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 Issued in Burlington, MA, on May 28, 1996
 David J. Hurley,
 Manager, Air Traffic Division, New England Region.
 [FR Doc. 96-13424 Filed 5-28-96; 8:45 am]
 BILLING CODE 4910-B-M

**OFFICE OF THE UNITED STATES
 TRADE REPRESENTATIVE**

15 CFR Part 2011

Implementation of Tariff-Rate Quota for Imports of Sugar

AGENCY: Office of the United States Trade Representative (USTR).
ACTION: Final rule.

SUMMARY: This rule makes final the interim final rule published on October 4, 1990 in the Federal Register governing certificates of quota eligibility for imports of sugar, specialty sugar, and allocations for "Other Specified Countries and Areas", with a change responding to comments received on that interim final rule and with conforming changes to reflect the entry into force of the Agreement Establishing the World Trade Organization (WTO).

EFFECTIVE DATE: May 29, 1996.

ADDRESSES: Office of the United States Trade Representative, Office of Agricultural Affairs, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Thomas Perkins, Senior Economist for Agricultural Affairs, Room 421, Office of the United States Trade Representative, Washington, DC 20506; telephone: (202) 395-6127.

SUPPLEMENTARY INFORMATION: As a result of the Uruguay Round Agreements, approved by the Congress in section 101 of the Uruguay Round Agreements Act (URAA) (Pub. L. 103-465), the United States has replaced the previous tariff-rate quota (TRQ) for imports of certain sugars, syrups, and molasses with a new tariff-rate quota provided in Schedule XX—United States of America annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994 (GATT 1994). Pursuant to section 111 of the URAA, the President proclaimed a number of changes to the Harmonized Tariff Schedule of the United States (HTS) to implement the new sugar TRQ (President Proclamation No. 6763 of December 23, 1994). The changes include, among other things, changes in the HTS item numbers for imports of sugar, the deletion of notes to the HTS,

and the proclaiming of new notes to the HTS.

A number of conforming changes need to be made to the sugar regulations issued by the United States Trade Representative (USTR) to reflect these changes to the HTS. This rule makes those conforming changes, as well as some technical and clerical amendments. Those conforming changes include correcting the references to the HTS to reflect the new HTS item numbers and removing subpart C as unnecessary in light of the fact that the allocations under the new TRQ will be announced annually.

In addition, when the United States Trade Representative promulgated the current rule on October 4, 1990 (55 FR 40648), it did so as an interim rule and invited public comments. This rule includes an amendment to the definition of specialty sugar in response to the comments received.

Summary of Issues Raised by Public Comments

Four public comments were received.

Specialty Sugars

One commenter requested that certain edible sugar decorations be added to the list of products eligible for potential treatment as "specialty sugars." Pursuant to this public comment, this final rule adds to that list sugar decorations. Two informal comments that were received after the December 4, 1990, deadline requested that various other specified sugar products be added to the list of products eligible for treatment as "specialty sugars." The Office of the United States Trade Representative, responding to these written comments, has added to the list: golden granulated sugar, muscovado, molasses sugar and sugar cubes. The United States Trade Representative has determined that these specific items are appropriate because they represent specialty sugars within the normal commerce of the United States.

The United States Trade Representative also has determined that it is appropriate to provide in the definition for other forms of sugar determined by the United States Trade Representative to be specialty sugar products within the normal commerce of the United States.

Another commenter requested that rock candy be removed from the list of products which are eligible for potential treatment as specialty sugar. The commenter's suggestion was not adopted primarily because rock candy appears to qualify as specialty sugar.

Reallocation of Quota Shortfalls

Finally, a commenter suggested that the rule contain a provision that if a country were not fully utilizing its allocation under the tariff-rate quota, then that country's allocation would be automatically reallocated to other countries. The commenter's suggestion was not adopted in the final rule because a general provision to that effect is unnecessary given alternative means by which unused allocations may be reallocated on a case-by-case basis when appropriate. Moreover, the HTS authorizes the USTR, in consultation with the Secretaries of State and Agriculture, to modify or suspend a country's allocation for the remainder of a quota year whenever he or she determines that a country will not be filling such allocation and he or she finds that such action is appropriate to carry out the rights or obligations of the United States under any international agreement to which the United States is a party or is appropriate to promote the economic interests of the United States.

Review

This rule has been determined to be a "significant regulatory action" under Executive Order 12866.

Pursuant to the Unfunded Mandates Reform Act of 1995, USTR has assessed the effects of this rulemaking action on state, local, and tribal governments, and the private sector. This action does not compel the expenditure of \$100 million or more by any state, local, or tribal government, or by anyone in the private sector, and therefore a statement under section 202 of the Act is not required.

Pursuant to the Paperwork Reduction Act of 1980, the Office of Management and Budget has approved the information collection requirements imposed by this rule under Office of Management and Budget control number 0551-0014. Comments on any burden resulting from the information collection requirements of this regulation may be forwarded to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. These programs are not subject to the provisions of Executive Order 12372 which required intergovernmental consultation with State and local officials.

No regulatory flexibility analysis is required for this rule since neither 5 U.S.C. 553 nor any other provision of law requires publication of a general notice of proposed rulemaking with respect to this rule. However, the United States Trade Representative has also determined that the rule will not have

a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 2011

Certificates of quota eligibility, imports, specialty sugars, sugar.

Accordingly, the interim rule amending 15 CFR part 2011 which published at 55 FR 40648 (October 4, 1990) is adopted as a final rule with the following changes:

PART 2011—ALLOCATION OF TARIFF-RATE QUOTA ON IMPORTED SUGARS, SYRUPS AND MOLLASSES

1. The authority citation for part 2011 is revised to read as follows:

Authority: 19 U.S.C. 3601, Presidential Proclamation No. 6763, Additional U.S. note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States.

Section 2011.101 is revised to read as follows:

§ 2011.101 General.

This subpart sets forth the terms and conditions under which certificates of quota eligibility will be issued to foreign countries that have been allocated a share of the U.S. sugar tariff-rate quota. Except as otherwise provided in this subpart, sugar imported from a foreign country may not be entered unless such sugar is accompanied by a certificate of quota eligibility. This subpart applies only to the ability to enter sugar at the in-quota tariff rates of the quota (subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS). Nothing in this subpart shall affect the ability to enter articles at the over-quota tariff rate (subheadings 1701.11.50, 1701.12.50, 1701.91.30, 1701.99.50, 1702.90.20, 2106.90.46).

3. Section 2011.102 is amended by redesignating paragraphs (g) through (m) as paragraph (h) through (n) respectively, adding a new paragraph (g), and revising paragraphs (a), (c), (e), (f), (j), (k), (l), and (n) (as so redesignated) to read as follows:

§ 2011.102 Definitions.

* * * * *

(a) "Additional U.S. Note 5" means additional U.S. Note 5 to chapter 17 of the HTS, including any amendments thereto.

* * * * *

(c) "Certificate of quota eligibility" or "certificate" means a certificate issued by the Secretary to a foreign country that, when duly executed and issued by the certifying authority of such foreign country, authorizes the entry into the

United States of sugar produced in such country.

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(e) "Enter" or "Entry" means to enter or withdraw from warehouse, or the entry or withdrawal from warehouse, for consumption in the customs territory of the United States.

(f) "Foreign country" means, for any quota period, any foreign country or area with which an agreement or arrangement described in section 2011.106 is in effect for that quota period and to which the United States Trade Representative has allocated a particular quantity of the quota.

(g) "HTS" means the Harmonized Tariff Schedule of the United States.

* * * * *

(j) "Quota" means the tariff-rate quota on imports of sugar provided in additional U.S. Note 5.

(k) "Quota period" means the period October 1 of a calendar year through September 30 of the following calendar year.

(l) "Raw value" has the meaning provided in additional U.S. Note 5.

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(n) "Sugar" means sugars, syrups, and molasses described in subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS, but does not include for any foreign country for any quota period specialty sugars as defined in subpart B of this part if a quantity of the quota for that quota period has been reserved for specialty sugars and an amount of that quota quantity has been allocated to that country.

4. Section 2011.103 is amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 2011.103 Entry into the United States.

(a) General. Except as otherwise provided in §§ 2011.104, 2011.109, and 2011.110, no sugar that is the product of a foreign country may be permitted entry unless at the time of entry the person entering such sugar presents to the appropriate customs official a valid and properly executed certificate of quota eligibility for such sugar.

(b) * * *

(3) This paragraph (b) shall not affect the manner in which the amount of sugar (raw value) entered is determined for purposes of administering the quota.

5. Section 2011.104(a) is revised to read as follows:

§ 2011.104 Waiver.

(a) General. The Secretary may waive, with respect to individual shipments, any or all of the requirements of this subpart if he or she determines that a

waiver will not impair the proper operation of the sugar quota system, that it will not have the effect of modifying the allocation of sugar made pursuant to the provisions of subdivision (b) of additional U.S. Note 5, and that such waiver is justified by unusual, unavoidable, or otherwise appropriate circumstances. Such circumstances include, but are not limited to, loss or destruction of the certificate, unavoidable delays in transmittal of the certificate to the port of entry, and clerical errors in the execution or issuance of the certificate.

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6. Section 2011.105(b) is revised to read as follows:

§ 2011.105 Form and applicability of certificate.

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(b) Other limitations. The Secretary may attach such other terms, limitations, or conditions to individual certificates of quota eligibility as he or she determines are appropriate to carry out the purposes of this subpart, provided that such other terms, limitations, or conditions will not have the effect of modifying the allocation of sugar made pursuant to the provisions of subdivision (b) of additional U.S. Note 5. Such terms, limitations, or conditions may include, but are not limited to, maximum quantities per certificate and a specified period of time during which the certificate shall be valid. In no event shall the maximum quantity per certificate exceed 10,000 short tons.

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7. Section 2011.107(b) introductory text is revised to read as follows:

§ 2011.107 Issuance of certificates to foreign countries.

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(b) Adjustments. The Secretary may adjust the amount of certificates issued to a certifying authority for any quota period, provided that such adjustment will not have the effect of modifying the allocation of sugar made pursuant to the provisions of subdivision (b) of additional U.S. Note 5 to reflect:

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8. Section 2011.109(a) is revised to read as follows:

§ 2011.109 Suspension or revocation of individual certificates.

(a) Suspension or revocation. The Secretary may suspend, revoke, modify or add further limitations to any certificate if the Secretary determines that such action or actions is necessary to ensure the effective operation of the import quota system for sugar and that

such suspension, revocation, modification or addition of further limitations will not have the effect of modifying the allocation of sugar made pursuant to the provisions of subdivision (b) of additional U.S. Note 5.

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9. Section 2011.201 is revised to read as follows:

§ 2011.201 General.

This subpart sets forth the terms and conditions under which certificates will be issued to U.S. importers for importing specialty sugars from specialty sugar source countries. Specialty sugars imported from specialty sugar source countries may not be entered unless accompanied by a specialty sugar certificate. This subpart applies only to the ability to enter specialty sugar at the in-quota tariff rates of the quota (subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS). Nothing in this subpart shall affect the ability to enter articles at the over-quota tariff rate (subheadings 1701.11.50, 1701.12.50, 1701.91.30, 1701.99.50, 1702.90.20, 2106.90.46).

10. Section 2011.202 is amended by removing paragraph (g), redesignating paragraphs (h) through (j) as paragraphs (g) through (i), respectively, revising paragraphs (b), (c), (f), (g), and (i), as redesignated, and adding a new paragraph (j) as follows:

§ 2011.202 Definitions.

* * * * *

(b) "Certificate" means a specialty sugar certificate issued by the Certifying Authority permitting the entry of specialty sugar.

(c) "Certifying Authority" means the Team Leader, Import Quota Programs, Foreign Agricultural Service, U.S. Department of Agriculture, or his or her designee.

* * * * *

(f) "Person" means any individual, partnership, corporation, association, estate, trust, or other legal entity, and, wherever applicable, any unit, instrumentality, or agency, of a government, domestic or foreign.

(g) "Quota" means the tariff-rate quota on imports of sugar provided in additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States.

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(i) "Specialty sugar" means brown slab sugar (also known as slab sugar candy), pearl sugar (also known as perl sugar, perle sugar, and nibs sugar), vanilla sugar, rock candy, demerara

sugar, dragees for cooking and baking, fondant (a creamy blend of sugar and glucose), ti light sugar (99.2% sugar with the residual comprised of the artificial sweeteners aspartame and acesulfame K), caster sugar, golden syrup, ferdiana granella grossa, golden granulated sugar, muscovado, molasses sugar, sugar decorations, sugar cubes, and other sugars, as determined by the United States Trade Representative, that would be considered specialty sugar products within the normal commerce of the United States, all of which in addition:

(1) are sugars, syrups, or molasses described in subheading 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, or 2106.90.44 of the Harmonized Tariff Schedule of the United States,

(2) are the product of a specialty sugar source country, and

* * * * *

(j) "Specialty sugar source country" means any country or area to which the United States Trade Representative has allocated an amount of the quantity reserved for the importation of specialty sugars under additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States.

11. Section 2011.203 is amended by revising paragraphs (a) and (c) to read as follows:

§ 2011.203 Issuance of specialty sugar certificates.

(a) Specialty sugars imported into the United States from specialty sugar source countries may be entered only if such specialty sugars are accompanied by a certificate issued by the Certifying Authority.

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(c) Subject to quota availability, an unlimited number of complying shipments may enter under a given certificate and a given certificate may cover more than one type of specialty sugar. Issuance of a certificate does not guarantee the entry of any specific shipment of specialty sugar, but only permits entry of such sugar if the amount allocated to the specialty sugar source country is not already filled.

12. Section 2011.204 is revised to read as follows:

§ 2011.204 Entry of specialty sugars.

An importer or the importer's agent must present a certificate to the appropriate customs official at the date of entry of specialty sugars. Entry of specialty sugars shall be allowed only in conformity with the description of sugars and other conditions, if any, stated in the certificate.

13. Section 2011.206 is amended by revising paragraph (c) to read as follows:

§ 2011.206 Suspension or revocation of individual certificates.

* * * * *

(c) The determination of the Certifying Authority under paragraph (a) that the importer has failed to comply with the requirements of this subpart may be appealed to the Director, Import Policy and Trade Analysis Division, Foreign Agricultural Service (FAS), U.S. Department of Agriculture, Washington, D.C. 20250, within 30 days from the date of suspension or revocation. The request for reconsideration shall be presented in writing and shall specifically state the reason or reasons why such determination should not stand. The Director shall provide such person with an opportunity for an informal hearing on such matter. A further appeal may be made to the Administrator, FAS, U.S. Department of Agriculture, Washington, D.C. 20250, within five working days of receipt of the notification of the Director's decision. The Certifying Authority may take action under paragraph (b) during the pendency of any appeal.

14. Section 2011.207(a) is revised to read as follows:

§ 2011.207 Suspension of the certificate system.

(a) Suspension. The U.S. Trade Representative may suspend the provisions of this subpart whenever he or she determines that the quota is no longer in force or that this subpart is no longer necessary to implement the quota. Notice of such suspension and the effective date thereof shall be published in the Federal Register.

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15. Subpart B of part 2011 is amended by adding § 2011.208 to read as follows:

§ 2011.208 Paperwork Reduction Act assigned number.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the regulations in this subpart in accordance with 44 U.S.C. Chapter 25 and OMB control number 0551-0014 has been assigned with corresponding clearance effective through April 30, 1997.

Subpart C—[Removed]

16. Subpart C of part 2011 is removed.

Signed at Washington, D.C. on May 15, 1996.

Charlene Barshefsky

Acting United States Trade Representative

[FR Doc. 96-12807 Filed 5-28-96; 8:45 am]

BILLING CODE 3190-01-M