without nutrient analysis of the foods produced, it is impossible to document that the meals do, in fact, meet the Dietary Guidelines and the standards for RDA and calories.

By law (42 U.S.C. 1758(f)(2)(D)), schools electing to use a food-based menu planning system are not required to conduct such an analysis. Consequently, unlike schools using NuMenus or Assisted NuMenus, these schools will have no records of nutrient analysis for the State agency to review. Therefore, the State agency must conduct such an analysis to determine compliance. Moreover, the State agency must analyze the school's production records in conjunction with the menus. As discussed elsewhere in this preamble, a weighted analysis which takes into account the actual production trends is the only reliable method for determining the quality of the meal service. Simply averaging the items offered without regard to their acceptance would provide results which have little, if any, correlation to the overall meal service.

Finally, as with reviews of schools using the nutrient based system, the Department is emphasizing technical assistance and corrective action rather than fiscal action. While State agencies would continue to disallow meals which are incomplete at the point of service, the school's failure to meet the overall nutrition standards would not automatically result in disallowances. Instead, the State agency would work with schools to develop a corrective action plan and would monitor the school's progress toward the nutrition standards. Fiscal sanctions would need to be imposed only if the school does not make a good faith effort to work toward improvement. For these reasons, this final rule adopts the monitoring requirements at  $\S210.19(a)(1)$  as proposed in the June 10, 1994, and January 27, 1995, rules.

## Streamlining: Paperwork Reduction/ Nonprofit Status

As part of the Department's continuing efforts to streamline the administration of Child Nutrition Programs, the June 10, 1994, proposal also offered State agencies and local school food authorities flexibility and reduced administrative burden in three important areas. The first provision would have extended the CRE cycle from 4 to 5 years. This change, which would result in a 20 percent decrease in annual reviews, would provide State agencies with additional flexibility and resources to enable them to work with schools to improve meals. The second provision would have eliminated the

current requirement for a specific daily edit check on meal counts for those school food authorities that have been found through CRE reviews to have accurate meal counts and claims. These school food authorities would have the option of establishing their own systems of internal controls without the Department's specified edits. Finally, the Department's proposal would have removed the requirement in § 210.15(b)(4) that distinct records be maintained to document the nonprofit status of the school food service. The Department determined that it was not necessary for the program regulations to mandate this recordkeeping requirement because these records (e.g., receipts, expenditures, etc.) are the accounts which any enterprise needs to maintain in the normal course of conducting business. These kinds of records are a necessary part of a school food authority's own accountability system and, in many cases, are required by State laws. It is important to emphasize that the school food authority would still have to be operated on a nonprofit basis; the proposed amendment would have only eliminated the requirements for documentation of nonprofit status. It is still incumbent upon the school food authority to demonstrate that the school food service is being operated on a nonprofit basis if a question arises during an audit or other oversight activity.

Slightly over 500 of the more than 14,000 commenters discussed the change in the administrative review cycle. Of these, 430 agreed with the extension to 5 years, although 23 commenters stated that the new cycle would not make much difference to the State agencies and a few opposed the change altogether. The Department continues to believe that the proposed reduction in the number of annual reviews will not compromise program accountability, but will enable State agencies to increase their commitments to training and technical assistance so necessary to the efficient implementation of the nutrition standards and is, therefore, adopting this amendment to §210.18(c) as proposed. State agencies are, of course, encouraged to exceed the regulatory requirements when resources permit, and they will continue to be required to conduct follow-up reviews of school food authorities which are found to exceed error thresholds on the initial reviews.

Slightly fewer than 500 commenters addressed the proposal to eliminate specific edit checks for school food authorities found to have accurate counting and claiming systems. Essentially, commenters tended to assert that this change would not really reduce paperwork or that it could impose an additional burden on State agencies to approve alternative systems. Several commenters recommended other areas such as elimination of verification requirements of free and reduced-price applications or the process of determining "severe need" status in the SBP.

When the Department proposed to require edit checks several years ago, many commenters stated that school food authorities should have the flexibility of devising their own systems of internal controls. However, at that time, the Department believed that school food authorities must, at a minimum, compare their meal counts, by type, to the number of eligible children in each category multiplied by an attendance factor. A few years later, in the regulation implementing CRE, the Department broadened State agencies' authority to authorize alternative systems of edits. The Department now believes that States and local school food authorities have had several years of experience with internal controls and are in the best position to modify these systems to meet their own needs. Therefore, this final rule adopts the amendment to  $\S210.8$  (a)(2) and (a)(3) as proposed.

Only 150 commenters addressed the issue of documentation of nonprofit status. Most of these were from those in school food service. While over 30 commenters agreed with the proposed provision, about 100 commenters stated that it was not a real reduction in paperwork at the local level. Some commenters felt "real" reduction in paperwork could be accomplished through elimination of the verification procedures, on-site reviews and other requirements. However, the Department continues to believe that this provision will reduce the paperwork burden on schools because they will no longer need to maintain records using Federal specifications; records would be maintained in the manner preferred by the school district or required by State laws. Therefore, the proposed amendments to §210.14(c) and § 210.15(b) are adopted as final without change. It is not possible for the Department to implement other changes suggested by commenters at this time since they were not a part of the original proposal. The Department will, however, retain them for future consideration.