revenues   <input type="checkbox"/> Increase Costs <input type="checkbox"/> Indeterminate   <input type="checkbox"/> Decrease Existing Revenues   <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Cost</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy   <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units   <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (<b>if checked, complete Attachment A</b>)</p>	
<p>9. Would Implementation and Compliance Costs Be Greater Than \$20 million? <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No</p>	
<p>10. Policy Problem Addressed by the Rule ETF is currently administering five disability programs for state and local government employees, including two long-term disability programs, where only one long-term program is needed. ETF currently administers the Disability Annuity (40.63) program, the Long-Term Disability Insurance (LTDI) program, the Duty Disability (40.65) program, and the State and Local Income Continuation Insurance (ICI) programs. The goal of the LTDI closure is to streamline the administration of disability benefits, reduce duplication, reduce costs, and reduce complexity and confusion for employers and employees.</p>	
<p>11. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments. Information, including the proposed rule language, will be made available by posting on the ETF website and the Wisconsin administrative rules website and by submitting the information to the Governor's Office of Regulatory Compliance.</p>	
<p>12. Identify the local governmental units that participated in the development of this EIA. None</p>	
<p>13. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) No substantive impact is anticipated.</p>	
<p>14. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule Streamline the administration of disability benefits, reduce duplication, reduce costs, and reduce complexity and confusion for employers and employees.</p> <p>An alternative to closing LTDI to new claims would be to continue to run out the 40.63 program and eventually leave LTDI as a remaining long-term disability benefit for WRS members. However, it is difficult to estimate how long 40.63 will take to run out, as it is a lifetime benefit and it is still approving claims from the approximately 33,000 members that</p>	

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

remain eligible for the benefit. It has been 23 years since LTDI was created and it will likely take even longer to completely run out 40.63 benefit payments. For example, a member, aged 45 applying for 40.63 today, who lives to age 90 will be on the benefit for 45 years. When survivor benefits are included, the runout period gets even longer. LTDI, on the other hand, will take approximately 37 years to run out because benefits will cease once a claimant reaches age 65, if not sooner.

Maintaining LTDI in its current form will necessitate development in the department's new Benefit Administration System (BAS/myETF), which is currently being constructed. And it will require ETF to continue to request bids from outside vendors to administer the program. ETF estimates that this contracted amount will cost at least \$1.2 million annually. There is also a concern with obtaining competitive bids for program administration if LTDI is bid out with the ICI program. The 40.63 program, on the other hand, is already administered in-house as a part of ETF's current systems and as a result will be part of the BAS/myETF development.

A similar alternative to maintaining the status quo also includes maintaining the current LTDI program but bringing administration of the program in-house rather than contracting for its administration. This alternative will require additional development in BAS/myETF. ETF estimates that this alternative would save approximately \$1.2 million annually in TPA fees, but it raises the same issues with running out the 40.63 program as the previous alternative and also includes additional BAS/myETF development costs.

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15. Long Range Implications of Implementing the Rule  
Eventually operating one long-term disability program for Wisconsin Retirement System members.

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16. Compare With Approaches Being Used by Federal Government  
The Federal Employee Retirement System offers a disability retirement benefit in the form of an annuity.

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17. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)  
All neighboring states offer disability benefits to public employees.

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18. Contact Name  
David Nispel

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19. Contact Phone Number  
(608) 264-6936

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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
-