



ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION

WASHINGTON, D.C. 20460

July 05, 2024

MEMORANDUM

SUBJECT: Response to the Office of Inspector General Management Implication Report, "*Preventing Fraud, Waste, and Abuse Within the EPA's Clean School Bus Program*" Report No. 24-N-0013, December 27, 2023

FROM: Joseph Goffman
Assistant Administrator
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TO: Jason Abend
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The EPA's Office of Air and Radiation (OAR) appreciates the opportunity to review and comment on the Office of Inspector General (OIG) published Management Implication report titled "*Preventing Fraud, Waste, and Abuse Within the EPA's Clean School Bus Program*." OAR's response begins with a summary of the U.S. Environmental Protection Agency's overall position and our intended corrective actions and estimated completion dates, as appropriate. We appreciate your staff's efforts in highlighting these concerns and providing recommended mitigating measures to aid the Agency in preventing fraud, waste, and abuse in the Clean School Bus (CSB) Program.

AGENCY'S OVERALL POSITION

Thank you for the opportunity to respond to the issues and recommendations in the investigative report "*Preventing Fraud, Waste, and Abuse Within the EPA's Clean School Bus Program*." The premise of this investigation is to identify potential areas for fraud, waste, and abuse in the 2022 Clean School Bus Rebate Program and the 2023 Clean School Bus Grants Program. In particular, the report focuses on verification protocols within the application process that may lead to potentially inaccurate information being submitted to the Agency. Examples include applicants self-certifying their eligibility, not providing proof of maintenance and identification of buses to be replaced, and not providing sufficient contact information.

We appreciate the OIG's efforts to help improve the Clean School Bus program and reduce the potential for fraud, waste, and abuse. OAR strongly agrees with continuing efforts to improve the protocols for accuracy, truthfulness, and verification for all applications in each Clean School Bus funding opportunity. We are committed to ensuring the application process complies with regulatory requirements intended to reduce opportunities for fraud, waste, and abuse. In the spirit of continuous improvement, the Clean School Bus Program, in partnership with the OIG, has made significant strides in addressing potential susceptibilities, including:

- Increasing oversight of third-party vendors by implementing a new form, the “School District Approval Letter for Third-Party Applicants,” to ensure that school districts are informed and consent to applications submitted on their behalf. This measure was completed in April 2023.
- The Program Guides for each of EPA’s Clean School Bus Rebate Programs contain a warning against making false representation in funding applications, including citing 18 U.S.C. § 1001, 18 U.S.C. § 3729, and 18 U.S.C. § 3801. When applicants submit their application, they also receive this warning again at the time of signature. The Clean School Bus Program will make a second mention of this warning in future program guidance materials, as well as adding it to the CSB website to provide further emphasis. It is possible OIG was unaware that the program guidance already cited 18 U.S.C. § 1001, 18 U.S.C. § 3729, and 18 U.S.C. § 3801 and that applicants received this warning again at the time of signature.
- The Clean School Bus Program continuously monitors and assesses risks by utilizing the tools such as the Program Integrity Framework Tool (PIFT) and the Grants Enterprise Risk Portal as required by EPA to enter data on risks, impacts, controls, engagements, and outreach as a mitigation strategy.
- EPA's regular grants management policies also cover oversight and management of grant funds. Each individual grant must undergo thorough eligibility reviews and detailed budget reviews by the Project Officers prior to award to determine that all costs are reasonable and necessary, and grant recipients report regularly on progress and expenditures. The Office of the Chief Financial Officer (OCFO) also conducts reviews of Clean School Bus payments and obligations.
- As recipients begin to finalize projects from the first round of funding, EPA will conduct site visits and audits. These site visits will verify that funding recipients are adhering to the program requirements, including records retention requirements. As part of the review of records onsite, EPA may review bus usage logs for replaced buses; EPA will also provide clear guidance to potential applicants and funding recipients in future funding opportunities about appropriate records to demonstrate compliance with eligibility requirements for buses to be replaced in the event of an audit.

In the report, the OIG identified a 2022 Clean School Bus Rebate recipient as an “administrative entity” indicating buses would serve a school district associated with no students, implying that recipient was ineligible. OAR disagrees with this conclusion and believes it creates a mistaken impression of the Clean School Bus Program. According to the Clean School Bus provisions in the Infrastructure

Investment and Jobs Act (42 USC 16091), both state and local governmental entities are eligible recipients if they are responsible for purchasing school buses or providing bus services to one or more public school systems. Therefore, an administrative entity that is also a state or local governmental entity responsible for providing bus services or purchasing buses for a public school district is eligible to apply. The administrative entity referenced in the report is a large school district responsible for providing bus services for multiple public-school systems, and therefore is an eligible applicant as defined by the statute. While OAR acknowledges the investigative nature of this report, we believe that if a draft had been provided for review before publication, the Clean School Bus Program could have clarified this issue earlier.

We've provided individual responses below to each of OIG's measures for improvement where applicable, including estimated timeframes for completion. For your consideration, we have also included technical comments as public-facing links to supplement.

AGENCY'S RESPONSE TO REPORT MEASURES FOR IMPROVEMENT

Our responses to the OIG's specific measures for improvement for OAR are as follows:

Measure for Improvement 1 - Require Applicants to Provide Supporting Documentation: Require that applicants provide ample supporting documentation to validate their assertions and certifications, ensuring transparency and precision in application submissions.

Response 1: OAR agrees with the spirit of this suggestion and understands the OIG's concerns; however, we believe the documentation suggested is an unnecessary measure that would create an undue burden for applicants. All applicants for Clean School Bus funding are required to attest to the truthfulness of their application at the time of submission. This attestation is also available for reference in the 2022 Clean School Bus Rebates Program Guide, Appendix C: Terms and Conditions, which states:

"By submitting an application, applicants certify that they have read and agree to comply with the requirements of this Program Guide, including the following 2022 CSB Rebates terms and conditions. This certification is a material representation that EPA will rely upon in providing funds for vehicle replacement rebates. False certifications may result in criminal prosecution under 18 U.S.C. § 1001, civil liability under the False Claims Act, 31 U.S.C. § 3729 et seq. and/or the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 et seq., suspension and/or debarment pursuant to 2 C.F.R. Part 180, and/or other criminal, civil or administrative penalties, sanctions, and remedies available to the Federal government."

To supplement these Terms and Conditions, the Clean School Bus Program has also collaborated with OIG to host three public webinars for potential applicants regarding fraud, waste, and abuse during each Clean School Bus funding opportunity, on July 13, 2022, August 9, 2023, and December 13, 2023. OAR is committed to preventing and detecting fraud, waste, and abuse, and will alert OIG to any indications of fraud by applicants. We will work closely with OIG to seek appropriate remedies, if and when the opportunity arises.

- The 2022 Clean School Bus Rebate Guide is publicly available at: <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1014WNH.PDF?Dockey=P1014WNH.PDF>.
- The 2023 Clean School Bus Rebate Guide is publicly available at: <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1018JIT.pdf>.

Measure for Improvement 2 - Establish a Validation Regimen: Establish a robust validation process that corroborates the accuracy of submitted applications. This validation could be executed through site audits or detailed cross-referencing with reliable external sources.

Response 2: OAR agrees with this suggestion. As previously planned, OAR will be conducting site visits and audits of recipients starting later this year. In earlier discussions, OIG suggested OAR require bus logs to prove that all replaced buses meet usage requirements. OAR believes requiring information in this manner would be burdensome and could potentially be falsified and OAR believes auditing recipients would be a more accurate way to review bus logs. Further, as noted above, applicants are required to attest to the truthfulness of their applications and are aware of the consequences for fraud, waste, and abuse. However, EPA will provide additional guidance to potential applicants in future funding opportunities about what materials to maintain to demonstrate bus eligibility in the event of an audit.

- **Planned Completion Date:** November 2024

Measure for Improvement 3 – Require Recipients to Maintain a Documentation Archive: Mandate that all recipients retain records for a minimum of six years after completion of the project period. This measure will facilitate potential future review by the EPA or the EPA OIG.

Response 3: OAR appreciates this suggestion from the OIG and inquired about implementing this measure for improvement. However, EPA’s Office of General Counsel (OGC) has provided guidance that EPA cannot place additional recordkeeping requirements on recipients based on the statute of limitations in fraud statutes, even if the Agency wanted to do so. Per OGC guidance, there is a general three-year maximum for records retention requirements under the applicable regulations ([2 C.F.R. 200.334](#)). EPA has a regulation in place that permits extended recordkeeping where there is an applicable statutory requirement ([2 C.F.R. 1500.7](#)). With the Clean School Bus Program, the Agency has interpreted the statutory requirement that buses must be operated for five years to permit EPA to require the five-year retention of records. The existence of criminal statutes of limitations does not provide a basis to extend that period of record retention. Moreover, if the Clean School Bus Program wanted to extend this further, there would likely be additional concerns regarding the Paperwork Reduction Act, because requiring records retention is considered a “burden” ([5 C.F.R. 1320.3](#)).

To align with the spirit of this recommendation, we have further emphasized the current five-year record retention requirement by incorporating it into the Official Selection Letter that selectees receive, in addition to continuing to include it in the Terms and Conditions of the Program Guide.

- **Planned Completion Date:** May 2024

Measure for Improvement 4 – Highlight Criminal Penalties and Require Signed Certifications: In a previous Management Implication Report issued on March 30, 2023, we observed that grantees and subrecipients may not be fully aware of key fraud prevention and enforcement measures, recommending, among other things, that *“the EPA should take stronger steps to clearly communicate the criminal, civil, and administrative consequences of fraudulent conduct throughout the life cycle of a grant.”* We [the OIG] continue to believe that emphasizing the legal consequences for the submission of fraudulent applications serves as a deterrent. With respect to the Clean School Bus Program, the EPA should add a warning ahead of the “Important Dates” section of the funding opportunity posting, highlighting that 18 U.S.C. § 1001 provides that knowingly making materially false statements or falsifying or concealing a material fact is a felony, which may result in fines or up to five years imprisonment. In addition, the EPA should note that federal agencies may take additional actions to disqualify individuals or entities that have deliberately falsified their applications. Also, at the end of the application, the EPA should require the applicant to sign a statement attesting and certifying to the veracity of the statements made as part of their application.

Response 4: OAR strongly agrees with the importance of emphasizing the legal consequences for fraudulent applications, and ensuring applicants acknowledge such penalties. To achieve this goal, the Clean School Bus Program has several measures in place that highlight criminal penalties for fraudulent applications.

First, the Clean School Bus Program has collaborated with OIG to host public webinars for potential applicants about fraud, waste, and abuse on three occasions: July 13, 2022, August 9, 2023, December 13, 2023, and will continue to do so.

Second, since the inception of the Clean School Bus Rebate Program, OAR has required all applicants to attest to the truthfulness of their rebate application before submitting. Below is an excerpt from the from the 2022 Clean School Bus Rebates application signature page:

Signature Page

The individual listed below must sign and submit this application before it will be considered for funding by the EPA. If you do not have the authority to sign this application, then notify the authorized representative so they can sign and submit the application. Note: The authorized representative must be registered as either the Government Business (and alternate), or Electronic Business (and alternate) Point of Contact in SAM.gov to access this application. By signing and submitting this application, applicants certify that:

- 1. They have read and agree to comply with the requirements and terms and conditions in the 2022 Clean School Bus (CSB) Rebates Program Guide. This certification is material representation that EPA will rely upon in providing funds for vehicle replacement rebates. False certifications may result in criminal prosecution under 18 U.S.C. § 1001, civil liability under the False Claims Act, 31 U.S.C. § 3729 et seq. and/or the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 et seq., suspension and/or debarment pursuant to 2 C.F.R. Part 180, and/or other criminal, civil or administrative penalties, sanctions, and remedies available to the Federal government.*

2. *Old buses listed to be replaced and new replacement buses meet the eligibility requirements in the 2022 CSB Rebates Program Guide and, if selected for funding, old buses will be disposed of according to the Program Guide requirements.*
3. *Replacement buses and associated charging/fueling infrastructure funded in this program will not be ordered until after official notification of selection.*
4. *They have the authority to represent the applicant organization listed on this form.*
5. *The public school system that will be served by the replacement buses for at least five years has been notified and approves of the proposed bus replacements.*
6. *The statements and information provided in this application are true and accurate to the best of their knowledge.*
7. *They will respond to EPA or its representatives if contacted to clarify information submitted in this application.*

Third, each of the Clean School Bus Rebate Program Guides highlight 18 U.S.C. § 1001 which states that knowingly making materially false statements or falsifying or concealing a material fact is a felony, which may result in fines or up to five years imprisonment, The Clean School Bus Program will continue to use this language in future program guides.

To further address this suggestion, we have added this language to the Clean School Bus Website on 1) the Online Rebates Forms webpage such that applicants and selectees see the information prior to completing any rebate form, and 2) a Program Oversight webpage that outlines oversight of the program and lists resources related to the CSB Program's work with the OIG.

- The new Clean School Bus Program Oversight webpage is publicly available at: <https://www.epa.gov/cleanschoolbus/clean-school-bus-program-oversight>
- The Clean School Bus Online Rebates Forms webpage is publicly available at: <https://www.epa.gov/cleanschoolbus/clean-school-bus-rebates-online-rebate-forms>

Measure for Improvement 5 - Require Notarized Attestations and Certifications: Make it mandatory for applicants to provide notarized attestations and certifications for each statement within their applications and ensure that the identity of applicants and contractors is easily discernable, to include a legally and financially responsible individual's name, address, social security number, date of birth, and telephone number.

Response 5: OAR acknowledges the importance of ensuring applicant identity but believes that this recommendation would be duplicative in nature and create an unnecessary burden for applicants. The Clean School Bus rebate online application currently uses the EPA Gateway service, which leverages Login.gov for identity authentication, the same as Grants.gov. Furthermore, all Clean School Bus funding recipients are required to use SAM.gov, which is the federal government's mechanism to

provide funding to applicants and validates the existence and uniqueness of an entity. This requirement mirrors the Grants.gov approach by restricting forms access to SAM.gov points of contact (POC) based on the POC email address matching up with the login.gov account email address. Once logged in to the Clean School Bus applicant dashboard, a user can only create an online form for SAM.gov entities where they are either a government business or electronic business POC. Any recommendations regarding the SAM.gov identity verification process would ultimately be the responsibility of the General Services Administration, due to their role as the administrator of the SAM.gov system.

Additionally, all applicants for Clean School Bus funding are required to attest to the truthfulness of their application at the time of submission, and are warned of that false certifications may result in criminal prosecution under 18 U.S.C. § 1001, civil liability under the False Claims Act, 31 U.S.C. § 3729 et seq. and/or the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 et seq., suspension and/or debarment pursuant to 2 C.F.R. Part 180, and/or other criminal, civil or administrative penalties, sanctions, and remedies available to the Federal government.

Individuals who submit applications are doing so on behalf of an employer (e.g., a state or local entity, or a contractor), and therefore requesting that they submit personally identifiable information as recommended above would not be appropriate since the applicant is organization they represent.

Measure for Improvement 6 - Increase Oversight of Third-Party Vendors: Strengthen supervision over third-party involvement in the application process. For example, the EPA should ensure that an entity on whose behalf an application is submitted is informed and consents to the application before accepting any applications submitted on its behalf.

Response 6: OAR agrees with this suggestion and has taken action on this point. In the 2022 Clean School Bus Rebates, the Clean School Bus Program required all third-party applicants to receive approval from school districts, as referenced in the program guidance below:

“Prior to submitting an application, eligible contractors and nonprofit school transportation associations applying for rebates must also notify and receive approval from the school district that would be served by buses purchased using rebates. These eligible contractors and nonprofits must certify this approval from the school district on the application form.”

As part of eligibility reviews, Clean School Bus Program contacted school districts listed on third-party applications to ensure their awareness and approval of the third-party application. During the eligibility review process, we learned that not all third parties had sought and received approval from the school districts. Thus, to further strengthen the requirement, a new “School District Approval Letter for Third-Party Applicants” is now compulsory for all Clean School Bus funding opportunities.

In the 2023 Clean School Bus Grants and 2023 Clean School Bus Rebates, all third-party applicants were also required to complete a form documenting that school districts are aware and approve of third-party applicants submitting applications for buses that will serve their district. We anticipate continuing this requirement in future funding opportunities.

CONTACT INFORMATION

If you have any questions regarding this response, please contact Grant Peacock, OAR Audit Liaison, at peacock.grant@epa.gov or (202) 564-6732.

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