flexibility in meeting this requirement, the proposal further allowed one serving per day to be in the form of a grainbased dessert, such as rice pudding.

The Department proposed no changes to the quantity and component requirements for breakfasts. However, the proposal encouraged school food authorities to offer children in grades 7 through 12 an additional serving of the grains/breads component each day. This optional increase was intended to provide sufficient calories to meet the needs of adolescent children, especially males, when the fat content was modified to conform to the Dietary Guidelines.

Finally, to provide sufficient State agency oversight of meal services employing a food-based menu planning system, the Department proposed to have State agencies conduct a nutrient analysis of one week's meals using the school's menus and supporting production records. Under the proposal, the State agency would be required to do the nutrient analysis once every five years and could combine the analysis with administrative review activity. As noted above, all school food authorities will be required, beginning with School Year 1996/1997, unless the requirement is temporarily waived, to comply with the Department's nutrition standards, including the Dietary Guidelines. Since schools using a food-based planning system will not generally be conducting routine analyses of their meals and, therefore, will have no records documenting compliance, it will be necessary for the State agency to determine whether or not the way the school is using the food-based menu planning system actually produces meals that meet the nutrition standards. In the interests of flexibility, however, the proposal also would have authorized the Department to approve alternative review methodologies proposed by a State agency if they provided the same degree of assurance that school meals are in compliance with all nutrition standards.

The Department allowed a 45-day comment period, during which 363 comment letters were received. (See chart earlier in this preamble for a detailed list of the number of commenters by type.) Moreover, on February 17, 1995, the Department conducted a public meeting and invited representatives of the health, nutrition, education, food service and food industry communities to participate. Members of the general public were also invited to attend and address the meeting. Twenty-six persons spoke at this meeting, and their comments were

also analyzed and considered in developing this final regulation.

Development of the Final Rule

This final rule incorporates provisions from both the June 10, 1994, and the January 27, 1995, proposed rules. In finalizing the two proposals, the Department established the same nutrition standards for all menu planning approaches, including the key nutrients that must be met. In essence, this rule provides an array of menu planning methods for school food authorities to choose from to meet the Dietary Guidelines. The remainder of this preamble addresses the key issues raised by commenters on both proposals.

Nutrition Standards: Dietary Guidelines, RDA and Calories

As mentioned earlier, both proposals would have incorporated the Dietary Guidelines as well as specific standards for RDA and calories into the NSLP and SBP regulations. Under the proposals, school lunches would be required to meet one-third of the RDA for protein, vitamin A, vitamin C, iron and calcium as well as one-third of the Recommended Energy Intake (calories). School breakfasts would be required to provide one-fourth of the RDA for the same nutrients and calories. Moreover, in the June 10, 1994, rulemaking, the Department proposed incorporation of the recommendations of the 1990 Dietary Guidelines appropriate for school meals and announced its intention to review modifications or additions in subsequent issues of the Dietary Guidelines for possible future inclusions in the applicable program regulations. The proposed rulemaking also would have required full implementation by School Year 1998/ 1999.

However, section 106(b) of Pub. L. 103–448, the Healthy Meals for Healthy Americans Act of 1994, amended section 9 of the NSLA, 42 U.S.C. 1758(f)(2)(C), to require that school meals meet the recommendations of the Dietary Guidelines in School Year 1996/ 97. The January 27, 1995, proposal, therefore, included this requirement along with the statutory authority for State agencies (provided by section 106(b) (42 U.S.C. 1758(f)(2)(B)) to waive implementation on a case-by-case basis until no later than School Year 1998/ 1999. Section 106(b) of Pub. L. 103-448 (42 U.S.C. 1758(f)(1)(B)) also requires compliance with the Dietary Guidelines as they evolve. That is, the Department will adjust the nutritional standards of the NSLP and SBP if and when changes are made to the Dietary Guidelines.

Over 2,000 of the more than 14,000 commenters on the June 10, 1994, proposal addressed the Dietary Guidelines; of these, nearly 1,800 supported their use as the basis for the nutrition standards for school meals. In addition, over 900 commenters from the school food service community felt that the Dietary Guidelines could be implemented faster if they had the option to plan and prepare meals using a food-based menu planning system. Also, these commenters felt that a foodbased menu planning system would support the goal of the Dietary Guidelines to increase consumption of fruits and vegetables. The basis for this latter comment was a perception that nutrient analysis seemed to focus on the nutrient content of individual foods rather than emphasizing the food groups, especially as depicted by the Food Guide Pyramid, jointly issued by the Department of Health and Human Services and USDA. The Department wishes to note that both proposals, as well as this final rule, reflect the Dietary Guidelines which the Food Guide Pyramid presents visually. The Department fully intends to continue using the Pyramid to promote nutritionally sound diets for the American people, and the Department expects the Pyramid to continue making a major contribution to nutrition education in the school meal programs and among the general public.

In view of the support by commenters, the scientific consensus recommending the Dietary Guidelines and the subsequent statutory provisions, the Department is incorporating the appropriate recommendations of the Dietary Guidelines into this final rule at § 210.10(b) (3) and (b)(4) and § 220.8(a) (3) and (4), and is requiring compliance with these recommendations by School Year 1996/97 unless a waiver not to exceed two years (to School Year 1998/ 99 at the latest) is authorized by the State agency (§ 210.10(o) and § 220.8(m)). The law does provide the Department with the authority to establish a later date for compliance (42 U.S.C. 1758(f)(2)(B)), but the Department does not consider a general extension appropriate given the importance of implementing the Dietary Guidelines as expeditiously as possible. As noted above, the statute (42 U.S.C. 1758(f)(1)(B)) also requires compliance with the most recent Dietary Guidelines. Therefore, this final regulation specifies compliance with the 1990 Dietary Guidelines, the most recent version to date. The Department will revise the school nutrition standards as necessary in the future to incorporate any