management practices in agriculture. EPA has concluded that it is appropriate to allow crop advisors to use their judgment and knowledge to determine whether a treated area may be safely entered during an REI and is granting an exemption from some of the WPS provisions to appropriate persons while they are performing crop-advising tasks.

Some comments requested clarification on the applicability of the exemption to crop advisors in a range of situations, for example, crop advisors employed by a single agricultural establishment, researchers, chemical company representatives, or agricultural extension personnel, etc. The exemption established by this action applies to crop advisors, who have demonstrated training and experience by completion of a crop advisor program, regardless of the source of compensation or employment. The WPS is not applicable to a person or establishment providing services (including crop advising services) on an agricultural establishment without compensation from the agricultural establishment for those services. For example, the WPS would not apply to extension agents, university researchers and chemical company representatives providing recommendations to growers where the agricultural establishment is not providing compensation for those recommendations.

## B. Scope of the Exemption

EPA has been persuaded by comments that a complete exemption from all the WPS provisions at all times would not be reasonable. The potential for exposure, and thus risk, is at its highest during pesticide application. Consequently, the exemption will not apply during pesticide application. During the REI and the 30 days following the REI, qualified persons performing crop advising tasks would not be required to comply with PPE (§ 170.240), knowledge of labeling and site specific information (§ 170.232), decontamination (§§ 170.150 and 170.250), and emergency assistance (§§ 170.160 and 170.260) requirements of the rule.

The comments received also persuaded EPA that the exemption should be applicable only when performing crop advising tasks as defined in the rule. Accordingly, section §§ 170.104 and 170.204 make it explicit that the exemption is available only when crop advising tasks are being performed in the treated area, and only after application ends.

Some comments expressed concern that the crop advisor would not know what applications had been made on the

agricultural establishment if this exemption were established. It should be noted that § 170.124 requires that agricultural employers notify commercial pesticide handling establishments whenever handlers (including crop advisors) employed by commercial pesticide handling establishments are performing handling tasks (including crop advising tasks) on the agricultural establishment. EPA believes that this requirement of agricultural establishment owners will result in adequate information being provided to crop advisors since the exemption for crop advisors does not eliminate the owner's responsibility under the notification requirement.

## C. Certification or Licensing

EPA proposed that, to be eligible for the exemption, crop advisors should be required to obtain certification or licensing from a program administered or approved by a State, Tribal or Federal agency having jurisdiction over such licensing or certification. The certification or licensing program would have to include pesticide safety training at least equivalent to the handler training required by the WPS.

Many comments agreed that the proposed mechanism for eligibility for the exemption was appropriate. Some comments suggested certified applicator licensing as being sufficient. Still others suggested that EPA recognize certain national programs, such as the American Society of Agronomy (ASA) Certified Crop Advisor and the National Alliance of Independent Crop Consultants (NAICC) Certified Professional Crop Consultant programs. Some comments stated that crop advisor certification or licensing is not currently available in all States.

EPA expects each State will determine its own criteria for acceptable programs which will qualify crop advisors for the exemption. States are given this flexibility and authority because a wide range of certifying programs are available across the country. EPA is requiring crop advisor certification programs to contain pesticide safety training at least equivalent to WPS handler training. States may consider and EPA expects and suggests, using a written test for competency, a requirement for experience and continuing education, and a specified renewal period. Most State certified applicator programs would not meet these criteria because EPA does not require work experience for pesticide applicator certification, and a written examination is only required for the initial certification of commercial applicators. However, some

States may go beyond the minimum EPA certified applicator requirements and require the testing and experience so that they would meet EPA's suggested crop advisor certification standards.

EPA agrees that a wide range of crop advisor programs may be appropriate for the exemption and has revised and clarified the text in §§ 170.104, 170.130, 170.204, and 170.230 to allow a number of crop advisor programs to be acceptable. EPA expects to approve requests from several national crop advisor certification programs, but will permit States to approve other programs they deem acceptable. EPA or a State may approve (or disapprove) a certification program by issuing to it a letter acknowledging that its content and requirements are (or are not) sufficient to qualify for the WPS crop advisor exemption.

## D. Employees

EPA also proposed exempting employees of certified or licensed crop advisors from WPS requirements, except for WPS pesticide safety training.

While most comments supported inclusion of employees, some raised concerns about removing protections for employees. They expressed concern that certified or licensed crop advisors could not adequately transfer their knowledge and experience to employees, especially if the employees were working independently from the crop advisor (e.g., in remote locations). Concern also was raised that crop advising employees are likely to be less educated and experienced than professional crop advisors. Finally, some comments found the proposal unclear regarding who is considered an employee and assumed that the exemption would apply to individuals when performing other than crop advising tasks and therefore could be abused by employers to avoid compliance with the WPS protections.

EPA agrees that it must be clear that any crop advisor exemption applies only to individuals when they are performing crop advising tasks and has revised §§ 170.104 and 170.204 accordingly.

EPA believes that, for this exemption, the employment relationship between crop advisors and assistants is not as critical as the supervisory relationship between them that allows the imparting of knowledge and guidance. Therefore, EPA has decided to refer to employees as "persons under the direct supervision" of a crop advisor. Since EPA believes that the important relationship between crop advisors and assistants is one that allows the imparting of knowledge and guidance,