modifiers, etc., on the labeling of raw poultry products whose internal temperature has been below 26° F in a manner that makes it clear to the purchaser that the product is not fresh, FSIS seeks comments on this position. FSIS will consider disallowing such label statements if information provided in the comment period shows that such uses have the potential to mislead.

## Descriptive Labeling

FSIS is proposing that further descriptive labeling on raw poultry products sold in a thawed condition whose internal temperature has been below 26° F would be accomplished through the use of a descriptive term. FSIS considered a number of terms to describe the nature of the product. These included "previously frozen," "previously held at \_\_\_\_° F," "thawed for your convenience," "freshly frozen," or "previously freshly frozen." FSIS is proposing to require use of the term 'previously frozen' because it believes that this term would be the most readily understood by consumers based upon comments from the public hearings. Raw poultry products that have been frozen to an internal temperature of 0° F or below in accordance with the freezing procedures required in 9 CFR 381.66(f)(2) could have the option to use the descriptive term "frozen" in lieu of the term "previously frozen." In addition, to avoid confusion or errors in handling, FSIS would not require use of either the term "frozen" or "previously frozen" on the labeling of products that have been frozen to an internal temperature of 0° F or below when such labeling duplicates or conflicts with products' special handling labeling instructions, e.g., "keep frozen" or "shipped/stored and handled frozen for your protection," as required in 9 CFR 381.125.

FSIS is aware of certain advantages and disadvantages associated with the use of the proposed descriptive term "previously frozen," as well as the others it considered. For these reasons, FSIS invites comments on descriptive terms and will consider another term or terms if information submitted during the comment period demonstrates greater consumer understanding and acceptability of the terms. The advantages and disadvantages of the terms, which FSIS has identified, are discussed below.

Labeling a product with the term "previously frozen" would provide information that the product so labeled had been frozen to an internal temperature below 26° F at one time or another and, for that reason, could be distinguished from product whose

internal temperature has never been below 26° F. Such labeling terminology would also be consistent with that used currently in the marketing of fish and seafood as described by participants at the public hearings.

However, the term "previously frozen" does not convey information on how long or at what temperature below 26° F the product was kept frozen. Furthermore, a product labeled with the term "previously frozen" whose internal temperature had been kept in the range above 0° F but below 26° F could be confused with product that had been frozen at 0° F or below in accordance with the FSIS regulatory requirement in 9 CFR 381.66(f)(2) for the proper freezing of poultry. However, based on comments received during the public hearings, FSIS does not believe that most consumers are aware that a temperature of 0° F or below is associated with the regulatory definition of "frozen." FSIS believes most consumers believe that a "frozen" product is one that is "hard-to-thetouch," which consumer representatives at the public hearings often described as below 26° F.

The term, "previously held at F," would provide consumers with information on the temperature at which product had been stored. It would also enable them to distinguish the product from product whose internal temperature had not been below 26° F. However, labeling with this term would not provide information on how long the product had been held at the stated temperature. It would not provide information on the significance of holding a product at the stated temperature. Also, some consumers might find the words "previously held" to be confusing. They might form the impression that after they purchased the product, they would have to handle it in some special way.

'Thawed for your convenience' would clearly imply that the product had been frozen. The term is considered to be easily understood by consumers, and would reflect industry good manufacturing practices as applied to temperature fluctuations. In other words, the term would not reflect any commitment by the industry to maintaining the product in a particular temperature range. The disadvantages to use of this term include the fact that it would not provide information on how long the product had been thawed prior to sale. It also would not state the temperature at which product had been held in a frozen state.

Labeling poultry with the term "freshly frozen" would convey truthful information that the product had been

frozen to an internal temperature below 26° F. The term "freshly does not imply that a food product is actually fresh in terms of being unprocessed. The use of the word "freshly" before frozen would also convey the notion that the product had been frozen while in a fresh state and had recently been in a frozen state. However, the term "freshly frozen" does not provide information on how long and at what temperature the product to which it is applied may have been held in a frozen state. Also, the term might be a source of confusion to the consumer buying the product at a supermarket where it is kept in a fresh poultry display case at a temperature higher than 26° F. Use of the term on raw poultry sold at "fresh" temperatures would be inconsistent with application to other food products that are retailed as frozen foods. The term might also be confused with the term "fresh frozen" that is used in connection with poultry that has been frozen at 0° F in accordance with the FSIS poultry freezing regulation.

Use of the term "previously freshly frozen" would have the advantage of providing factual information that the poultry had indeed been frozen to an internal temperature below 26° F. It would also convey the notion that the product had been frozen while fresh and that it had recently been in a frozen state. On the other hand, the term would not inform the consumer of the length of time and the temperature at which the product had been kept frozen. Nor would use of the term provide industry with a mechanism to distinguish among the multiple temperatures between 0° F and 26° F at which the product was held. Also, product labeled with this term could be confused with product labeled as "fresh frozen" that had been frozen for long-term storage at 0° F in accordance with the FSIS poultry freezing regulation.

## **Compliance Procedures**

FSIS believes that processors, transporters, wholesalers, and retailers will maintain controls to ensure that their poultry products comply with the Agency's proposed requirements as part of their good manufacturing practices. Therefore, the Agency believes that it is unnecessary to propose compliance procedures for use of the term "fresh" on raw poultry products. FSIS inspection and compliance staffs monitor compliance with labeling requirements at inspected plants and in commerce for the purpose of preventing the distribution of poultry products that are misbranded. In specific instances, the Agency provides instructions to its