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## **Confused About Compliance?**

### **Insights to Rule 2202 Compliance Questions**

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# Inspection Tips

## *Types of Inspections*

**High AVR No-Fault Inspection:** When an employer exceeds the Average Vehicle Ridership (AVR) zone and has an Annual Employee Commute Reduction Program due, the Employee Transportation Coordinator (ETC) can request a High AVR No-Fault Inspection. Once the requirements for this inspection have been verified by a District representative, a letter indicating that the site has passed the inspection is issued to the employer. This letter, along with the AVR data will meet the submittal requirements for this type of inspection; program filing fees are reduced. ***The employer must schedule this inspection at least two months prior to the program submittal date by contacting Area Sources Compliance staff at (909) 396-2390.***

**Complaint Investigation:** District Staff investigates all complaints received from the regulated community. This type of inspection generally occurs when an employee from a regulated site contacts District Staff alleging non-implementation or changing or deletion of approved strategies.

**Staff Requested Inspection:** For a variety of compliance reasons, Transportation Staff may request that Compliance Staff make a site visit.

**Random Inspection:** Inspector arrives at a worksite unannounced (without an appointment) and conducts an inspection.

**Follow-up Inspection:** These inspections are conducted to ensure that corrective measures have been taken as a follow-up to a previous inspection where a notice was issued.

## *Successful Inspections*

Documentation that may be requested by the Inspector during an inspection may include, but is not limited to:

- The employer's copy of the most recently approved program (stamped "approved");
- Approval letter from the District;
- Verification of AVR calculations (surveys, calculation worksheets and other materials used to determine the current AVR);
- Verification of program implementation;
- Verification of program marketing;
- and if applicable, written approval of program modification(s)

## ***Recordkeeping Tips***

- Establish committees to assist in program development, implementation, marketing and tracking. Maintain documentation of committee meetings, discussions and actions;
- Maintain clear, detailed implementation, marketing and monitoring mechanisms;
- Date all program documentation;
- Maintain copies of all materials that verify program development, implementation, marketing and tracking;
- Maintain copies of all applicable policies and procedures;
- Ensure the approved program and approval letter are on site (note: we use your stamped “*approved*” copy of the program to conduct the inspection).

## ***Program Marketing Examples***

The following are examples of the various types of marketing techniques:

- Employee memos, payroll stuffers, newsletters, brochures, flyers, new hire orientation materials (dated material which indicates when the item was created or distributed);
- Kick-off events, zip code matching parties and other promotional/educational events;
- Annual Rideshare events.

## ***Program Tracking Mechanisms***

The following are examples of the various types of tracking techniques:

- Self-report forms on which employees indicate their commute modes (calendar type forms);
- Agenda or minutes of employee meetings;
- Roster of program participants;
- Time Cards/Time Sheets providing the names of employees and indicate specific strategy participation;
- Scantron, magnetic card readers, electronic mail.

## ***Incentive Implementation Examples***

- **Recognition Program:** Maintain names/pictures of employees honored, dated copies of certificates, memos, newsletters, banners, or flyers.
- **Guaranteed Return Trip:** Maintain a log of employees receiving the guaranteed return trip. The log should include date, type of transportation provided (taxi vouchers/contracts, rental car agreements, ETC or fellow employee) and reason for providing transportation.
- **Ride Matching Zip Code Parties:** Maintain a list of employees that received match lists and information regarding carpools or vanpools and identify carpool/vanpool formations resulting from matching activities.
- **Flex Time:** Maintain lists of employees, identifying schedules that were modified to accommodate rideshare situations.
- **Earned Day Off With Pay:** Maintain documentation identifying hours accumulated by participants and amount of time off was given to the appropriate employees.
- **Monetary Incentives/Prize Awards:** Maintain documentation identifying employees, amounts of awards, types of prizes provided, copies of checks, and certificates given to participants. Receipts for prize purchases, copies of vouchers/gift certificates may also be used as documentation.
- **Other Records:** Copies of payroll/accounting forms, photos of winners/prizes.

## ***Notice to Comply***

A Rule 2202 Notice to Comply (NC) is served in either of these two situations:

1. The Inspector finds non-compliance with the rule or rule guidelines, or
2. The Inspector needs additional information to verify compliance with the rule or rule guidelines.

A Notice to Comply is a time sensitive notice which provides specific instructions to the ETC or employer on what action is required in order to bring the worksite into compliance with the rule.

A Notice to Comply may be issued to an employer to:

- Implement one or more program strategies identified in the most recently approved program;
- Implement the approved marketing program;
- Allow the employer an opportunity to train an Employee Transportation Coordinator (ETC);
- Produce records to verify implementation or marketing;
- Submit a late registration or program;
- Submit a program amendment to AQMD, etc;
- Provide AVR survey data or conduct an AVR survey;
- Submit overdue Emission Reduction Credits.

If all the deficiencies listed on the Notice to Comply are corrected by the due date, a notice will not result in any penalties.

Before the inspector leaves your facility, make sure that all aspects of the requirements needed to bring the site into compliance are clear. However, if you find that you need additional assistance/guidance or more time to correct deficiencies, please contact the inspector immediately. Please do not wait until the Notice to Comply requirements are due to make other arrangements, as you will not be granted an extension at that time.

Once you have corrected all the deficiencies, contact the inspector to coordinate a follow-up visit or other method of resolving the Notice to Comply deficiencies.

### ***Notice of Violation***

A Rule 2202 Notice of Violation (NOV) is issued to an employer when the business has failed to comply with rule requirements or has failed to comply with a Notice to Comply. When an employer receives a Notice of Violation from the AQMD, it is **operating in violation of the law**.

When a violation notice is issued, the inspector will provide the employer with literature that explains the rule requirements and solutions to outstanding compliance issues. Once the notice is issued to an employer, it is forwarded to the District Prosecutor's Office. The Prosecutor's Staff will review the case and contact the employer regarding the violation either by telephone or by letter. Before a Notice of Violation can be settled, an employer must be in compliance with Rule 2202. Prior to reaching a settlement with the Prosecutor's Office, a follow-up inspection may be conducted to verify compliance with Rule 2202.

# Pre-Inspection Checklist for Employee Commute Reduction Programs

The following three (3) basic items will be requested by the inspector during an inspection of a Rule 2202 Employee Commute Reduction Program:

1. \_\_\_\_\_ Employee Commute Reduction Program (ECRP). This document must be an approved copy and have the AQMD's "approved" stamp on the Management Commitment letter.
2. \_\_\_\_\_ AQMD Employee Commute Reduction Program approval letter
3. \_\_\_\_\_ AVR survey forms completed by employees (for current program)

You will also need the following items to verify program implementation, marketing and tracking:

1. \_\_\_\_\_ Lists of participants (tracking forms, sign up sheets, etc.)
2. \_\_\_\_\_ Any other documentation which shows strategies are provided and implemented
3. \_\_\_\_\_ Copies of the marketing methods used to promote the program
4. \_\_\_\_\_ Copy of Match-list or a Zip Code list used for carpool matching

If your program contains site amenities such as rideshare bulletin board(s), preferential parking, bike racks or lockers, ATM machine, the inspector will confirm that these amenities are in place.

\_\_\_\_\_ Verification that amenities listed in approved program are available

## Issuance Guidelines for Notice to Comply and Notice of Violation

### *Type of Program: Employee Commute Reduction Program (ECRP)*

<b>SITUATION</b> <i>NC = Notice to Comply</i> <i>NOV = Notice of Violation</i>	<b>ACTION TAKEN</b>	<b>TIME GRANTED</b>	<b>FAILURE TO IMPLEMENT NC</b>
Failure to notify the AQMD within 30 days of becoming subject to Rule 2202; or employee threshold exemption pursuant to paragraph (m)(1) no longer applies.	<b>NC</b>	<b>14 days</b>	<b>NOV</b>
Failure to have certified ETC for <b>more than 8 weeks</b> (AQMD staff notified of pending certification).	<b>NC</b>	<b>30 days</b>	<b>NOV</b>
Failure to have certified ETC for more than 12 weeks (AQMD staff not notified).	<b>NOV</b>		
Failure to submit Annual Program by due date (No prior history of late-submittals).	<b>NC</b>	<b>30 days</b>	<b>NOV</b>
Failure to submit Annual Program by due date (Prior history of late submittals).	<b>NOV</b>		
Failure to implement a strategy or strategies (non monetary strategy).	<b>NC</b>	<b>14 to 30 days</b>	<b>NOV</b>
Failure to implement program strategy or strategies, with or without prior history of non implementation, or willful intent not to implement a strategy or strategies.	<b>NOV</b>		
Failure to re-submit Annual Program after Disapproval from AQMD (Prior history of late submittals).	<b>NOV</b>		

Changing strategies or substituting strategies (must be comparable strategies) without submitting a program amendment to AQMD Transportation staff & receiving written approval.	<b>NC</b>	<b>14 days</b>	<b>NOV</b>
Suspension or deletion of a strategy or strategies without submitting a program amendment to the AQMD & receiving written approval.	<b>NOV</b>		
Provide documentation to verify compliance (AVR Surveys, payroll records, tracking forms, etc.).	<b>NC</b>	<b>14 days</b>	<b>NOV</b>
Failure to provide documentation to verify compliance for the approved ECRP.	<b>NOV</b>		
Falsification of records (AVR Surveys, tracking forms, documentation for incentives, etc.).	<b>NOV</b>		
Failure to notify AQMD of change of ownership (New owner must notify AQMD within 30 days).	<b>NC</b>	<b>14 days</b>	<b>NOV</b>
Employer relocates to new worksite and does not notify AQMD staff of the move within the 30 day rule requirement.	<b>NOV</b>		

**Type of program: Emission Reduction Strategy (ERS)**

<b>SITUATION</b> NC = Notice to Comply NOV = Notice of Violation	<b>ACTION TAKEN</b>	<b>TIME GRANTED</b>	<b>FAILURE TO IMPLEMENT NC</b>
Failure to notify the AQMD within 30 days of becoming subject to Rule 2202; or employee threshold exemption pursuant to paragraph (m)(1) no longer applies.	<b>NC</b>	<b>14 days</b>	<b>NOV</b>
Failure to submit a Rule 2202 Registration by due date.	<b>NC</b>	<b>30 days</b>	<b>NOV</b>
Failure to re-submit Rule 2202 Registration after a Disapproval from AQMD.	<b>NOV</b>		
Failure to submit Emission Credits within the allotted 6 month period.	<b>NC</b>	<b>14 days</b>	<b>NOV</b>
Failure to provide documentation to verify compliance (AVR survey data used for emission calculations, etc.).	<b>NC</b>	<b>14 days</b>	<b>NOV</b>
Falsification of records.	<b>NOV</b>		
Failure to notify AQMD of change of ownership (New owner has not notified AQMD within 30 day requirement).	<b>NC</b>	<b>14 days</b>	<b>NOV</b>
Employer relocates to new worksite and does not notify AQMD staff of the move within the 30 day rule requirement.	<b>NOV</b>		

**Type of program: Air Quality Investment Program (AQIP)**

<b>SITUATION</b> NC = Notice to Comply NOV = Notice of Violation	<b>ACTION TAKEN</b>	<b>TIME GRANTED</b>	<b>FAILURE TO IMPLEMENT NC</b>
Failure to notify the AQMD within 30 days of becoming subject to Rule 2202; or employee threshold exemption pursuant to paragraph (m)(1) no longer applies.	<b>NC</b>	<b>14 days</b>	<b>NOV</b>
Failure to submit a Rule 2202 Registration.	<b>NC</b>	<b>30 days</b>	<b>NOV</b>
Failure to re-submit Rule 2202 Registration after Disapproval from AQMD.	<b>NOV</b>		
Failure to provide documentation to verify compliance (AVR Surveys or other documentation used to determine employee count in window period).	<b>NC</b>	<b>14 days</b>	<b>NOV</b>
Falsification of records.	<b>NOV</b>		
Failure to provide change of ownership (New owner must notify AQMD within 30 days).	<b>NC</b>	<b>14 days</b>	<b>NOV</b>

**NOTE: Compliance staff can deviate from action taken (NC or NOV) depending on the circumstances**

- If an employer needs more time than listed on the NC (Notice to Comply), then the Inspector that issued the NC should be contacted. Employer representatives can contact compliance staff to arrange a possible extension to the NC due date.
- In cases when programs are overdue, compliance with the due date on the NC does not negate late fee penalties.
- Transportation staff cannot extend the NC due date; therefore, Compliance staff must be contacted to coordinate a time extension.

# Frequently Asked Questions

1. **Do I have to make an appointment to conduct an audit?**

Yes, an employer who has achieved or surpassed the AVR zone must schedule an appointment in order for a District Inspector to conduct a High AVR No-fault inspection **at least 60 days prior to their due date.**

2. **How long do I have to keep my records for? (Survey forms, etc.)**

The employer is required to maintain Rule 2202 implementation documentation for 3 years from the program approval date.

3. **What is a Notice to Comply?**

Basically, a Notice to Comply is a time sensitive "fix-it" document issued to the employer, documenting what needs to be done by the employer to come into compliance.

4. **Is there a monetary penalty associated with a Notice to Comply?**

No, there is no monetary penalty associated with the Notice to Comply.

5. **If I receive a Notice to Comply to submit a late program, do I get a new program submittal due date?**

No, you **do not** get a new due date (your program is late). The Notice to Comply is a warning ticket issued by the compliance staff which provides an employer additional time to submit the program before other actions are taken. The due date on the notice is a tracking mechanism for the compliance staff.

6. **Who can extend a due date on a Notice to Comply?**

The **inspector** that issued the notice or the **Compliance Supervisor** can extend the due date (Transportation staff cannot extend Notice to Comply due dates).

7. **If the program is overdue, are there any penalties?**

Yes, when you submit your overdue program, you will need to add 50% to the filing fee.