V. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires Agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.''

Section 403A of the FD&C Act (21 U.S.C. 343–1) is an express preemption provision. Section 403A(a) of the FD&C Act provides that ''no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce—(1) any requirement for a food which is the subject of a standard of identity established under section 401 that is not identical to such standard of identity or that is not identical to the requirement of section 403(g).''

The express preemption provision of section 403A(a) of the FD&C Act does not preempt any State or local requirement respecting a statement in the labeling of food that provides for a warning concerning the safety of the food or component of the food (section 6(c)(2) of the NLEA, Public Law 101–535, 104 Stat. 2353, 2364 (1990)).

This proposed rule, if finalized, would impose requirements that fall within the scope of section 403A(a) of the FD&C Act.

VI. Environmental Impact

We have determined under 21 CFR 25.32(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Paperwork Reduction Act

We conclude that the provisions of this proposed rule are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

VIII. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IX. Reference

The following source has been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at *http://www.regulations.gov.*

1. Memorandum to the file, from Cristina McLaughlin, FDA, November 26, 2012.

List of Subjects in 21 CFR Part 150

Food grades and standards, Fruits.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Associate Commissioner for Policy and Planning, it is proposed that 21 CFR part 150 be amended as follows:

PART 150—FRUIT BUTTERS, JELLIES, PRESERVES, AND RELATED PRODUCTS

1. The authority citation for 21 CFR part 150 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

§§ 150.141 and 150.161 [Removed]

2. Remove §§ 150.141 and 150.161.

Dated: November 27, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–29181 Filed 12–3–12; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2012–F–1100]

DSM Nutritional Products; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA) is announcing that DSM Nutritional Products has filed a petition proposing that the food additive regulations be amended to provide for the safe use of benzoic acid as a feed acidifier in swine feed.

DATES: Submit either electronic or written comments on the petitioner's request for categorical exclusion from preparing an environmental assessment or environmental impact statement by January 3, 2013.

ADDRESSES: Submit electronic comments to: *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Isabel W. Pocurull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6853, email: *isabel.pocurull@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2273) has been filed by DSM Nutritional Products, 45 Waterview Blvd., Parsippany, NJ 07054. The petition proposes to amend Title 21 of the Code of Federal Regulations (CFR) in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of benzoic acid as a feed acidifier in swine feed.

The petitioner has requested a categorical exclusion from preparing an environmental assessment or environmental impact statement under 21 CFR 25.32(r). Interested persons may submit a single copy of either electronic or written comments regarding this request for categorical exclusion to the Division of Dockets Management (see **DATES** and **ADDRESSES**). Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: November 29, 2012.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2012–29202 Filed 12–3–12; 8:45 am]

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