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New EU MRL for Fosetyl Takes Effect

Report Categories:

Fresh Fruit

Tree Nuts

Trade Policy Monitoring

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Report Highlights:

On January 1, 2016, the EU maximum residue limit (MRL) for fosetyl-al for several fruits and vegetables reverted back to the detection level set at 2 mg/kg. A yet-to-be published regulation will keep the fosetyl-al MRL for almonds, cashew nuts, hazelnuts, macadamias, pistachios, and walnuts at 75 mg/kg until March 1, 2019. However, imports of berries and other commodities that use fosetyl or other phosphonate crop inputs will likely be threatened by the return to the default MRL.

General Information:

In late 2013, EU changed the designation of phosphonates as both a fertilizer and pesticide to only a pesticide. However, a Maximum Residue Limit (MRL) for phosphonate-containing products was not established and any residues were included under the existing MRLs for Fosetyl-al. [Commission Regulation \(EU\) 396/2005](#) defines the fosetyl MRL as the sum of fosetyl, phosphonic acid and their salts expressed as fosetyl.

Fosetyl-al is not authorized for use on fruit-bearing trees in the United States but a number of fertilizer products commonly used in the United States can result in phosphonate residues and are exempt in the United States from residue limits because of their low toxicity. By expanding the scope of the EU MRL, the Commission now attributes the use of these fertilizers as treatment with fosetyl-al. However, the change in designation was taken as an enforcement action rather than a change in the EU's MRL legislation. As a result, no formal World Trade Organization (WTO) notification was issued to inform third country stakeholders of the EU's measure. Third countries had no opportunity to comment on possible unintended economic impacts, the limited timeframe for compliance, or the need to submit data on the potential sources of additional residues which may stem from legal use in third countries – all of which now have to be accounted for within the fosetyl-al MRL. The EU set a temporary MRL of 75 ppm for tree nuts and several other crops in 2014 until December 31, 2015, and considered that this approach provided food business operators sufficient time to adjust.

The temporary increase for the fosetyl MRL ([Commission Regulation \(EU\) No 991/2014](#)) applied to almonds, cashew nuts, hazelnuts, macadamia nuts, pistachios, walnuts; apricots, cherries, peaches, plums and other stone fruit; blackberries, dewberries, raspberries and other cane fruit, blueberries, currants, gooseberries, figs, kumquats, persimmon, passion fruit, papaya, pomegranate, garlic, beans, peas and asparagus. Products likely to be the most affected are produced in many countries around the world (see Table 1).

In September 2015, the U.S. tree nut industry submitted an information package to the European Commission that included a report on its efforts to address phosphonate residues and an anticipated timeline for submission of an import tolerance application to replace the temporary MRL for tree nuts. On the basis of this information, along with the support of Member States, the Commission put forward the proposal to extend the temporary MRL for tree nuts until the end of 2019. This legislation is expected to be published at the beginning of 2016 and to be retroactively applicable from 1 January 2016. The Commission's proposal to extend the temporary MRL for these products received broad support by the Member States in the Standing Committee on Plants, Animals, Food and Feed on November 9-10, 2015.

According to the EU's [proposal](#), the EU limited the extension of the temporary MRL increase to tree nuts only, as other concerned industries had either not provided any additional data or were not able to demonstrate the same level of progress on field trials needed for the submission of a dossier for a fosetyl-al import tolerance. The proposal states that: "trading partners of the Union informed the Commission of ongoing efforts and timetables to generate supervised residue trial data with a view to submitting an application concerning MRLs for products belonging to the group of tree nuts."

A number of other U.S. industries could also be affected when the temporary fosetyl-al MRL reverts to the default level. Close to \$100 million of U.S. fresh and dried fruit and berry exports (including \$70 million of dried prunes alone) will be subject to the default MRL as of January 1, 2016 (See Table 1). However, U.S. exports are often only a small part of the EU's overall imports of a given commodity, suggesting that other countries may face even greater challenges because of the EU's reversion to the default MRL for these commodities. Table 1 shows not only the values of the U.S. exports to the European Union but also the value and country of origin of the EU's most importer exporter for each commodity in 2014.

Table 1: Top U.S. Berry and Fruit Exports to the EU Subject to MRL Change, including Top Exporter to the EU for Each Commodity, 2014

HS Code	Commodity Description	U.S. Exports to the EU (USD), 2014	U.S. Rank among Exporters to EU for Commodity	Top Exporting Country to EU for Commodity 2014	Value of Exports to EU by Top Exporting Country (USD)
080410	Dates, Fresh Or Dried	3,994,856	8	Tunisia	93,818,250
080420	Figs, Fresh Or Dried	77,261	11	Turkey	168,912,848
080910	Apricots, Fresh	6,415	14	South Africa	12,379,280
080929	Cherries, Fresh, Nesoi	13,051,802	3	Turkey	108,588,139
080940	Plums, Prune Plums And Sloes, Fresh	20,607	14	South Africa	93,773,364
081020	Raspberries/Blackberries / Mulberries, Fresh	4,984,912	6	Mexico	45,979,814
081030	Currants, Black, White Or Red & Gooseberries Fresh	40,346	3	Chile	1,935,530
081040	Cranberries, Blueberries, Etc, Fresh	4,447,237	7	Chile	136,306,009
081070	Persimmons, Fresh	78,989	6	Israel	3,628,645
081320	Prunes, Dried	70,214,153	2	Chile	95,645,724
	Trade Total	96,916,578			760,967,603

Source of Data: Eurostat

