

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Fiscal Year 2009 Annual List of Certifications and Assurances for

Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice

SUMMARY: Pursuant to 49 U.S.C. 5323(n), FTA is authorized to consolidate the certifications and assurances required by Federal law or regulations for its programs into a single document.

FTA is also required by 49 U.S.C. 5323(n) to publish a list of those certifications and assurances annually.

Appendix A of this Notice contains the comprehensive compilation of FTA's Certifications and Assurances for Federal Fiscal Year (Federal FY) 2009 applicable to the various Federal assistance programs that FTA will administer during that Federal FY. FTA's Certifications and Assurances for Federal FY 2009 reflect Federal statutory, regulatory, and programmatic changes that have now become effective.

EFFECTIVE DATE: These FTA Certifications and Assurances are effective on October 1, 2008, the first day of Federal FY 2009.

FOR FURTHER INFORMATION CONTACT: FTA staff in the appropriate FTA Regional Office or FTA Metropolitan Office listed below. For copies of other related documents, see the FTA Web site at <http://www.fta.dot.gov> or contact FTA's Office of Administration at 202-366-4022.

Region 1: Boston

States served: Connecticut, Maine,

Massachusetts, New Hampshire,

Rhode Island, and Vermont

Telephone # 617-494-2055

Region 2: New York

States served: New York, and New Jersey

Telephone # 212-668-2170

Region 3: Philadelphia

States served: Delaware, District of Columbia,

Maryland, Pennsylvania, Virginia,

and West Virginia

Telephone # 215-656-7100

Region 4: Atlanta

States served: Alabama, Florida,

Georgia, Kentucky, Mississippi,

North Carolina, Puerto Rico,

South Carolina, Tennessee,
and the U.S. Virgin Islands
Telephone # 404-865-5600

Region 5: Chicago

States served: Illinois, Indiana,
Michigan, Minnesota,
Ohio, and Wisconsin
Telephone # 312-353-2789

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana,
New Mexico, Oklahoma, and Texas
Telephone # 817-978-0550

Region 7: Kansas City

States served: Iowa, Kansas,
Missouri, and Nebraska
Telephone # 816-329-3920

Region 8: Denver

States served: Colorado, Montana,
North Dakota, South Dakota,
Utah, and Wyoming
Telephone # 720-963-3300

Region 9: San Francisco

States served: Arizona, California,
Hawaii, Nevada, Guam,
American Samoa, and
the Northern Mariana Islands
Telephone # 415-744-3133

Region 10: Seattle

States served: Alaska, Idaho,
Oregon, and Washington
Telephone # 206-220-7954

Lower Manhattan Recovery Office

Area served: Lower Manhattan
Telephone # 212-668-1770

New York Metropolitan Office

Area served: New York Metropolitan Area

Telephone # 212-668-2201

Philadelphia Metropolitan Office

Area served: Philadelphia Metropolitan Area

Telephone # 215-656-7070

Washington DC Metropolitan Office

Area served: Washington DC Metropolitan Area

Telephone # 202-219-3562 /219-3565

Chicago Metropolitan Office

Area served: Chicago Metropolitan Area

Telephone # 312-886-1616

Los Angeles Metropolitan Office

Area served: Los Angeles Metropolitan Area

Telephone # 213-202-3950

SUPPLEMENTARY INFORMATION:

1. PURPOSES.

The purposes of this Notice are to:

- Publish FTA's Federal FY 2009 Certifications and Assurances for Applicants for Federal assistance administered by FTA and the Projects for which they seek Federal assistance.
- Highlight new changes to the FTA Certifications and Assurances now in effect.
- Identify locations where these FTA Certifications and Assurances may be viewed, and
- Provide directions for submitting these FTA Certifications and Assurances.

2. BACKGROUND.

a. FTA's Responsibilities. Since Federal FY 1995, FTA has been consolidating the various certifications and assurances that may be required of its Applicants and their projects into a single document for publication in the *Federal Register*. FTA intends to continue publishing this document annually, when feasible in conjunction with its publication of the FTA annual apportionment notice, which sets forth the allocations of funds made available by the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act. Because U.S. DOT's full-year appropriations for Federal FY 2009 were not signed into law on October 1, 2008 (the first day of Federal FY 2009), and have not yet been signed into law, FTA is proceeding with publication of its Certifications and Assurances for FY 2009.

b. Applicant's Responsibilities. Irrespective of whether a project will be financed under the authority of 49 U.S.C. chapter 53, Title 23, United States Code, or another Federal statute, the Applicant must submit Federal FY 2009 Certifications and Assurances to FTA applicable to all projects for which the Applicant seeks funding during Federal FY 2009.

FTA requests that an Applicant to submit all of the twenty-four (24) categories of the Certifications and Assurances that may be needed for all projects for which the Applicant intends to or might seek Federal assistance in the Federal FY 2009. Selecting and submitting these Certifications and Assurances to FTA signifies the Applicant's intent and ability to comply with all applicable provisions thereof.

In order to assure FTA that the Applicant is authorized under State and local law to certify compliance with the FTA Certifications and Assurances it has selected, FTA requires the Applicant to obtain a current (Federal FY 2009) affirmation signed by the Applicant's attorney affirming the Applicant's legal authority to certify its compliance with the FTA Certifications and Assurances that the Applicant has selected. The Applicant's attorney must sign this affirmation during Federal FY 2009. Irrespective of whether the Applicant makes a single selection of all twenty-four (24) categories of FTA Certifications and Assurances or selects individual categories from the FTA Certifications and Assurances, the Affirmation of Applicant's Attorney from a previous Federal FY is not acceptable, unless FTA expressly determines otherwise in writing.

c. Effect of Subrecipient Participation. Absent a written determination by FTA to the contrary, the Applicant itself is ultimately responsible for compliance with the FTA

Certifications and Assurances it has selected even though the Project may be carried out in whole or in part by one or more subrecipients. Thus, if subrecipients will be participating in the Project, when the Applicant submits its FTA Certifications and Assurances, the Applicant is also signifying that it will be responsible for compliance, both of itself and of each of its subrecipients, with the provisions of the FTA Certifications and Assurances it has selected. Therefore, in providing Certifications and Assurances that necessarily involve the compliance of any prospective subrecipient, FTA strongly recommends that the Applicant take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient participating in the project, to assure the validity of the Applicant's Certifications and Assurances to FTA.

3. Significant Information about FTA's Certifications and Assurances for Federal FY 2009.

a. Legal Implications.

(1) **Binding Commitments.** Because the Applicant is required by Federal law and regulations to comply with the applicable provisions of all FTA Certifications and Assurances it submits, it is important that the Applicant be familiar with the provisions of all twenty-four (24) categories of FTA Certifications and Assurances for Federal FY 2009. The text of those Certifications and Assurances is contained in Appendix A of this Notice, and also appears at <http://www.fta.dot.gov/documents/2009-Certs-Appendix.A.pdf>, and in FTA's electronic award and management system, TEAM-Web, <http://ftateamweb.fta.dot.gov>, at the

“Cert's & Assurances” tab of the “View/Modify Recipients” page in the “Recipients” option.

Provisions of this Notice supersede conflicting statements in any FTA circular containing a previous version of FTA’s annual Certifications and Assurances. The Certifications and Assurances contained in those FTA circulars are merely examples, and are not acceptable or valid for Federal FY 2009.

An Applicant’s annual Certifications and Assurances to FTA generally remain in effect for either the duration of the Grant or Cooperative Agreement supporting the Project until the Project is closed out or for the duration of the Project or Project property when a useful life or industry standard is in effect, whichever occurs later. If, however, the Applicant provides Certifications and Assurances to FTA in a later year that differ from the Certifications and Assurances previously provided, the later Certifications and Assurances will apply to the Grant, Cooperative Agreement, Project, or Project property, except to the extent FTA permits otherwise in writing.

(2) Penalties for Noncompliance. If the Applicant makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal government reserves the right to impose on the Applicant the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, or the penalties of 49 U.S.C. 5323(1) invoking the criminal

provisions of 18 U.S.C. 1001, or other applicable Federal law to the extent the Federal government deems appropriate.

(3) FTA's Certifications and Assurances Constitute Only a Partial List of Federal Requirements. FTA cautions that the FTA Certifications and Assurances required by Federal law and regulations do not address all the Federal requirements that will apply to the Applicant and its Project. FTA's Certifications and Assurances are generally pre-award requirements, *i.e.*, those requirements of Federal law and regulations the Applicant must fulfill before FTA is legally authorized to award of Federal financial assistance to an Applicant.

(4) Other Federal Requirements. Because FTA's Certifications and Assurances do not encompass all Federal requirements that will apply to the Applicant and its Project, FTA strongly encourages the Applicant to review the Federal authorizing legislation, regulations, and directives pertaining to the program or programs for which the Applicant seeks Federal assistance. The FTA Master Agreement for Federal FY 2009 at <http://www.fta.dot.gov/documents/15-Master.pdf> identifies a substantial number of those Federal laws, regulations, and directives that apply to Applicants and their various projects.

b. Importance of FTA's Certifications and Assurances for Federal FY 2009. Following publication of these Certifications and Assurances, FTA may not award Federal financial assistance through a Federal Grant or Cooperative Agreement until the Applicant submits all of the FTA Certifications and Assurances for Federal FY 2009 pertaining to itself and its project as required by Federal laws and regulations. The Applicant's Certifications and Assurances for Federal FY 2009 will be applicable to all projects for which it seeks Federal

assistance during Federal FY 2009 and through the next Federal FY until FTA issues its annual Certifications and Assurances for Federal FY 2010.

c. Federal FY 2009 Changes. Apart from minor editorial revisions, significant changes to FTA’s Certifications and Assurances include the following:

(1) In the Introductory paragraphs preceding the text of FTA’s Certifications and Assurances:

(a) The FTA Web site for the FTA Master Agreement for Federal FY 2009 is identified as <http://www.fta.dot.gov/documents/15-Master.pdf>.

(b) A new provision has been added expressly reminding the Applicant that when it applies for FTA assistance on behalf of a consortium, joint venture, partnership, or team, each member of that consortium, joint venture, partnership, or team is responsible for compliance with the certifications and assurances the Applicant selects pertaining to any FTA assisted project.

(2) Category 09. The Charter Service Agreement has been amended for consistency with the new FTA regulations, “Charter Service,” published at 73 FR 2325 *et seq.*, January 14, 2008, and amended at 73 FR 44927 *et seq.*, August 1, 2008, and 73 FR 46554 *et seq.*, August 11, 2008.

(3) Categories 13 and 21. Subsection 201(i) of the SAFETEA-LU Technical Corrections Act, 2008, Pub. L. 110-244, June 6, 2008, changed the name of the “Alternative Transportation in Parks and Public Lands Program” to the “Paul S. Sarbanes Transit in Parks Program.” References to that program have been amended to reflect the new name change.

d. When to Submit. All Applicants for FTA formula program or capital program assistance, and current FTA Grantees with an active project financed with FTA formula program or capital program assistance, are expected to provide their FTA Certifications and Assurances for Federal FY 2009 within 90 days from the date of this publication or as soon as feasible after their first application for Federal assistance authorized or made available for Federal FY 2009, whichever is earlier. In addition, FTA encourages Applicants seeking Federal assistance for other projects to submit their FTA Certifications and Assurances to FTA as soon as possible to expedite awards of FTA assistance.

4. WAYS TO SUBMIT FTA'S CERTIFICATIONS AND ASSURANCES.

As further explained, FTA will accept an Applicant's Certifications and Assurances submitted either in TEAM-Web at <http://ftateamweb.fta.dot.gov>, or on paper containing the text set forth on the Signature Page(s) of Appendix A of this Notice. In order of preference, FTA permits:

a. ELECTRONIC SUBMISSION IN TEAM-WEB. An Applicant registered in TEAM-Web must submit its FTA Certifications and Assurances, as well as its applications for Federal assistance in TEAM-Web. FTA prefers that other Applicants for Federal assistance submit their FTA Certifications and Assurances through TEAM-Web.

The TEAM-Web "Recipients" option at the "Cert's & Assurances" tab of the "View/Modify Recipients" page contains fields for selecting among the twenty-four (24) categories of FTA Certifications and Assurances to be submitted. There is also a field for

entering a single selection covering all twenty-four (24) categories of FTA Certifications and Assurances.

Within the “Cert’s & Assurances” tab is a field for the Applicant’s authorized representative to enter his or her personal identification number (PIN), which constitutes the Applicant’s electronic signature for the FTA Certifications and Assurances selected. In addition, there is a field for the Applicant’s attorney to enter his or her PIN, affirming the Applicant’s legal authority to make and comply with the FTA Certifications and Assurances the Applicant has selected. The Applicant’s authorized representative may enter his or her PIN in lieu of the Attorney’s PIN, provided that the Applicant has a current Affirmation of Applicant’s Attorney as set forth in Appendix A of this Notice, written and signed by the attorney in Federal FY 2009.

For more information, the Applicant may contact the appropriate FTA Regional Office or Metropolitan Office listed in this Notice or the TEAM-Web Helpdesk.

b. PAPER SUBMISSION. Only if the Applicant is unable to submit its FTA Certifications and Assurances in TEAM-Web may the Applicant submit its FTA Certifications and Assurances on paper.

If an Applicant is unable to submit its FTA Certifications and Assurances electronically, it must mark the categories of FTA Certifications and Assurances it is making on the Signature Page(s) in Appendix A of this Notice and submit them to FTA. The Applicant may signify compliance with all categories by placing a single mark in the appropriate space or select the categories applicable to itself and its projects.

The Applicant must enter its signature on the Signature Page(s) and must provide

an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity to make and comply with the Certifications and Assurances the Applicant has selected. The Applicant may enter its signature in lieu of its Attorney's signature in the Affirmation of Applicant's Attorney section of the Signature Page(s), provided that the Applicant has on file the Affirmation of Applicant's Attorney as set forth in Appendix A of this Notice, written and signed by the attorney and dated in Federal FY 2009.

For more information, the Applicant may contact the appropriate FTA Regional Office or Metropolitan Office listed in this Notice.

AUTHORITY. 49 U.S.C. chapter 53; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), as amended by the SAFETEA-LU Technical Corrections Act, 2008, Pub. L. 110-244, June 6, 2008; Title 23, United States Code (Highways); other Federal laws administered by FTA; U.S. DOT and FTA regulations at Title 49, Code of Federal Regulations; and FTA Circulars.

Issued in Washington, DC, this _____ day of _____, 2008.

James S. Simpson
Administrator