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EU Establishes Trade-Facilitative MRL for Fosetyl-Al on Tree Nuts

Report Categories:

SP2 - Prevent or Resolve Barriers to Trade that Hinder
U.S. Food and Agricultural Exports
Tree Nuts

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Report Highlights:

On June 6, 2018 the EU published permanent Maximum Residue Levels (MRLs) for fosetyl-al (the sum of fosetyl, phosphonic acid and their salts, expressed as fosetyl) on tree nuts. The new MRLs are set at 500 ppm and will enter into force on June 26, 2018. Without this definitive MRL, the temporary level of 75 ppm that has been in place for the most commonly traded tree nuts would revert back to 2 ppm on March 1, 2019.

General Information:

[Commission Regulation \(EU\) 2018/832](#) of June 5, 2018 amends Annexes II, III and V of Regulation (EC) No 396/2005 of the European Parliament and of the Council with regards to maximum residue levels (MRL) for cyantraniliprole, cymoxanil, deltamethrin, difenoconazole, fenamidone, flubendiamide, fluopicolide, folpet, fosetyl, mandestrobin, mepiquat, metazachlor, propamocarb, propargite, pyrimethanil, sulfoxaflor and trifloxystrobin in or on certain products. The regulation goes into force on June 26, 2018 and sets the MRL for fosetyl-al (sum of fosetyl, phosphonic acid and their salts, expressed as fosetyl) as follows:

	Fosetyl MRL (in ppm)
Almonds	500
Brazil nuts	500
Cashew nuts	500
Chestnuts	500
Coconuts	2 (Limit of analytical determination)
Hazelnuts/cobnuts	500
Macadamias	500
Pecans	500
Pine nut kernels	500
Pistachios	500
Walnuts	500
Other Tree Nuts	2 (Limit of analytical determination)

The levels set in the regulation are based on the EFSA [Reasoned opinion on the modification of the existing maximum residue levels for fosetyl-Al in tree nuts, pome fruit, peach and potato](#). (EFSA Journal 2018;16(2):5161 [36 pp.]). The Almond Board of California submitted the MRL application on behalf of the California tree nut industry (almonds, pistachios and walnuts).

Until the entry into force of these new levels later this month, a temporary MRL of 75 ppm set by [Commission Regulation \(EU\) 2016/75](#) applies to almonds, cashews, hazelnuts/cobnuts, macadamias, pistachios and walnuts. The Almond Board's application resulted in a final MRL of 500 ppm for a broader group of tree nuts including not only all above mentioned nuts but also brazil nuts, chestnuts, pecans, and pine nut kernels. The publication of this regulation brings a definitive solution to an issue that hit the California tree nut industry almost five years ago.

Background

In late 2013, the 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 back in 2013, the Commission now attributes the use of these fertilizers as treatment with fosetyl-al.

The change in designation was taken as an enforcement action by the Member States rather than through a change in the EU's MRL legislation. As a result, the European Commission did not submit a formal World Trade Organization (WTO) notification to inform third country stakeholders of the EU's measure. Thus, 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 had to be accounted for within the fosetyl-al MRL.

Initially, the EU set a temporary MRL of 75 ppm for tree nuts and several other crops in 2014 expiring on December 31, 2015, and considered that this approach provided food business operators sufficient time to adjust. This temporary increase for the fosetyl-al 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.

In September 2015, the U.S. tree nut industry submitted an information package to the European Commission, which included an anticipated timeline for submission of an import tolerance application to replace the temporary MRL for tree nuts. To avoid trade disruptions during the MRL setting process, [Commission Regulation \(EU\) 2016/75](#) further extended the 75 ppm temporary MRL for almonds, cashews, hazelnuts/cobnuts, macadamias, pistachios and walnuts nuts from January 1, 2016 until March 1, 2019. The EU MRL setting process was finalized prior to this deadline: the new 500 ppm MRL for nuts was published in [Commission Regulation \(EU\) 2018/832](#) and will enter into force on June 26, 2018.