still be important that each reimbursable meal include a minimum number of food items for the following reasons. First, there needs to be a reasonable standard for Federal reimbursement. Secondly, a reimbursable meal must be easily recognizable at the point of service so that it can be counted accurately. Finally, it is preferable that children receive a minimum amount of nutrients from every meal rather than experiencing large fluctuations from day to day.

Therefore, the Department proposed that under NuMenus and Assisted NuMenus, a lunch would be reimbursable if at least three menu items (one must be an entree and one fluid milk) were offered, and, if the school does not participate in OVS, all menu items are taken. If the school participates in OVS, a lunch would be reimbursable if at least three menu items were offered (again, one must be an entree and one must be fluid milk), and at least two menu items (including the entree) were selected. For the SBP, at least three menu items had to be offered and at least two taken under OVS. The entree requirement was not extended to the SBP. The proposal ensured that children would receive appropriate daily levels of nutrition and that cashiers would continue to be able to determine easily if the meal selected by the child was reimbursable.

The Department received nearly 1,300 comments stating that a minimum of two items for OVS was not adequate. About 700 of these commenters were concerned that allowing children to take as few as two items would not support nutrition education efforts or provide sufficient calories. Further, they felt that only two items under OVS would undermine efforts to have meals comply with the Dietary Guidelines.

The Department agrees that the number of items which children may decline should be limited. Therefore, this final rule revises the proposed definition of a reimbursable lunch when schools using NuMenus or Assisted NuMenus also participate in OVS. For lunches in these situations (at §210.10(i)(2)(ii)), the child must select at least two items (the entree and one other) and may decline no more than two items. Thus, when a school offers a meal with five or more items, the student may decline only two items and must take three or more. Under the proposal, the student would have been required to accept only two items and could have declined three or four items in a five or six item meal. The entree, of course, could not have been declined. For the SBP, the current requirement that the child may decline only one item is retained at $\S 220.8(e)(2)(ii)$. Consequently, the amount of food taken by the child under NuMenus and Assisted NuMenus will at least equal, and in many cases will exceed, the amount taken under the old meal pattern requirements.

The Department does wish to address what appears to be a misunderstanding on the part of some commenters regarding the term "menu item" as it is used in NuMenus and Assisted NuMenus. Under a meal pattern system, food items are generally viewed as satisfying one or more components. For example, a helping of spaghetti and meatballs will supply the meat/meat alternate and grain/bread components of the meal as well as one of the fruit/ vegetable components. The same holds true for many popular foods, such as lasagna, pizza or chef salads. If schools use a meal pattern menu system and participate in OVS, the child would have to take the spaghetti and meatballs, since collectively that dish includes three components, but could decline the second vegetable/fruit item or the milk.

Under a system of nutrient analysis, however, spaghetti and meatballs is a single menu item (in this case, an entree) which contributes specific nutrients. If, therefore, the school offered this dish along with two other items (e.g., milk and fruit), the meal would actually provide more nutrients than under OVS in schools using a meal pattern, since the child would have to select the entree and at least one other item. If the school offered this dish along with three other items (e.g., green beans, fruit and milk), the child would also receive a more substantial meal than under the meal pattern since s/he could decline only two of the remaining three items.

The proposed requirement (at $\S 210.10(e)(4)(ii)$) that the child select the entree stemmed from the Department's concern that the school lunches children consume provide an adequate amount of calories and other essential nutrients. Traditionally, the most significant nutrition contribution in a school lunch has come from the entree. Therefore, this provision was proposed as a way of ensuring that children participating in OVS receive the most nutritious lunch possible.

The Department recognized that the proposal deviated from current requirements which do not stipulate any particular item that the child must select. Therefore, the Department specifically solicited comments on this requirement. Only about 30 commenters supported the requirement, while 644 commenters expressed some objection. Some commenters were concerned that requiring students to select an entree would lead to reduced participation since students would have less opportunity for personal choice. Others thought that fewer fruits and vegetables would be selected. Finally there was concern that requiring selection of the entree would increase meal service costs.

The Department appreciates the concerns expressed by the commenters but continues to believe that it is necessary to require that the entree be selected for lunch in order for the meal to be reimbursable. Because the meal is built around the entree, that dish will generally make the most significant calorie contribution to the meal and also will be likelier than other items to provide a variety of nutrients. The Department also notes that schools have considerable flexibility in determining what the entree will be. For example, a school could serve a chef's salad or a vegetable and fruit platter as an entree. The Department emphasizes that the final provisions on NuMenus and Assisted NuMenus require the child to take the entree and at least one other item. Therefore, the child may actually receive more food than would necessarily be the case under the former meal pattern. Finally, data from the SNDA study shows that children overwhelmingly select entrees under the current system. Therefore, the Department does not believe that requiring children to select the entree will result in greater plate waste. For these reasons, this final regulation, at §210.10(i)(2)(ii), requires that one of the items selected by the child under OVS be an entree.

While the Department believes that the OVS requirement for an entree is necessary to ensure that children receive proper nutrition from school meals, it is concerned about the possibility of plate waste. Consequently, the Department requests that school food service personnel submit comments based on their operational experience with OVS under NuMenus and Assisted NuMenus. If operational experience with OVS as required by this rule indicates an increase in plate waste, the Department will consider future rulemaking, including issuance of a proposed rule, to change the regulatory requirement.

Complexity/Inflexibility of NuMenus/ Assisted NuMenus

Over 2,200 commenters maintained that NuMenus and Assisted NuMenus were too complex, and more than 3,400 believed these menu planning systems would be inflexible. The Department notes that, since NuMenus is not bound