inspectors and compliance staff for enforcing compliance. Such instructions typically will include collection of randomly selected samples of consumer units, representative of a lot, either at the inspected plant or in commerce. In the case of poultry products covered by this proposal, a lot might consist of the contents of all like product contained in a cooler, cargo compartment, or other area used for cold storage or transport of products. Like product would be defined as similar kinds of whole birds and similar kinds of the same cut-up or disjointed poultry parts. If the mean temperature at the central part of the samples is below 26° F, the lot would be out of compliance with the proposed "fresh" labeling requirements. If any lot is found to be not in compliance, it could be deemed to be misbranded and could not enter or proceed in commerce until the product is relabeled to accurately reflect its nature. FSIS invites comments regarding procedures for monitoring compliance with the "fresh" labeling requirements.

## **Executive Order 12866**

FSIS has determined that this proposed rule is significant within the meaning of Executive Order 12866. The proposed rule would require all poultry processors and handlers to maintain the internal temperature of raw poultry at 26° F or above if the term "fresh" is used on the labeling of such products. In addition, the proposal would require that poultry products whose internal temperature has ever been below 26° F to be labeled with a descriptive term reflecting this fact.

## **Regulatory Option**

FSIS could choose to prohibit the use of the term "fresh" on the labeling of raw poultry products whose internal temperature has ever been below 20° F. Some industry participants at the public hearings held by FSIS suggested that, if designing a program for control for the industry for precooling temperatures that maintain physical attributes of freshness, one could use 23° F as the first lower control limit, and 20° F as the second-step lower limit for taking corrective action. They suggested these temperatures as best for the preparation and distribution of the highest quality fresh product. Should FSIS alternatively choose 20° F as the temperature at or above which product could be labeled as "fresh," the impact on the poultry industry would be minimal. Information from the hearings suggests that few processors chill product lower than 20° F because the refrigeration process is expensive. Generally, product is not cooled below 20° F unless it is being

frozen to 0° F or below for long-term storage. However, other participants noted that poultry is very solid at 23° F and 80 percent of the water is in a frozen state. There is little discernable physical difference between a product frozen to 23° F and one frozen to 0° F, where almost all of the water is in a frozen state. Therefore, products at a temperature of 20° F would be perceived by consumers to be frozen and not fresh.

## **Costs of the Proposed Rule**

FSIS has examined possible sources of costs associated with the proposed rule. Americans consumed approximately 17.9 billion pounds of chicken (retail weight) in 1993, of which approximately 8.9 billion pounds were purchased at retail. According to a recent survey of broiler marketing practices, 27 percent of chicken destined for the retail market was shipped in containers filled with shaved or crushed ice (ice pack) or solid carbon dioxide (dry ice pack). Broilers represent the majority of chicken grown and slaughtered in the U.S. The survey also showed that 57 percent of the chicken was shipped using the chillpack method of refrigeration, which was described under industry practices at the public hearings; 3 percent was frozen (i.e., below 0° F); and 13 percent was marketed in other miscellaneous forms.

The internal temperature of poultry products that are refrigerated by ice pack or dry ice pack methods ranges from about 32° F to 35° F. Therefore, the proposed rule would not affect this portion of the market. Most smaller processors use ice or dry ice packs because they do not have the production volume or chilling equipment to store and ship poultry products using the chill-pack cooling system. For this reason, the economic impact of the proposed rule on small poultry processors should be minimal. The proposed rule would not affect the 3 percent of chicken that is marketed at retail as frozen (i.e., below 0° F). Most turkey is prepared and shipped as product that is frozen to 0° F or below, and, thus, most turkey would be unaffected by the proposal.

The proposed rule might have an economic impact on the 13 percent of chicken that is marketed in miscellaneous refrigerated forms, but FSIS has no information on what such an impact might be. FSIS believes that the proposed rule could affect a portion of the 57 percent (5.1 billion pounds) of the 8.9 billion pounds of chicken marketed domestically at retail as chill pack product. Chill pack product is sold in the fresh retail case and either is labeled as "fresh" or bears no temperature-related labeling other than special handling instructions. Some of the chill pack product has been frozen to internal temperatures below 26° F and is thawed prior to presentation in the retail case.

Under the chill pack refrigeration method, raw poultry products are said to be cooled to a range of 28° F to 32° F. However, according to information presented in the public hearings held by FSIS and in the U.S. District Court proceedings, processors currently using the chill pack method often target an internal temperature range of 26° F to 28° F. Other processors of chill pack products commonly target internal temperatures ranging from 20° F to 25° F, and transport products across the country in this temperature range. Most processors using the chill pack cooling system aim to keep the product at or below 28° F during storage and shipment to maintain an optimum shelf life of about 3 weeks from slaughter.

The information presented in the public hearings and U.S. District Court proceedings also indicates that, in commercial practice, it is difficult to maintain all product in a storage area at an exact target temperature of 26° F to 28° F. For example, the temperature in storage rooms at poultry plants, which are commonly maintained at 26° F to 28° F, may have cold spots, such as by a blower, that are as low as 22° F. Poultry is typically transported from processing plants to wholesalers and purchasers by refrigerated trucks. The temperature inside the storage compartments of these trucks is reported to vary about 5 to 7 degrees Fahrenheit. Thus, the temperature near the refrigeration unit at the front of the truck could be at 21° F while the top of the truck compartment is at 28° F.

Because products that have been chilled to internal temperatures of 26° F to 28° F require time to equilibrate with different surrounding air temperatures, such as those produced by the temperature dispersions in truck cargo compartments, FSIS examined interstate shipping distances for ready-to-cook chicken. FSIS estimates that about 72 percent of chill pack products are shipped 800 miles or less. Such trips would not take more than 2 days, and products chilled at the plant to internal temperatures of 26° F to 28° F and stored near cold spots in the truck cargo compartments would be less likely to fall below 26° F. If truck thermostats were adjusted so as to maintain the highest cargo temperature at 32° F, as opposed to 28° F, in order to prevent product from becoming frozen (i.e.,