



**COLORADO**  
Department of Transportation  
Division of Transportation Development

Environmental Programs Branch  
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**DATE:** November 21, 2017

**TO:** Colorado Regional Planning and Environmental Managers

**FROM:** Colorado Air Quality Interagency Consultation Group, including:

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**SUBJECT:** Transportation Conformity: Exempt Project Interpretations for 40 CFR 93.126

**BACKGROUND:** The Transportation Conformity Regulation (Code of Federal Regulation Chapter 40, Part 93 [40 CFR 93<sup>1</sup>]) addresses federal actions related to highway and mass transit funding and approval actions. Table 2 of Section 93.126 lists types of project that are exempt from the requirement to determine conformity. However, sometimes it is not clear if a project is exempt based on the information in Table 2.

The purpose of this memo is to clarify interpretations of exempt projects and to ensure there is statewide consistency in how transportation conformity is implemented. The first three project types listed below were determined to be exempt from conformity by the Environmental Protection Agency's (EPA's) Office of Transportation and Air Quality, in conjunction with the Federal Highway Administration (FHWA). This guidance was distributed by Tim Russ of EPA's Region 8 office via an email on October 17, 2017. The fourth project type listed below was determined to be exempt from conformity by the Colorado Air Quality Interagency Consultation Group (ICG) at the October 25, 2017 ICG meeting. This decision was consistent with the intent of Sections III.C.1.c and III.C.3.a of Air Quality Control Commission's Regulation Number 10 (5 CCR 1001-12).

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<sup>1</sup> 23 CFR 93 was first published in 1993 (58 FR 62188) and most recently revised on March 14, 2012 (77 FR 14986).

Please note that 40 CFR 93.105(c)(1)(iii) anticipates that the interagency consultation procedures will include a specific process to evaluate “whether projects otherwise exempted ... should be treated as non-exempt in case where potential adverse emissions impacts may exist for any reason.” Therefore, if a road diet, an auxiliary lane less than 1 mile in length, a ramp meter, a pedestrian crossing light, or any other project labeled “exempt” has “potential adverse emissions impacts,” it is recommended to refer to the governing interagency consultation procedures for the process to evaluate whether the project should be treated as non-exempt.

#### **EXEMPT PROJECT CLARIFICATION:**

**Road diets:** Based on discussion with FHWA, the EPA believes that “Road Diets” are exempt projects under 40 CFR 93.126, Table 2 . Road diets are done for safety purposes. If a road diet is part of a state’s Highway Safety Improvement Program, the road diet is exempt under the item, “Highway Safety Improvement Program implementation.” If not, a road diet could be still be exempt under the item, “Projects that correct, improve, or eliminate a hazardous location or feature.” Please see this link from FHWA: [https://safety.fhwa.dot.gov/road\\_diets/](https://safety.fhwa.dot.gov/road_diets/)

**Auxiliary lanes:** If an auxiliary lane is less than 1 mile in length, it can be considered exempt under 40 CFR 93.126, Table 2, as “Projects that correct, improve, or eliminate a hazardous location or feature.” The EPA confirmed this interpretation with FHWA.

**Ramp metering:** In coordination with FHWA, the EPA has concluded that ramp metering projects are exempt under 40 CFR 93.126, Table 2, as “Projects that correct, improve, or eliminate a hazardous location or feature.”

**Pedestrian Crossing Lights:** A pedestrian light stays black until activated (e.g., a pedestrian presses a button). Then the light comes on for a designated time period, depending on the cross walk width, stopping any cars that are present and allowing pedestrians to cross. These lights, such as High-Intensity Activated crossWalk (H.A.W.K.) beacons, are installed at a location that is specifically not at an intersection and where there is a need to provide a safe and legal pedestrian crossing. The ICG has concluded these pedestrian crossing light projects are exempt under 40 CFR 93.126, Table 2, as both “Projects that correct, improve, or eliminate a hazardous location or feature” and “Traffic control devices and operating assistance other than signalization projects.”

**EFFECTIVE DATE:** Immediate

Please distribute this information to the appropriate individuals and offices in your Region. If there are questions or concerns regarding the guidance update, please contact Rose Waldman at (303) 757-9016 or [rose.waldman@state.co.us](mailto:rose.waldman@state.co.us).