Comments on Methodology and Data Collection:

Most commenters were supportive of the new methodology, lauding our proposal to use reported data (rather than generated estimates) and appreciative of the reporting mechanisms which would allow State agencies to track their own performance in a timely manner. Most also did not find the reporting of these data elements to be burdensome for States and LEAs.

The Process as a Whole - One commenter believed the new methodology would impose a complex data collection process and assign potentially misleading rankings.

Data Element #2, Universe - Several commenters, who otherwise agreed with the new approach, pointed out that the new Data Element #2—requiring SNAP State agencies to provide a count for the universe of school-aged children in SNAP households—still includes children who may not be students in NSLP schools. Some State agencies reported having what they believe to be significant but unquantifiable numbers of dropouts, homeschoolers, or children in non-public or charter schools which may not participate in the NSLP. These States point out that the count against which they would be measured will be too high and their direct certification rates would appear to be lower because of it.

Data Element #2, 5-17 Age Range - Three commenters commented on our proposal to continue using the 5-17 age range that FNS has used for years as "school-age" for estimating the number of school-aged children living in households receiving SNAP benefits when computing direct certification performance rates. Two suggested using an age range that is aligned with compulsory school attendance ages, either by using a narrower age range or by making the age range State-specific. The third commenter was concerned that using the 5-17 age range for Data Element #2 meant that the State must run their matches only on this same 5-17 age range.

Data Element #3, State Agency Concerns - Although most commenters were supportive of collecting Data Element #3—which requires States with special provision schools operating in a non-base year to have a match run between SNAP records and student enrollment records from these schools—some State agencies expressed special concern with this data element. Two of these States foresee problems because although some of their provision schools do have their students listed in the statewide student enrollment database, a few of their other provision schools do not. One State, however, had major concerns with this provision, and this State has a significant number of special provision schools. This State also pointed out that this issue will affect more and more States as they elect the new Community Eligibility Option (CEO) when it becomes available to all States in SY 2014-2015. Another State pointed out that it does not conduct matches at the State level; it uses district-level matching and is under the impression that the match for special provision schools must be done at the State level.

Data Element #3, Advocacy Organization Concerns - The advocacy organizations were in favor of this provision, commenting that it will improve the accuracy of the direct certification performance rate calculation and will provide schools with data to make good management decisions, especially with regard to continuing in their current special provision or switching to CEO or another option. One of these advocacy groups went on to urge FNS to allow CEO schools to use the results of the CEO match with SNAP (that must be completed by April 1 if the CEO wants to have their claiming percentages adjusted) in lieu of running a match again for this data element requirement in or near October.

USDA/FNS Response to Methodology and Data Collection:

On the Process as a Whole - FNS developed the new methodology to provide a more simplified and straightforward approach than has been used in years past. It has been designed to yield more accurate counts with which to measure States against the benchmarks and to give States the power to track their own performance. We expect this process to be an improvement over generating estimates to assess performance, particularly since State performance rates are no longer intended to track general trends but rather to compare States against actual benchmarks.

On Data Element #1 and the Change in Form FNS-742 Timeframes, "Reapplied and Reinstated" - In actuality, the requirement to report on the form FNS-742 the number of students who reapplied and were reinstated by February 15th was proposed to be removed and is removed by this final rulemaking. Removing this requirement allows the form FNS-742 to be submitted a month earlier, which will help States and FNS be able to compute direct certification rates earlier.

On Data Element #2, Universe - We acknowledge that the best scenario to determine the universe of those children who could potentially be directly certified with SNAP would be to get the count of children who not only live in households receiving benefits under SNAP but also are actually in attendance at schools that participate in the NSLP. This data, however, is not available. This final rule would require the SNAP State agency to provide an actual, unduplicated count of school-aged children ages 5-17 who are living in households receiving benefits under SNAP at any time during the period July 1 through September 30. This is a major improvement, but, as stated in the proposed rule, we acknowledge that the new methodology still does not account for children in this age range who are not attending school or who are attending

schools not participating in the NSLP. Our commenters noted this as well. In States that do have a high incidence of homeschoolers, dropouts, or children attending non-NSLP schools, the direct certification rate may indeed appear lower than it actually is. But, this is not necessarily so. To know the actual impact of a large homeschooling population, for instance, we would first need to know, by State, how many children in the target 5-17 age range are homeschooled, and then we would need to know how many of this group are also members of households receiving benefits under SNAP at any time during the July through September timeframe. Only then could we back them out of the universe of those who could potentially be matched. Even if a State has many homeschoolers, it may be that only a very few of them are also on SNAP. Similarly, we would need this type of State-specific data for dropouts and for children attending non-NSLP schools—basically determining how many children are affected and how many of those are also on SNAP. Without reliable State-specific data to estimate these numbers, we cannot make appropriate adjustments. In order to address this issue and in recognition of the potential for improving data sources, we are adding a check box to the new form FNS-834. This check box would provide States a mechanism for indicating that they have special circumstances that may affect their direct certification rate calculation in a quantifiable way. For FNS to consider making an adjustment due to a special circumstance, however, a State would need to forward a description of the circumstance, the count of the number of children affected by the circumstance, the methodology for estimating the count, and the source(s) of published State or Federal data used to support that methodology. This ancillary system for determining the effect of special circumstances should help to keep our own methodology dynamic and better able to adapt to improved data sources.

It is important to point out that there is already some built-in variability which could make a State's direct certification rate appear to be higher than it actually is. For instance, States that have mandatory pre-K programs that serve children younger than age 5, as well as States with children in attendance who are older than 17 during the target months, are able to count these children if they are directly certified, even though they would not be represented in the universe of those who could potentially be matched. This variability could potentially help offset any negative impact caused by the fact that not all children counted in the universe actually attend NSLP schools. Also, it is important to remember that the benchmarks are not set at 100%; and even for SY 2013-2014 and beyond, where the benchmark is at its highest at 95%, there is still a 5% built-in allowance.

On Data Element #2, 5-17 Age Range - Section 4301 of the Food, Conservation, and Energy Act of 2008 requires that when we assess State direct certification performance for the Report to Congress we include, for the universe of children who could potentially be matched against student enrollment records, an estimate of the number of school-aged children receiving SNAP benefits during the months of July, August, or September. We have used the 5-17 age range as a proxy for "school-age" since the first Report to Congress in 2008. Of the two commenters who suggested using compulsory education requirements instead, one recommended using 6-15 as an age range that would more closely represent the average compulsory requirements across States, while the other suggested using State-specific compulsory age ranges as defined by individual State statute. Compulsory education requirements, however, set an age range for when children must be enrolled in and attending school; they do not preclude children younger or older from attending school, so they would not be good indicators for actual school enrollment.

According to the detailed table, "Enrollment Status of the Population of 3 Years Old and Older, by Sex, Age, Race, Hispanic Origin, Foreign Born, and Foreign-Born Parentage: October 2010," found in the Current Population Survey published by the U.S. Census Bureau and the U.S. Bureau of Labor Statistics, 94.5% of 5- and 6-year-olds and 96.1% of 16- and 17-year-olds were enrolled in school. School enrollment drops significantly on either side of this 5-17 age range. The 5-17 age range is therefore an appropriate approximation for the "school-age" snapshot required by Congress, and we intend to continue using it in estimating the number of school-aged children who could potentially be matched.

For the commenter who was concerned that the State would need to set its match criteria to include only the 5-17 year age range, we wish to clarify that States are to count all children directly certified with SNAP, not just those in the 5-17 age range. We use the 5-17 age range to estimate the universe of potential matches for the Report to Congress and to determine State performance, not to dictate the age range the State agency is to utilize for the match. States/LEAs are therefore responsible for matching SNAP data with their school enrollment data over a wider age range than the 5-17 in order to pick up all possible matches of children who are in school in the State, including those under 5 or over 17 years of age. Using the narrower range for the universe actually gives States an advantage for meeting the benchmarks if they were to find matches outside of that age range.

On Data Element #3, State Agency Concerns - States are to be sure that matches are run between SNAP data and enrollment data of students attending special provision schools operating in a non-base year so that the State can get credit for each of the SNAP children in these schools. We purposely did not prescribe a particular methodology for collecting this data element in order to allow each State the flexibility to set up its own business practice, one that

would work well given its own circumstances. For instance, if a State uses district- or local-level matching, it might choose to use this same method for its non-base year special provision schools, or it may choose a different method, perhaps having such schools upload student enrollment files to the State, with the State running the match on their behalf. If a State uses State-level matching, it may have some schools not represented in its statewide student enrollment database, and the State may need to come up with a way to upload from such schools. For other State-level matching States, it may be that they are already running the matches for all the schools in the State, but just not sending the matches down to the local level for LEAs to enter into their point-of-service systems. In this latter scenario, just counting the number of such matches would be very easy for the State. Many States have no, or very few, special provision schools, so not all States are affected at this time.

For those States with special provision schools that are not geared up to run the match in SY 2012-2013, we are providing an alternative phase-in procedure. For SY 2012-2013, the State agency may elect to use base-year SNAP direct certification rates for these schools when completing the form FNS-834. For SY 2013-2014 and beyond, however, States are expected to have a system in place to do this match with their special provision schools operating in a non-base year.

On Data Element #3, Advocacy Organization Concerns - With regard to CEO schools—which have the opportunity to run a match by April 1 each year to determine if they would be eligible for an increase in claiming percentages—we agree that certain accommodations for them can be made. We accept the advocacy group's suggestion to make allowances annually for these schools. As such, States that have special provision schools exercising the CEO may establish the count for this data element for these CEO schools each year through data matching efforts in

or near October (but not later than the last operating day in October) between SNAP data and student enrollment data from these schools—as for the other special provision schools—or by opting for one of the following two alternatives:

- Using the count of identified students matched with SNAP used in determining the CEO claiming percentage for that school year; or
- Using the count from the SNAP match conducted by April 1 of the same calendar year the FNS-834 is due, whether or not it was used in the claiming percentages.

In any case, it is important the count used represents students in CEO schools matched against SNAP records, without the inclusion of any letter method or non-SNAP matches. In other words, the State would need to be able to selectively count the SNAP matches from the matching efforts performed for the April CEO opportunity if either of the two alternatives for CEO schools is elected. States would also need to ensure that students are not double counted.

Disposition of Methodology and Data Collection in Final Rule:

The provisions in the new §245.12(c)(1) Data Element #1 remain unchanged from the proposed rule.

The provisions in the new §245.12(c)(2) Data Element #2 remain unchanged from the proposed rule.

Likewise, the related provisions that amend SNAP regulations in the new §272.8(a)(5)—to point the SNAP State agency to the requirements of §245.12(c)(2) and to require the SNAP State agency to execute a data exchange and privacy agreement with the NSLP State agency—remain unchanged from the proposed rule.

Paragraph 245.12(c)(3) Data Element #3 is changed in the final rule to allow States annually the option of using specific alternatives for the estimation of Data Element #3 for its special provision schools that are exercising the CEO.

The alternative phase-in procedure for SY 2012-2013 for those States with special provision schools that cannot properly compute Data Element #3 for this first school year will be handled in FNS guidance and is not codified in the final rule.

To keep the methodology for computing Data Element #2 or Data Element #3 dynamic as State or Federal data sources improve over the years, FNS is adding a check box to the new form FNS-834 to allow NSLP or SNAP State agencies to indicate they have special circumstances to bring to FNS's attention.

The final rule, as in the proposed rule, would remove the provision regarding "Reapplied and Reinstated," and this final rule removes the provision by the rewording of §245.11(i). In addition, the revised timeframes for submitting the FNS-742 that are made possible by removing this "Reapplied and Reinstated" requirement remain unchanged from the proposed rule in §§245.6a and 245.11(i). Note that even though the revised form FNS-742 will not be implemented for SY 2012-2013, the provision requiring the earlier submission of the FNS-742 and the dropping of the "Reapplied and Reinstated" requirement applies as well to the current form FNS-742 that will be utilized for SY 2012-2013.

Comments on CIPs:

Commenters were generally supportive of the requirements of the CIPs, including making the CIPs "multiyear" plans and adding a fourth component to track State progress in implementing other direct certification requirements.

What is to be included in the CIP - One commenter was concerned that States would spell out for themselves in their CIPs longer timelines than necessary for accomplishing tasks because of the "multiyear" timeline.

A State agency requested clarification and guidance on the content of the CIPs. Additionally, an advocacy organization had very specific ideas about what should be included in the CIP and how progress should be monitored, such as requiring State agencies to include: goals that are quantifiable and objective, the rationale for adopting the measures it proposes, and an analysis of why a previous plan may have failed.

State progress implementing other direct certification requirements in the CIP - A few commenters incorrectly believed that the first three components of the CIP were already incorporated in regulation and that this rulemaking would be adding just the fourth component.

One State agency was concerned that it would need to report progress toward phasing out the "Letter Method" even though it finds it an effective and successful secondary method of reaching eligible families in that State.

Another commenter wanted the fourth component of the CIP to include the tracking of extended eligibility, whereby other children in the directly-certified child's household can also be considered directly certified, by extension. (See USDA FNS Policy Memorandum SP 38-2009—Extending Categorical Eligibility to Additional Children in a Household, dated August 29, 2009, available at http://www.fns.usda.gov/cnd/governance/Policy-Memos/2009/SP_38-

2009_os.pdf, and USDA Policy Memorandum SP 25-2010—Questions and Answers on Extending Categorical Eligibility to Additional Children in a Household, dated May 3, 2010, available at http://www.fns.usda.gov/cnd/governance/Policy-Memos/2010/SP_25_CACFP_11_SFSP_10-2010_os.pdf).

Other CIP issues - One commenter expressed concern that 60 days may not be enough time for a State agency to formulate and submit a CIP.

Two other commenters were in favor of applying fiscal sanctions or other negative incentives for repeated failure to meet the benchmarks so that States would not just be submitting CIPs each year with no other repercussions.

Two of the advocacy organizations suggested that States be required to post their CIPs for public access.

USDA/FNS Response to CIPs:

On what is to be included in the CIP - The proposal that the timeline in the CIP be "multiyear" was added in the proposed rule so that a State agency could define what measures it proposes to implement in each of several years. Some goals will take longer than a year to implement, some will take less, and others will logically follow after some other goal is reached. In addition, some States may take longer than others to implement effective changes, due in part to such circumstances as the number of LEAs in the State, the population of the State, the geographical size of the State, the current data structures in the State, the relationship with partner agencies, and the restrictions imposed by State law. The intent was not so that States could take years to accomplish some task that should take less time.

Regarding the specifics of what should go into the plans and how they should be structured, we will provide guidance to those State agencies that are required to develop CIPs. Each CIP will be reviewed individually and approved based on whether the goals and timeframes are reasonable for that particular State. Subsequent CIPs can track progress and reflect realigning goals.

On State progress implementing other direct certification requirements in the CIP - This final rulemaking codifies all four components of a CIP, not just the fourth.

For reporting "Letter Method" information, there is a phase-out plan for the "Letter Method" for SNAP as it applies to benchmarks and CIPs included in USDA FNS Memorandum SP 32-2011—Child Nutrition Reauthorization 2010: Direct Certification Benchmarks and Continuous Improvement Plans, dated April 28, 2011, available at http://www.fns.usda.gov/cnd/governance/Policy-Memos/2011/SP32-2011.pdf. By SY 2012-2013, the "Letter Method" must be fully phased-out as a means of direct certification of children in households receiving SNAP benefits, and the mandatory direct certification with SNAP must be conducted using data-matching techniques only. Letters to SNAP households may continue to be used as an additional means to notify households of children's categorical eligibility based on receipt of SNAP benefits, and schools may continue to use the letter to certify children in lieu of an application; however, such certifications cannot be counted as direct certifications. These certifications based on SNAP letters would be exempt from verification but would not be included in data reported for direct certifications with SNAP. As time goes on, States must have systems that effectively handle more-frequent direct certification with SNAP without the use of the "Letter Method." States will need to report in each CIP their progress in making this transition.

As for including in the fourth component of the CIPs information about the State's progress toward implementing extended eligibility policies, we currently monitor the State's progress during a management evaluation and the State monitors the SFA's progress during an administrative review. With the advent of the new benchmarks, there is additional incentive for States to fully implement the policy on extended eligibility since doing so would increase the State's direct certification performance rate.

On other CIP issues - With regard to the proposed 60-day timeframes for submitting a CIP, the timed CIP-development period would not start until after we formally notify the State that a CIP is needed. The new transparent methodology should facilitate a State's ability to continually monitor its own performance, analyze its systems, and plan for improvement. A State that monitors its own performance will likely begin to estimate its SNAP direct certification performance rate as early as February 1st when the counts are due in from the LEAs, and a State that finds itself below a benchmark could begin to formulate and test its plans long before the State is even notified of the need to do a CIP. To ensure the development of a thoughtful, workable CIP, however, and to give the State time to get input from its State agency partners and to get the CIP through its own State approval process, this final rule sets the due date for submitting the CIP to FNS at 90 days after notification, instead of the 60 days that was proposed.

Regarding the suggestions for applying fiscal sanctions or other negative disincentives for repeated failures to meet the benchmarks, we want to reiterate that the CIP process is designed for steady progress to be made in improving direct certification rates. Some States will have further to go than others to meet the direct certification benchmarks because they face certain obstacles that other States might not face. We anticipate that States will continue to make

a good faith effort to improve their direct certification rates and that the CIPs will be a useful tool in guiding their efforts. Should there be an instance of willful noncompliance in implementing the CIP to make improvements, this would be addressed by FNS on a case-by-case basis as are instances of noncompliance with other program requirements. In addition, FNS is in the process of developing a proposed rule to implement section 303 of the HHFKA, Fines for Violating Program Requirements, which will provide an additional method to address any instances of severe mismanagement and willful noncompliance with program requirements.

Finally, with regard to general access to the CIPs, we agree that States may wish to share their CIPs with one another to encourage the formulation of successful plans, and we will continue to work to accommodate the sharing of best practices through channels such as PartnerWeb or State-to-State publications. However, mandatory public release of CIPs is unnecessary for this type of technical document and would be an additional burden on States. As such, USDA intends to leave the decision to the individual State as to whether or not it chooses to make its plan available to the public at large.

Disposition of CIPs in Final Rule:

The provisions regarding CIPs in the new §245.12, paragraphs (a) Direct certification requirements, (d) State notification, (f) Continuous improvement plan required components, and (g) Continuous improvement plan implementation, remain unchanged from the proposed rule. The provision that sets the timeframes for submitting the CIPs is changed in the new paragraph §245.12(e) Continuous improvement plan required, from 60 days in the proposed rule to 90 days in this final rule.