(2) FSIS surveyed callers to the USDA Meat and Poultry Hotline to determine their attitudes, perceptions, and expectations regarding poultry that is to be labeled as "fresh"; (3) FSIS conducted a review of the scientific literature to determine and, if necessary, to resolve any scientific or technical time- and temperature-related issues concerning the safety of poultry products during shipment and storage; and (4) FSIS requested USDA's Agricultural Research Service (ARS) to conduct research studies on sensory and quality characteristics of poultry exposed to various time and temperature combinations, to examine general microbial properties of poultry, and to develop a spectroscopic analytical model to measure the temperature to which poultry has been chilled.

## **Public Hearings**

The public hearings on use of the term "fresh" were held on September 12 in Modesto, CA; September 16 in Atlanta, GA; and September 20 in Washington, DC. At these hearings, consumers, processors, producers, industry representatives, state and local government officials, members of Congress and their staffs, restaurant and hotel chefs, health officials, and other interested parties had the opportunity to present oral and written views on the "fresh" poultry labeling issue. The results of these hearings are presented below. Transcripts of the public hearings and copies of data and information submitted during the hearings are available for review under Docket Number 94-022P at the office of the FSIS Docket Clerk, Room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, from 8:30 a.m. to 1:00 p.m., and from 2:00 p.m. to 4:30 p.m., Monday through Friday.

The hearings focused on issues relating to industry practices and controls and consumer expectations and perceptions regarding the term "fresh" on the labeling of raw poultry products. Discussions centered on current practices and controls used by industry (e.g., processors, wholesalers) for packaging, storing, and transporting raw poultry products; practices and controls used by retailers for packaging, storing, and handling raw poultry products; and the time which elapses between slaughter and the sale to consumers of raw poultry products labeled as "fresh." Participants also discussed consumers' expectations when purchasing poultry labeled as "fresh" and the usefulness of descriptive terms on the labeling of

poultry products that have been previously frozen to an internal temperature below 26° F. A total of 79 individuals from five constituent groups representing consumers, industry, academia, government, and professional organizations presented comments.

At the Modesto hearing, consumer and industry representation was even, but the proportion of participants who were elected state and federal officials and their staffs was larger than at the other public hearings. The predominant theme expressed by the participants was the issue of truth in labeling and the consumers' right to know what they are purchasing. Participants contended that consumers feared there might be health hazards associated with home refreezing of poultry that had been chilled, frozen, and thawed before being displayed as "fresh" in the supermarket. Many participants considered the labeling of a product as "fresh," when to all appearances it was hard-to-the-touch, to be mislabeled, and a few characterized such labeling as fraudulent.

In Atlanta, the industry and consumer representation was proportionally higher than in Modesto, and, of the two groups, the industry presence was slightly larger. The majority of speakers stated that if a product is not really fresh, it should not be labeled as such. Some argued that the word "fresh' should be left off the product entirely. while others thought that the use of the phrase "previously frozen" would be a truthful statement on a label of a product that had been previously frozen (i.e., below 26° F) and then thawed. Participants expressed an interest in seeing more scientific research before a decision is made. Some participants maintained that temperature was not the only indication of a "fresh" product, but that other characteristics, such as smell, color, and texture, should be considered. Participants asserted that temperature cannot be controlled once a product leaves a plant. Some participants emphasized the importance of allowing products to move freely in interstate commerce. For example, they stated that the California law (specifically, the "ambient temperature" provision that has since been removed from the law) made it difficult, if not impossible, for fresh poultry processed in other States to be shipped into California because the temperature to which a product is subjected and maintained during storage and distribution affect its freshness. These participants maintained that poultry products shipped in interstate commerce must be subject to a uniform set of requirements developed by the Federal government, and not subject to

requirements of individual or different states which may seek to protect their local markets from out-of-state competition.

At the hearing in Washington, DC, the main themes discussed were labeling misrepresentation and the definition of "fresh" versus that of "frozen." Almost half the presenters were consumer representatives, including chefs, restaurant owners, and members of consumer advocacy groups. Additionally, Minnesota Congressman David Minge attended the hearing, while Congressman Gary A. Condit and Senator Diane Feinstein, both of California, submitted written comments. Arkansas' Senators Dale Bumpers and David Pryor submitted a joint comment opposing the California law as discriminating against out-of-state products. The consensus among participants was that poultry at an internal temperature of 26° F or less should be considered frozen.

Additional comments regarding industry practices and consumer expectations and perceptions that were presented at the three public hearings are discussed below.

## **Industry Practices**

Industry participants reported at the public hearings that it is a common practice of the poultry industry to ship product across the country in a deepchilled state with internal temperatures ranging from 20° F to 26° F depending on the type of product, for example, whole birds or parts for slicing. According to the industry participants, poultry generally is cooled to the lower 20° F range when the chill-pack cooling system is used. Because cooling is costly, poultry that is not "frozen' according to the regulatory definition (at or below 0° F) is rarely cooled below 20° F. The product cooled to the lower  $20^{\circ}$ F range is often labeled as "fresh" in accordance with current regulations and appears in supermarket refrigerated display cases, which hold poultry in the range of 35° F to 45° F, feeling soft-tothe-touch. The industry participants indicated that the product may be priced from \$0.10 to \$1.00 or more per pound below locally produced product whose temperature has never been below the range of 26° F to 28° F.

According to California poultry producers' presentations at the public hearings, 98 percent of California product sold on the West Coast has not been brought to temperatures below 26° F to 28° F. They contended that the temperature range of 26° F to 28° F is safe, the product remains pliable as expected by consumers, and the product has an expected shelf life of 11 to 14