



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 29 2011

OFFICE OF
AIR AND RADIATION

The Honorable Gerry Ritz
Agriculture and Agri-Food Canada
1341 Baseline Road
Ottawa, Ontario K1A 0C5

Dear Mr. Ritz:

Thank you for your submission of the Government of Canada's petition under the US Renewable Fuel Standard (RFS) program. The petition requested that the U.S. Environmental Protection Agency approve a renewable biomass aggregate compliance approach for planted crops and crop residue grown in Canada authorized under the renewable fuel standard regulations petition process for aggregate compliance approach for foreign countries (PART 80, Regulation of Fuels and Fuel Additives §80.1457). We published notice of this petition in the Federal Register on March 15, 2011 and solicited comments from the public on all aspects of the petition. We received comments largely in favor of approving the aggregate compliance approach for Canada. After thorough consideration of the petition, all supporting documentation provided and the public comments received, the EPA has determined that the criteria for approval of the petition have been satisfied and, effective immediately, approves the use of an aggregate compliance approach to renewable biomass verification for planted crops and crop residue grown in Canada.

Enclosed is a copy of our decision document. In the document we provide a discussion of our analysis of the petition and comments as well as a description of the conditions under which the aggregate compliance approach will apply in Canada.

Again, thank you for the petition. We look forward to future collaboration with Canada on renewable fuels issues. Please let my staff know if you have any questions on this document.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gina McCarthy", is written over a faint, larger signature.

Gina McCarthy
Assistant Administrator

Enclosure

Determination on Government of Canada Petition for an Aggregate Compliance Approach for Canadian Planted Crops and Crop Residues

I. Summary

On December 9, 2010, EPA finalized new regulatory provisions as part of the Renewable Fuel Standard (RFS2) program regulations to establish procedures for petitions to request EPA authorization of an aggregate compliance approach for renewable biomass verification for crops and crop residues grown in foreign countries. EPA subsequently received a petition from the Government of Canada requesting that EPA approve an aggregate compliance approach for planted crops and crop residue from Canada. EPA published notice of this petition in the Federal Register on March 15, 2011 (76 FR 14007, March 15, 2011) and solicited comments from the public on all aspects of the petition. The petition and all comments received are available at Docket ID No. EPA-HQ-OAR-2011-0199, found at www.regulations.gov. EPA has determined that the criteria for approval of the petition have been satisfied and, effective immediately, approves the use of an aggregate compliance approach to renewable biomass verification for planted crops and crop residue grown in Canada.

This document contains information summarizing the petition requirements and process, the petition submitted by the Government of Canada, the factors that EPA considers in evaluating a petition, EPA's analysis of the Canadian petition, EPA's response to public comments received, and EPA's final determination that an aggregate compliance approach will provide reasonable assurance that planted crops and crop residue from Canada meet the definition of renewable biomass and will continue to meet the definition of renewable biomass, based on credible, reliable and verifiable data.

II. Factors that EPA considers in evaluating petitions

EPA regulations at 40 CFR 80.1457(a) describe several factors that EPA will consider as part of its evaluation of any petition submitted. These factors include:

- a. Whether there has been a reasonable identification of the “2007 baseline area of land,” defined as the total amount of cropland, pastureland, and land that is equivalent to U.S. Conservation Reserve Program land in the country in question that was actively managed or fallow and nonforested on December 19, 2007, taking into account the definitions of terms such as “cropland,” “pastureland,” “planted crop,” and “crop residue” included in the final RFS2 regulations.
- b. Whether information on the total amount of cropland, pastureland, and land that is equivalent to U.S. Conservation Reserve Program land in the country in question for years preceding and following calendar year 2007 shows that the 2007 baseline area of land is not likely to be exceeded in the future.
- c. Whether economic considerations, legal constraints, historical land use and agricultural practices and other factors show that it is likely that producers of planted crops and crop residue will continue to use agricultural land within the 2007 baseline area of land identified into the future, as opposed to clearing and cultivating land not included in the 2007 baseline area of land.
- d. Whether there is a reliable method to evaluate, on an annual basis, if the 2007 baseline area of land is being or has been exceeded.
- e. Whether a credible and reliable entity has been identified to conduct data gathering and analysis, including annual identification of the aggregate amount of cropland,

pastureland, and land that is equivalent to U.S. Conservation Reserve Program land, that is needed for an annual EPA determination under 40 CFR 80.1454(g)(1) of whether the 2007 baseline area of land has been exceeded, and whether the data, analyses, and methodologies are publicly available.

In addition, EPA will consider whether all petition submission requirements specified in 40 CFR 80.1457(b) have been satisfied.

III. Petition Requirements

The regulations at 40 CFR 80.1457(b) require certain information to be submitted to EPA as part of a petition to request EPA authorization of an aggregate compliance approach for renewable biomass verification for planted crops and crop residue grown in foreign countries. These requirements are reproduced below:

(b) Any petition and all supporting materials submitted under . . . this section must be submitted both in English and its original language (if other than English), and must include all of the following or an explanation of why it is not needed for EPA to consider the petition:

- (1) Maps or electronic data identifying the boundaries of the land for which the petitioner seeks approval of an aggregate compliance approach.

- (2) The total amount of land that is cropland, pastureland, or land equivalent to U.S. Conservation Reserve Program land within the geographic boundaries specified in paragraph (b)(1) of this section that was cleared or cultivated prior to December 19, 2007 and that was actively managed or fallow and nonforested on that date.
- (3) Land use data that demonstrates that the land identified in paragraph (b)(1) of this section is cropland, pastureland or land equivalent to U.S. Conservation Reserve Program land that was cleared or cultivated prior to December 19, 2007, and that was actively managed or fallow and nonforested on that date, which may include any of the following:
- i. Satellite imagery or data.
 - ii. Aerial photography.
 - iii. Census data.
 - iv. Agricultural survey data.
 - v. Agricultural economic modeling data.
- (4) Historical land use data for the land within the geographic boundaries specified in paragraph (b)(1) of this section to the current year, which may include any of the following:
- i. Satellite imagery or data.
 - ii. Aerial photography.
 - iii. Census data.
 - iv. Agricultural surveys.

v. Agricultural economic modeling data.

- (5) A description of any applicable laws, agricultural practices, economic considerations, or other relevant factors that had or may have an effect on the use of agricultural land within the geographic boundaries specified in paragraph (b)(1) of this section, including information regarding the efficacy and enforcement of relevant laws and regulations.
- (6) A plan describing how the petitioner will identify a credible and reliable entity who will, on a continuing basis, conduct data gathering, analysis, and submittal to assist EPA in making an annual determination of whether the criteria specified in paragraph (a) of this section (i.e., that an aggregate compliance approach provides reasonable assurance that planted crops and crop residue meet the definition of renewable biomass and will continue to do so) remains satisfied.
- (7) A letter, signed by a national government representative at the ministerial level or equivalent, confirming that the petition and all supporting data have been reviewed and verified by the ministry (or ministries) or department(s) of the national government with primary expertise in agricultural land use patterns, practices, data, and statistics, that the data support a finding that planted crops and crop residue from the specified country meet the definition of renewable biomass and will continue to meet the definition of renewable biomass, and that the responsible national government ministry (or ministries) or department(s) will review and verify the data submitted on an annual basis to facilitate EPA's annual

evaluation of the 2007 baseline area of land specified in §80.1454(g)(1) for the country in question.

(8) Any additional information the Administrator may require.

IV. Compliance by the Government of Canada with the petition requirements

A. Identification of boundaries.

In Section 5.0 of their petition, the Government of Canada defines the boundaries of the land for which they seek approval of an aggregate compliance approach, noting that their petition and supporting analysis applies for the whole of Canada. They note that the geographical regions that produce crop and crop residues are concentrated in the southern part of the country, and, as required, have provided maps of Canada that identify the agricultural land within Canada in 2007 (see Appendix 1, Figure 1). EPA finds that the Government of Canada has satisfied the petition submission requirement at 40 CFR 80.1457(b)(1).

B. Calculation of 2007 baseline acreage

The Government of Canada has identified the total amount of land that is cropland, pastureland or land equivalent to U.S. CRP land that is within Canada and that was cleared or cultivated prior to December 19, 2007 and was actively managed or fallow and nonforested on that date. In Appendix 1, Table 2, the Government of Canada cross-referenced the land use categories they used in determining their baseline acreage of land with those categories used in defining “existing agricultural land” for purposes of RFS2, to ensure that their calculations are

consistent with the RFS2 regulations. The Government of Canada has calculated that the baseline amount of agricultural land in Canada that it believes is consistent with the RFS2 definition of "existing agricultural land" as 124 million acres. EPA finds that the Government of Canada has satisfied the petition submission requirement at 40 CFR 80.1457(b)(2).

C. Land use data supporting calculation of baseline acreage.

The Government of Canada utilized several types of land use data to demonstrate that the land included in their proposed 124 million acre baseline is cropland, pastureland or land equivalent to U.S. Conservation Reserve Program land that was cleared or cultivated prior to December 19, 2007, and was actively managed or fallow and nonforested on that date (and is therefore RFS2 qualifying land). To identify the amount of qualifying cropland, the petition refers to data collected through Statistics Canada's annual crop survey for all annual, perennial and horticultural crops (minus Christmas tree, sod and nursery crops, which are taken from the Censuses of Agriculture). To define the amount of pastureland, the petition cites to data from the 2006 Census of Agriculture on tame or seeded pasture, which is the Canada Census of Agriculture equivalent to the US Census of Agriculture category of cropland used only for pasture or grazing (a subsection of pastureland). Finally, to estimate the amount of land equivalent to U.S. Conservation Reserve Program land, the petitioner used data collected through Statistics Canada's Farm Environmental Management Survey (FEMS) in 2006. This survey collects data on seasonal wetlands, which are equivalent to US farmable wetlands, and riparian buffer zones, field shelterbelts, and grassed waterways, which are lands used by farmers for conservation purposes, similar to those lands comprising U.S. CRP lands. EPA finds that the

Government of Canada has satisfied the petition submission requirement at 40 CFR 80.1457(b)(3).

D. Historical data

The Government of Canada has provided annual agricultural land use trends for Canada since 1995 using Statistics Canada's annual surveys and the Censuses of Agriculture from 1996, 2001 and 2006. The data show that crop and pastureland use in Canada has been generally stable since 1991, with a slight negative trend. Table 3 in Appendix 1 of the petition shows that total crop and pastureland in Canada was 114.6 million acres in 1995, 113.4 million acres in 2007 and finally 112.7 million acres in 2010. Additionally, the amount of land in conservation practices is fairly stable at 9.8 million acres. EPA finds that the Government of Canada has satisfied the petition submission requirement at 40 CFR 80.1457(b)(4).

E. Laws, practices, economic considerations and other factors that may have an effect on use of agricultural lands.

Canada identifies a number of laws, practices, considerations and other factors in support of their petition. First, the petition cites that EPA's RFS2 modeling as showing little to no harvested crop area changes in Canada as a result of RFS2 and little contribution of biofuels made in Canada to the RFS2 program. Second, Canada's Regulatory Impact Analysis for its own biofuels mandate, which requires an average renewable fuel content of five percent in gasoline and two percent in diesel and heating oil,¹ reveals no significant changes in agricultural land use to support the mandate. Since Canada's federal renewable fuel requirements are

¹ <http://www.ecoaction.gc.ca/ECOENERGY-ECOENERGIE/renewablefuels-carburantsrenouvelables-eng.cfm#a1>

expected to have negligible impact on crop prices, Canada's RIA anticipates that there will be little impact on crop intensification at the national level and that changes in cropping activities are expected to take place within the existing crop land base.² Third, the petition describes a long term trend in agricultural land use in Canada that involves decreasing acres of land left fallow in the summer in favor of continuous cropping. This more efficient use of existing land allows increased in crop production without conversion of non-agricultural land. The Government of Canada notes that, as in the U.S., increasing crop yields and other technological advances such as genetically engineered crops have also diminished the need for farmers to increase the amount of agricultural land in use. Additionally, the petition states that, due to weather, geographic and geological factors such as short growing seasons, there is virtually no incentive to convert non-agricultural and forest lands to agricultural land.

Finally, the petition and supporting materials submitted by the Government of Canada describe the national and provincial land use policies that influence land use and would or could restrict expansion of agricultural land. The Government of Canada notes that over 41 percent of all land in Canada is federal Crown land governed by the federal government, 48 percent is provincial Crown land governed by the provincial government, and only 1.1 percent is privately owned (see page 2 of the Government of Canada's submission entitled "Supplemental Information on Canada's Aggregate Compliance Approach Petition stating that the majority of the land base in Canada is subject to governmental control.)

The Government of Canada states that much of the land base in the northern part of the country is undesirable for crop production because of geographic conditions such as cold

² <http://www.gazette.gc.ca/rp-pr/p1/2010/2010-04-10/html/reg1-eng.html>

climate, scarce water resources and poor soil conditions. Furthermore, the majority of these lands are restricted from agricultural use by the federal government under laws such as the Territorial Lands Act, R.S.C. 1985 and the Yukon Act, S.C. 2002. The Government of Canada argues that the limited amount of land in the north that is available for agricultural purposes is currently under production for local, non-renewable fuel purposes. Furthermore, in the other provinces in which most agricultural land resides, provincial laws such as Manitoba's Crown Lands Act and Saskatchewan's Provincial Lands Act govern the management and use of provincial Crown land, limiting uses based on various criteria, including, in some cases, environmental and habitat concerns.

Additionally, the Government of Canada states that Canada has strong national and provincial policies against deforestation, and that the amount of forestland in Canada has not significantly changed since 1990. Canada's has recently adopted a forest policy, A Vision for Canada's Forests: 2008 and Beyond, that includes climate change considerations. Canada is also an active participant in numerous international forestry initiatives and a signatory on several legally binding international frameworks that affect forest policy in Canada. Canada also has national forest policies that regulate forest resources on public lands, and each province has its own forest policies that include monitoring and compliance regimes such as timber permits, quotas and significant penalties for violators. Canada has also implemented on the national level many sustainable development and conservation policies into its land management regime, including the establishment of protected areas, a national park system, endangered species protections, grassland protection, and soil conservation. Provincial governments have also implemented similar protections that govern public lands and provide economic incentives for

private lands to be donated for conservation purposes, prohibiting those lands to be converted for agricultural purposes.

EPA finds that the Government of Canada has satisfied the petition submission requirement at 40 CFR 80.1457(b)(5).

F. Plan for entity to assist in annual data collection.

In its petition, the Government of Canada identifies the Agricultural Division of Statistics Canada, in collaboration with Agriculture and Agri-Food Canada, as the entity that will conduct annual data compilation and analysis to determine whether the baseline level of agricultural land has been exceeded. The petition states that Statistics Canada will provide EPA with preliminary data, analysis of the data and a report each October in time for EPA's November determination. EPA finds that the Government of Canada has satisfied the petition submission requirement at 40 CFR 80.1457(b)(6).

G. Letter from national government representative.

The Government of Canada has submitted a letter from the Minister of Agriculture and Agri-food confirming that the petition and all supporting data have been reviewed and verified by experts in the organization, and stating that the data support a finding that planted crops and crop residue from Canada meet the definition of renewable biomass and will continue to do so. Additionally, the petition includes a certificate from Statistics Canada stating that all supporting data, analyses and justifications provided in the petition have been reviewed and verified by the relevant subject matter experts and senior officials in the Agriculture Division of Statistics Canada. These letters confirm that these entities will also review and verify the data submitted

by Canada on an annual basis to facilitate EPA's annual evaluation of the 2007 baseline. EPA finds that the Government of Canada has satisfied the petition submission requirement at 40 CFR 80.1457(b)(7).

V. Analysis and discussion

As described in Section II, in determining whether to grant a petition for the application of the aggregate compliance approach to a foreign country, EPA will consider several factors specified in 40 CFR 80.1457.

EPA believes that while the Government of Canada has appropriately calculated the total amount of existing agricultural land in 2007 Canada to be 123.2 million acres (see Section 5.8 of the petition). This is the total amount of "cropland," "pastureland," (as these terms are defined in the RFS2 regulations) and land equivalent to U.S. CRP land in Canada that was actively managed or fallow and nonforested on December 19, 2007. EPA believes that Canada appropriately took into account the RFS2 regulatory definitions of the terms "cropland," "pastureland," "planted crop," and "crop residue" in identifying which Canadian land types from Canadian databases to include in their 2007 baseline amount of land. Canada has provided, in Tables 1 and 2 in Appendix 1 in their petition, a table comparing each land type and data sources used in setting the U.S. 2007 baseline amount of agricultural land with those used for purposes of defining the Canadian baseline amount of agricultural land. However, EPA believes that in setting the 2007 baseline amount of agricultural land eligible for RFS2, the amount of agricultural land should be rounded down to 123 million acres rather than up to 124 million, as

proposed in the petition. We believe this is proper rounding technique and is comparable to the methodology used in setting the 2007 U.S. agricultural land baseline for the aggregate compliance approach.

To calculate the amount of existing cropland and pastureland in 2007, the Government of Canada relied on the Census of Agriculture, which collects agricultural data every five years. The Census data is the leading source of agricultural information in Canada and is thoroughly analyzed by Statistics Canada, the country's national statistics agency. The Census methodology and data are all publicly available on Statistics Canada's website. Additionally, the Government of Canada supplemented the Census of Agriculture with Statistics Canada's Farm Update Surveys which are conducted several times a year estimate the area of land actually seeded each year. The methodology for and results of these surveys are also available to the public on Statistics Canada's website. Using these data sources, the Government of Canada determined that the total cropland area in Canada in 2007 was 99.0 million acres, and that the total pastureland was 14.4 million acres in 2007.

Since Canada does not have a federal program comparable to the U.S. Conservation Reserve Program (CRP), in order to calculate the amount of land equivalent to U.S. CRP land, the Government of Canada used data on agricultural land under conservation practices through the Farm Environmental Management Survey (FEMS), which is a survey conducted every five years to collect information on wetlands, riparian buffers, field shelterbelts/windbreaks and grasses waterways. The FEMS questionnaires and results are publicly available on the Statistics Canada website. In order to ensure that the FEMS data used was equivalent to the U.S. CRP land data used, the Government of Canada excluded the data on permanent wetlands since they

were comparable to those lands in the U.S. Wetlands Reserve Program, which was excluded from the U.S. 2007 amount of CRP land. Using the FEMS date, the Government of Canada determined that the amount of agricultural lands under conservation practice in 2007 was 9.8 million acres.

EPA believes that Canada has done a thorough assessment of the land types and amounts, and that the land categories identified and quantified by Canada in their petition are equivalent to those used by the U.S. in setting the 2007 baseline amount of agricultural land in the U.S. Furthermore, EPA believes that the data used, including the Canadian Census of Agriculture, annual crop surveys, and FEMS, are credible and reliable since they are conducted by Statistics Canada, Canada's national statistics agency with primary expertise in collection, analysis and dissemination of data and statistics on agricultural land use patterns and practices in Canada. The data quality is thoroughly checked by Statistics Canada as well as provincial agricultural statistics departments and can be publicly viewed and verified on Statistics Canada's website.

EPA believes that the Canadian petition provides ample information demonstrating that the total amount of cropland, pastureland, and CRP equivalent land in Canada in calendar year 2007 is not likely to be exceeded in the future. The historical data provided in the petition shows that the amount of crop and pastureland in Canada has been generally stable with a slight negative trend since 1991. Considering the other factors contemplated in the petition, it is reasonable to believe that the market forces maintaining the stability in the amount of Canadian agricultural land will continue to contribute to that stability into the future. We believe that the

determination by the Government of Canada that the historical trends indicate that the amount of agricultural land in Canada is not likely to increase in the future has merit.

Furthermore, the petition provides an analysis of economic considerations, legal constraints, and agricultural practices, and other factors that show that it is likely that producers of planted crops and crop residue will continue to use agricultural land within the 2007 baseline area of land identified into the future, as opposed to clearing and cultivating land not included in the 2007 baseline area of land. EPA finds the Government of Canada's references to the more efficient use of land due to increasing crop yields and growing use of genetically engineered crops to be persuasive to support their argument that new lands are unlikely to be cleared because farmers are increasingly able to grow larger amounts of crops on existing agricultural land. Furthermore, EPA agrees that the evidence of increasing use of crop rotation and continuous cropping of existing cropland provided in the data (shown in the decrease in summer fallow area while overall agricultural land remains steady) supports the conclusion that the amount of Canadian agricultural land will likely remain steady in future years. Additionally, the petition references studies conducted by the US and Canadian governments in the context of analyzing both the U.S. and Canadian renewable fuels mandates showing that these laws are not likely to incentivize the clearing of new land to comply with the mandates. We recognize that while the RFS2 mandates will in part be met by feedstock grown in Canada, continued trends in increasing yields as anticipated in the US and the demand for feedstock relative to the amount of land already in crop production in Canada suggest fulfilling the RFS2 mandates will not drive significant changes in the amount of agricultural land in Canada. Finally, EPA agrees with Canada's assessment of the restrictive effect of factors such as climate, weather, and land use

policies on growing crops in Canada on lands that are not already captured in the 2007 baseline area of land. Taken together, we believe that this information relevant to the factors specified in 40 CFR 1457(a)(1)-(3) weigh in favor of approval of the Canadian petition.

The Government of Canada has also identified a reliable method to evaluate, on an annual basis, if the 2007 baseline area of land is being or has been exceeded. The petition states that the Agricultural Division of Statistics Canada, in collaboration with Agriculture and Agri-Food Canada, will be the entity that will conduct annual data compilation and analysis to provide EPA with data, analysis of the data and a report each October in time for EPA's November determination of whether the Canadian baseline acreage has been exceeded. The petition states that the Government of Canada will use a combination of annual crop surveys for field crops, summer fallow land, hay and forage, and greenhouse, sod and nurseries. They will add to the total acreage garnered from the annual surveys estimates of land in tame and seeded pasture and Christmas tree farms, based on trends calculated from the Census of Agriculture data. Finally, the annual amount of CRP equivalent land will be derived from an analysis of FEMS data trends. The Government of Canada has noted that all of the data used in setting the 2007 baseline amount of agricultural land in Canada is available in the public domain and that the same publicly available data will be used in their annual data collection efforts. We believe that this information, relevant to the factors specified in 40 CFR 1457(a)(4)-(5) also weigh in favor of approval of the Canadian petition.

Finally, the Government of Canada has proposed that if the total agricultural land acreage in Canada is found to be greater than 122 million acres (within 2 million acres of their proposed 124 million acres baseline), then Statistics Canada will conduct further investigations to assist

EPA in evaluating whether the presumption built into the aggregate compliance approach remains valid. EPA agrees that including this investigatory trigger would help to ensure that the Canadian agricultural land baseline would not be exceeded. However, in light of EPA's determination that the baseline will be set at 123 million acres rather than the 124 million acres proposed by the Government of Canada, we believe that the trigger for additional investigation should be a determination that the total agricultural land in Canada exceeds 121 million acres. Accordingly, our approval is conditioned on this amendment of Canada's proposal.

In sum, EPA finds that the Government of Canada has satisfied the petition submission requirements in 40 CFR 1457(b), and that an evaluation of the factors specified in 40 CFR 1457(a)(1), which essentially mirror the factors that EPA considered in adopting the aggregate compliance approach for domestic planted crops and crop residue, (see 75 F.R. 14701 col. 3, March 26, 2010), support EPA approval of the Canadian petition.

VI. Public participation

Pursuant to 40 CFR 80.1457, EPA published a notice in the Federal Register of receipt of the petition from the Government of Canada and solicited comments from the public on all aspects of that petition. 76 FR 14007 (March 15, 2011). EPA placed the petition and all supporting documentation and data supplied by Canada in the public docket, and provided a 60-day comment period. EPA received and took into consideration the public comments on the Canadian petition.

All comments supported the petition submitted by the Government of Canada and urged EPA to approve the petition to apply the aggregate compliance approach to planted crops and crop

residue grown on Canadian agricultural land. The commenters state that they believe the Canadian petition meets all of the regulatory requirements, that it relies on credible, reliable data that is publically available, and that Canada has proposed an adequate plan for making the annual determination. Furthermore, those commenters argue that Canada's proposed baseline amount of agricultural land in 2007 is a conservative estimate, that the amount of agricultural land in Canada has remained constant for decades, and that the RFS2 program will not contribute to the clearing of new lands in Canada. EPA agrees with the commenters that it is appropriate to approve an aggregate compliance approach for Canada.

VII. Conclusion

After a thorough assessment of the petition and supporting information submitted by the Government of Canada, and consideration of all public comments received, EPA has determined, based on credible, reliable and verifiable data provided by the Government of Canada, that an aggregate compliance approach will provide reasonable assurance that planted crops and crop residue from Canada meet the definition of renewable biomass and will continue to meet the definition of renewable biomass. Therefore, effective immediately, any producer or RIN-generating importer of renewable fuel made from planted crops or crop residue from existing Canadian agricultural land will be covered by the aggregate compliance approach and will not be subject to the recordkeeping requirements for planted crops and crop residue at §80.1454(g)(2) unless EPA publishes a finding that the 2007 baseline amount of agricultural land in Canada (123 million acres) has been exceeded or that the withdrawal of EPA approval of the aggregate compliance approach is warranted pursuant to §80.1457(e).

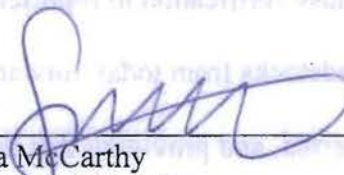
VIII. Implementation

The aggregate compliance approach for planted crops and crop residues grown in Canada is effective immediately. RINs may be generated by renewable fuel producers and importers in reliance on the aggregate compliance approach for renewable biomass verification to represent renewable fuel produced from Canadian crops and crop residue feedstocks from today forward, regardless of when the Canadian crops and crop residue were harvested, and providing that the fuel had not already been sold by the renewable fuel producer or importer to another party. Biofuel derived from Canadian crop or crop residue that was sold by a producer or importer prior to today was eligible for RIN generation only if the RIN generator was in possession of the relevant renewable biomass records as required in 40 CFR 80.1454. Renewable fuel producers and RIN-generating importers must comply with all RFS program regulations in 40 CFR Part 80, Subpart M, including the requirements of sections 80.1426 and 80.1452.

As described in its petition and supporting information, the Government of Canada will provide EPA with information on an annual basis to assist EPA in determining if the 2007 baseline acreage of agricultural land (123 million acres) has been exceeded, and if EPA determines that the acreage exceeds 121 million acres, Statistics Canada will conduct further investigate to assist EPA in evaluating whether the presumption built into the aggregate compliance approach remains valid.

EPA's approval of the aggregate compliance approach for Canada may be revoked for any of the reasons specified in 40 CFR 80.1457(e)(1), including: (1) EPA determination that the

acreage of cropland, pastureland and land equivalent to U.S. Conservation Reserve Program land exceeds the 2007 baseline area of land, (2) EPA determination that the criteria specified in 40 CFR 80.1457(a) is no longer satisfied, or (3) EPA determination that the data needed for its annual evaluation has not been collected and submitted in a timely and appropriate manner.


Gina McCarthy
Assistant Administrator
Office of Air and Radiation
United States Environmental Protection Agency

Date 9/27/11