that can make more healthful meals that are also appealing to children. The Department continues to believe that there is no inherent reason why fruits/ vegetables and grains/breads should not be appealing if they are properly prepared and presented.

In the January 27th proposed rule, the Department sought to include the crediting of one dessert per day to provide schools with flexibility in meeting the enhanced grains/breads requirement in the proposed rule. The Department appreciates commenters' concerns about possible sugar content of desserts. The Department emphasizes, however, that if desserts are served as part of the reimbursable meal service. all of the elements in these food items will be analyzed by the State agency as part of its review of the school's compliance with the nutrition standards. To assist schools in preparing desserts that make a balanced contribution to the meal, the Department has developed modified dessert recipes which reduce fat content and increase the use of whole grain products. Such popular desserts as orange rice pudding, whole grain cookies and fruit-filled items will provide many of the children's other needs, such as dietary fiber, without overemphasizing sugar and fat. For the above reasons, the Department is adopting in this final rule, at §210.10(k) and §220.8(g), the proposed food-based menu planning meal patterns.

Age/Grade Groupings

One concern cited by commenters to the January 27th proposed rule was the difference between the age/grade groups for NuMenus and those for the foodbased menu planning systems. In the June 10, 1994, proposal, the Department advocated establishing minimum levels of calories and nutrients for four age groups: (1) Ages 3–6, (2) ages 7–10, (3) ages 11-13 and (4) ages 14-17. These groupings were designed to take into account the ages at which children tend to need greater amounts of nutrients and calories to ensure proper growth. The specific levels represented weighted averages of the levels of nutrients and calories needed by children in those groups with the greatest increase coming at approximately age 11. Under a system of nutrient analysis, such as NuMenus or Assisted NuMenus, the computer software enables the menu planner to calculate the required nutrient levels easily and to adjust the menu and portion sizes to reflect the nutrient profile of the children when more than one age group is being served.

With a food-based menu planning system, however, the components and portion sizes are prescribed for menu planners to ensure that sufficient food is provided to meet the children's calorie and nutrient needs. Consequently, this system, which is not as flexible as nutrient analysis, does not allow for the tailoring that is possible under a system of nutrient analysis. In recognition of this limitation, the Department proposed to establish minimum portion sizes (accompanied by the appropriate levels of calories and nutrients for these grade levels) for two grade groupings in the January 27, 1995, rulemaking: Kindergarten-grade 6 and grades 7-12 for the NSLP while retaining the current single grade group of kindergarten-grade 12 for the SBP. In addition, optional levels were established in the NSLP for kindergarten-grade 3 and in the SBP for grades 7–12. These groups were selected because they reflect the age breakouts commonly used for individual schools and because they recognize the need for significant increases in nutrients and calories for adolescents.

The Department received over 500 comments on the age/grade groupings proposed in the June 10, 1994, rule, the vast majority of which were from school food service personnel. While a few commenters agreed with the four age groupings for nutrient analysis, most raised questions or concerns. About a third of the commenters asserted that the groupings were too complicated and too costly and would require too much paperwork. Some commenters were concerned that the groupings did not reflect the actual age/grade groups in some schools, and some maintained that these groupings would not work in schools with kindergarten-grade 12. A small number recommended that a single generic standard be established for all ages/grades. Over half of the commenters, again mainly representing school food service, addressed miscellaneous concerns about applying these groupings in different local situations and recommended modifications such as applying one age category based upon the majority of students or establishing standards for pre-school, elementary, middle and high schools.

The Department received 53 comments addressing the age/grade groupings of the January 27, 1995, proposed rule for the food-based menu planning system. Three commenters agreed with the proposed groupings, while eight disagreed without raising specific issues. Over forty commenters suggested changes to the groupings because of concerns about the applicability of the two groupings to their particular situations.

The Department does recognize that no set of age/grade groupings will apply precisely to every school's structure, nor will they satisfy the nutrition and calorie needs of every child. Moreover, it recognizes that not all systems will be able to tailor meals to the optimum. Therefore, the final rule adopts the same grade groups for both NuMenus and Assisted NuMenus as were proposed for the food-based menu planning alternative as the minimum requirement. In addition, the regulation also provides a number of alternatives for age/grade groupings for the nutrient analysis alternatives. Schools may use the age levels provided in the January 27, 1995, proposed regulation (ages 3-6, 7-10, 11-13 and 14 and above) as an option or may develop their own age/ grade groupings. The Department continues to believe it is important to recognize the age related nutrient needs of children and provides the option of these more age appropriate levels for schools that are able to implement them. The software will readily allow for these variations, and FCS will be providing guidance on how to develop individual groupings and levels. The age/grade groupings for NuMenus and Assisted NuMenus may be found at §210.10(c) and (i)(1) and at § 220.8(b) and (k)(1).

The January 27, 1995, proposal was structured to take into account that, in many cases, school food authorities using the food-based menu planning alternative would not have access to computer technology and would, therefore, need a simpler pattern. Consequently, as noted above, the Department proposed two grade groupings for both the nutrition standards and portion sizes which essentially overlap the four age groupings of the June 10, 1994, proposal. Since these groupings generally reflect the grade structures of most schools, the Department considers that school food authorities using these patterns should experience little, if any, difficulty in complying with the requirements. In fact, the grade groups in this rule conform more closely to the standard structures of elementary and secondary schools than did the groupings in the existing patterns (kindergarten-grade 3 and grades 4-12). Finally, the Department notes that school food authorities may always increase the portion sizes to accommodate older children, but to require schools to do so would introduce an unreasonable complexity into the system. For these reasons, the age/grade groupings of the January 27th proposal are adopted without change at