

Parts 1177-1179—Securities, Security Interests and Financial Structures

PART 1177—RECORDATION OF DOCUMENTS

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AUTHORITY: 49 U.S.C. 1321, 11301.

SOURCE: 46 FR 54946, Nov. 5, 1981, unless otherwise noted. Redesignated at 47 FR 49592, Nov. 1, 1982.

§ 1177.1 Definitions and classifications of documents.

(a) A “primary document” is a mortgage (excluding those under the Ship Mortgage Act of 1920, as amended—46 U.S.C. *et seq.*), lease, equipment trust agreement, conditional sales agreement, assignment of a lease or leases which have not previously been filed, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of one or more vessels operated subject to Surface Transportation Board jurisdiction, railroad cars, locomotives, or other rolling stock for a use related to interstate commerce.

(b) A “secondary document” is any assignment of rights or interest, supplement, or amendment to any primary or other secondary document. These include releases, discharges, or satisfactions, either total or partial.

§ 1177.2 To whom documents should be submitted for recordation.

Documents to be recorded shall be submitted in person, via the Board’s website, or by mail addressed to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001. All documents submitted by mail should clearly state “Documents for Recordation” on the envelope.

[74 FR 52910, Oct. 15, 2009]

§ 1177.3 Requirements for submission.

In order to be accepted for recordation, an original of any primary or secondary document must:

(a) Be in writing and executed by the parties to the document, and acknowledged or verified either in a form:

- (1) Authorized by the law of the state, territory, district or possession where executed for the acknowledgment or verification of deeds of land; or
- (2) Substantially as follows:

INDIVIDUAL FORM OF ACKNOWLEDGEMENT

I, (name of signor), certify that I am the person described in and who executed the foregoing instrument and that I acknowledge that I executed the same as my free act and deed. I further declare (certify, verify or state) under penalty of perjury (“under the laws of the United States of America” if executed outside the United States) that the foregoing is true and correct. Executed on (date).

Signature.

or;

CORPORATE FORM OF ACKNOWLEDGEMENT

I, (name of signor), certify that I am (title of office) of (name of corporation), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that the instrument was signed and sealed on behalf of the corporation by authority of its Board of Directors, and that I acknowledge that the execution of the foregoing instrument was the free act and deed of the corporation. I further declare (certify, verify or state) under penalty of perjury (“under the laws of the United States of America” if executed outside the United States of America) that the foregoing is true and correct. Executed on (date).

Signature.

or;

- (3) Substantially as follows:

INDIVIDUAL FORM OF ACKNOWLEDGEMENT

State of _____

County of _____, ss:

On this ____ day of _____, 19__, before me, personally appeared (name of signor), to me known to be the person described in and who executed the foregoing instrument and (s)he acknowledged that (s)he executed the same as his/her free act and deed. (SEAL)

Signature of Notary Public

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My Commission expires _____

Corporate Form of Acknowledgement

State of _____
County of _____, ss: _____

On this _____ day of _____, 19____ be-
fore me personally appeared (name of si-
gnor), to me personally known, who being by
me duly sworn, says that (s)he is the (title of
office) of (name of corporation), that the seal
affixed to the foregoing instrument is the
corporate seal of said corporation, that said
instrument was signed and sealed on behalf
of said corporation by authority of its Board
of Directors, and (s)he acknowledged that
the execution of the foregoing instrument
was the free act and deed of said corporation.
(SEAL)

Signature of Notary Public
My Commission expires _____

(b) Be accompanied by at least one
fully executed and acknowledged or
verified counterpart, or if no counter-
part has been executed and acknowl-
edged by the parties, one certified true
copy. A certified true copy of an origi-
nal document is a complete and iden-
tical copy in all respects to the origi-
nal attached with:

(1) A certificate executed by a notary
public, stating that he or she has com-
pared the copy with the original and
has found the copy to be complete and
identical in all respects to the original
document; or

(2) A certification of the filer stating
that he or she has compared the copy
with the original and found the copy to
be complete and identical in all re-
spects to the original document and
that he or she declares under penalty
of perjury ("under the laws of the
United States of America" if executed
outside the United States) that the
foregoing is true and correct; or

(3) There may be attached to the
copy, affidavits, wherein the affidavit
states that he or she has compared the
copy with the original document and
found the copy to be complete and
identical in all respects to the original
documents.

(c) Be accompanied by the fee set
forth in 49 CFR 1002.2(f)(83). However,
assignments which are executed prior
to the filing of the primary document
and which are submitted concurrently
will be treated along with the primary
document as one for fee purposes and
will be assessed only one fee. A lease

and agreement (Philadelphia Plan)
shall be similarly treated.

(d) Be accompanied by a letter of
transmittal requesting the recording of
the document. For a sample of a letter,
see §1177.4. Documents submitted con-
currently under the same recordation
number may be included in a single
transmittal letter. Otherwise, each
document must have its own letter of
transmittal. The letter should be ad-
dressed to the Chief, Section of Admin-
istration, Office of Proceedings and in-
clude the following information:

(1) *Type of Agreement.* (equipment
trust, mortgage, assignment, etc.).

(2) *Whether document is a primary doc-
ument or a secondary document* (see
§1177.1). If the document is a secondary
document, it must contain the recorda-
tion number of the primary document
to which it is connected, unless it is
being filed concurrently with a pri-
mary document to which a recordation
number has not yet been assigned.

(3) *A request for cross-indexing.* If the
document is an assignment, parties
may request the listing of the assign-
ment in the index under the name(s) of
parties with continuing interest not in-
volved in this particular assignment.

(4) *A description of the equipment cov-
ered in the document—(i) For railway
equipment—*The type of equipment;
whether locomotives, cars, or other
rolling stock; with any A.A.R. mechan-
ical designation; the number of each
type; any identifying marks such as
the name or initials of the lessee,
mortgagee, or vendee, and the road or
serial number, or if more than one for
each type of equipment, the first and
last inclusive numbers.

(ii) *For water carrier equipment—*
Whether tow boats, barges or other
vessels; type of equipment; description
as contained in the United States
Coast Guard certificate of enrollment;
number of each type of equipment; and
any identifying marks such as the
name or initial of the lessee, mort-
gagee, or vendee.

(5) Parties to the agreement, as fol-
lows:

(i) Conditional sale-vendor, pur-
chaser, guarantor.

(ii) Mortgage—mortgagor, mort-
gagee, guarantor.

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(iii) Equipment Trust—vendor, trustee, lessor, lessee, guarantor of lease.

(iv) Lease—lessee, lessor, guarantor.

(v) Bailment—bailor, bailee, guarantor.

(vi) Other transactions—principal debtor, trustee, guarantor, and other parties.

(6) Parties to whom original document should be returned.

(7) The amount of the enclosed fee.

(8) A short summary (1 or 2 sentences) of the type of document and a very brief description of the equipment and identifying numbers. This summary will be entered into the index as an aid to researching the encumbrances to title. (For a sample of a summary, see §1177.4).

(9) The letter must be signed by an executive officer of one of the parties having knowledge of the matters described in the letter, or their attorney or representative in fact.

NOTE: If the document is a mortgage or deed of trust which contains a “hereafter acquired” or similar clause, the following statement may be included in the letter of transmittal in lieu of the equipment description above:

“Included in the property covered by the aforesaid mortgage (or deed of trust) are (here identify generally the equipment such as “barges, tow boats, or other vessels, railroad cars, locomotives and other rolling stock”) intended for use related to interstate commerce, or interests therein, owned by (name of mortgagor) at the date of said mortgage or thereafter acquired by it or its successors as owners of the water carriers or the lines of railway covered by the mortgage.”

When such a mortgage or deed of trust is filed, it is not necessary to refile the document whenever additional rolling stock is acquired in order to perfect the lien of the document upon the addition of vessels or rolling stock.

(Authority: 5 U.S.C. 553, 31 U.S.C. 9701; 49 U.S.C. 10321)

[46 FR 54946, Nov. 5, 1981. Redesignated at 47 FR 49592, Nov. 1, 1982 and amended at 52 FR 46484, Dec. 8, 1987; 56 FR 10520, Mar. 13, 1991; 56 FR 12423, Mar. 25, 1991; 64 FR 53268, Oct. 1, 1999; 74 FR 52910, Oct. 15, 2009]

§ 1177.4 Sample forms.

(a) Sample short summary for the Index. (1) *Primary documents*. [Type of document] between [name and address

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of lessor, mortgagor, bailor, etc.] and [name and address of lessee, mortgagee, bailee, etc.] dated [date], and covering [briefly list amount and types of equipment].

(2) *Secondary documents*. (i) If an assignment—Assignment between [name and address of assignor] and [name and address of assignee] dated [date of assignment] and covering [list amount and types of equipment], and connected to [type of document primary document is] with Recordation No. [recordation number of the primary document if known, at time recorded].

(ii) Other secondary documents—[Type of document] to [type of primary document] with Recordation No. [Recordation number of the primary document], dated [date of amendment, supplement, release, etc.] and covering [list amount and types of equipment].

(b) *Sample Letter of Transmittal*.

[Chief, Section of Administration, Office of Proceedings' Name] Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC.

Dear Section Chief: I have enclosed an original and one copy/counterpart of the document(s) described below, to be recorded pursuant to Section 11301 of Title 49 of the U.S. Code.

This document is a [mortgage, lease, equipment trust, supplement, etc.], a [primary or secondary] document, dated [date].

(If a secondary document)—The primary document to which this is connected is recorded under Recordation No. ____.

(If an assignment)—We request that this assignment be cross-indexed.

The names and addresses of the parties to the documents are as follows:

Vendor, Lessor, Mortgagor, etc: [name and address]

Vendee, Lessee, Mortgagee, etc: [name and address].

A description of the equipment covered by the document follows:

[Type of equipment, amount of each, AAR designation if any, identifying marks, road or serial numbers, etc., as outlined in 1177.3(d)(4).]

A fee of _____ is enclosed. Please return the original and any extra copies not needed by the Board for recordation to [party to whom documents should be returned].

A short summary of the document to appear in the index follows: [a short summary as described in 1177.4(a).].

Very truly yours,

Surface Transportation Board

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[signature of an executive officer of one of the parties, their attorney, or representative in fact.]

[46 FR 54946, Nov. 5, 1981, as amended at 64 FR 53268, Oct. 1, 1999; 74 FR 52910, Oct. 15, 2009]

§ 1177.5 Administrative procedure.

(a) At the time of filing of a document with the Board for recordation, a consecutive number will be stamped upon the original document and upon the copies or the counterparts, with the date and hour of the filing. A notation acknowledging that the document has been filed pursuant to 49 U.S.C. 11303 will be made. The original document, along with the notation, will be returned to the party named in the transmittal letter and a copy or counterpart will be retained by the Board. For a secondary document, the number assigned will be the recordation number of the primary document plus the next available letter suffix.

(b) The Board will maintain an index for public use as required by 49 U.S.C. 11303(b). There will be an index of parties to documents recorded at the Board in alphabetical order by the party's name. If requested by the letter of transmittal, this index will also be amended to reflect an assignment under the name of the party other than the assignor or assignee to the document. There will also be an index of documents by number, which will list secondary documents referenced to the primary ones. The indexes will contain the pertinent information furnished by the parties in the transmittal letter.

(c) The Board cannot judge the validity of documents, nor judge the status of encumbrances to property as reflected by documents recorded at the Board. The public is welcome to research the records or use an agent or attorney to do so, provided that Board rules concerning handling of the documents are respected.

(d) The public should note that filing documents with the Board is discretionary and encumbrances exist which are not on file with the Board.

PARTS 1178–1179 [RESERVED]

Parts 1180–1189—Combinations and Ownership

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACK-AGE RIGHTS, AND LEASE PROCEDURES

Subpart A—General Acquisition Procedures

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- 1180.0 Scope and purpose.
- 1180.1 General policy statement for merger or control of at least two Class I railroads.
- 1180.2 Types of transactions.
- 1180.3 Definitions.
- 1180.4 Procedures.
- 1180.5 [Reserved]
- 1180.6 Supporting information.
- 1180.7 Market analyses.
- 1180.8 Operational data.
- 1180.9 Financial information.
- 1180.10 Service assurance plans.
- 1180.11 Transnational and other informational requirements.

Subpart B—Transfer or Operation of Lines of Railroads in Reorganization

1180.20 Procedures.

AUTHORITY: 5 U.S.C. 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 1321, 10502, 11323–11325.

Subpart A—General Acquisition Procedures

SOURCE: 47 FR 9844, Mar. 8, 1982, unless otherwise noted. Redesignated at 47 FR 49592, Nov. 1, 1982.

§ 1180.0 Scope and purpose.

(a) *General.* The regulations in this subpart set out the information to be filed and the procedures to be followed in control, merger, acquisition, lease, trackage rights, and any other consolidation transaction involving more than one railroad that is initiated under 49 U.S.C. 11323. Section 1180.2 separates these transactions into four types: *Major*, *significant*, *minor*, and *exempt*. The informational requirements for these types of transactions differ. Before an application is filed, the designation of type of transaction may be clarified or certain of the information required may be waived upon petition to the Board. This procedure is explained in §1180.4. The required contents of an application are set out in