§ 191.10  Certificate of delivery.

(a) Purpose; when required. A party who: imports and pays duty on imported merchandise; receives imported merchandise; in the case of 19 U.S.C. 1313(j)(2), receives imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise; or receives an article manufactured or produced under 19 U.S.C. 1313(a) and/or (b); may transfer such merchandise or manufactured article to another party. The party shall record this transfer by preparing and issuing in favor of such other party a certificate of delivery, certified by the importer or other party through whose possession the merchandise or manufactured article passed (see paragraph (c) of this section). A certificate of delivery issued with respect to the delivered merchandise or article:

(1) Documents the transfer of that merchandise or article;

(2) Identifies such merchandise or article as being that to which a potential right to drawback exists; and

(3) Assigns such right to the transferee (see §191.82 of this part).

(b) Required information. The certificate of delivery must include the following information:

(1) The party to whom the merchandise or articles are delivered;

(2) Date of delivery;

(3) Import entry number;

(4) Quantity delivered;

(5) Total duty paid on, or attributable to, the delivered merchandise;

(6) Date certificate was issued;

(7) Date of importation;

(8) Port where import entry filed;

(9) Person from whom received;

(10) Description of the merchandise delivered;

(11) The HTSUS number with a minimum of 6 digits, for the designated imported merchandise (such HTSUS number shall be from the entry summary and other entry documentation for the merchandise unless the issuer of the certificate of delivery received the merchandise under another certificate of delivery, or a certificate of manufacture and delivery, in which case such HTSUS number shall be from the other certificate); and

(12) If the merchandise transferred is substituted for the designated imported merchandise under 19 U.S.C. 1313(j)(2), the HTSUS or Schedule B commodity number, with a minimum of 6 digits.

(c) Intermediate transfer—(1) Imported merchandise. If the imported merchandise was not delivered directly from the importer to the manufacturer, or
from the importer to the exporter (or
destroyer), each intermediate transfer
of the imported merchandise shall be
documented by means of a certificate
of delivery issued in favor of the re-
ceiving party, and certified by the per-
son through whose possession the mer-
chandise passed.

(2) Manufactured article. If the article
manufactured or produced under 19
U.S.C. 1313 (a) or (b) is not delivered di-
rectly from the manufacturer to the
exporter (or destroyer), each transfer
after the transfer from the manufac-
turer (which shall be documented by
means of a certificate of manufacture
and delivery) shall be documented by
means of a certificate of delivery,
issued in favor of the receiving party,
and certified by the person through
whose possession the article passed.

(d) Retention period; supporting
records. Records supporting the infor-
mation required on the certificate(s) of
delivery, as listed in paragraph (b) of
this section, must be retained by the
issuing party for 3 years from the date
of payment of the related claim or
longer period if required by law (see 19
U.S.C. 1508(c)(3)).

(e) Retention; submission to Customs.
The certificate of delivery shall be re-
tained by the party to whom the mer-
chandise or article covered by the cer-
tificate was delivered. Customs may re-
quest the certificate from the claimant
for the drawback claim based upon the
certificate (see §§ 191.51, 191.52). If the
certificate is requested by Customs,
but is not provided by the claimant,
the part of the drawback claim de-
pendent on that certificate will be denied.

(f) Warehouse transfer and with-
drawals. The person in whose name
merchandise is withdrawn from a bond-
ed warehouse shall be considered the
importer for drawback purposes. No
certificate of delivery is required cov-
ering prior transfers of merchandise
while in a bonded warehouse.

§ 191.11 Tradeoff.

(a) Exchanged merchandise. To comply
with §§ 191.21 and 191.22 of this part, the
use of domestic merchandise taken in
exchange for imported merchandise of
the same kind and quality (as defined in
§ 191.2(x)(1) of this part for purposes
of 19 U.S.C. 1313(b)) shall be treated as
use of the imported merchandise if no
certificate of delivery is issued cov-
ering the transfer of the imported mer-
chandise. This provision shall be
known as tradeoff and is authorized by
§ 313(k) of the Act, as amended (19
U.S.C. 1313(k)).

(b) Requirements. Tradeoff must occur
between two separate legal entities but
it is not necessary that the entity ex-
changing the imported merchandise be
the importer thereof. In addition,
tradeoff must consist of an exchange of
same kind and quality merchandise
and nothing else (the exchange may be
of different quantities of same kind and
quality merchandise, but may not in-
volve the payment or receipt of cash
payments or other than same kind and
quality merchandise). If the quantities
of merchandise exchanged are dif-
ferent, the lesser quantity shall be the
quantity available for drawback. If the
quantity of domestic merchandise re-
ceived is greater than the quantity of
imported merchandise exchanged, the
merchandise identified for drawback
shall be the portion of the domestic
merchandise equal to the quantity of
imported merchandise which is first re-
ceived.

(c) Application. Each would-be user of
tradeoff, except those operating under
an approved specific manufacturing
drawback ruling covering substitution,
must apply to the Entry Process and
Duty Refunds Branch, Regulations and
Rulings, Office of International Trade,
CBP Headquarters, for a determination
of whether the imported and domestic
merchandise are of the same kind and
quality. For those users manufacturing
under substitution drawback, this re-
quest should be contained in the appli-
cation for a specific manufacturing
drawback ruling (§ 191.8). For those
users manufacturing under a general
manufacturing drawback ruling
(§ 191.7), the request should be made by
a separate letter.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR
15288, Mar. 31, 1998]

§ 191.12 Claim filed under incorrect
provision.

A drawback claim filed pursuant to
to any provision of § 313 of the Act, as
amended (19 U.S.C. 1313) may be
deeemed filed pursuant to any other