

below 26° F) in colder sections of the compartments, FSIS does not believe that the shelf life or market quality of products shipped 800 miles or less would become unsatisfactory. FSIS expects that industry will find market incentives to closely control storage and shipping temperatures of products destined for hauls of durations of 2 days or less so that none of the cargo falls below 26° F, and the products could be labeled as "fresh."

FSIS does not believe that it is likely that chicken processors using the chill-pack cooling system would change current procedures for products shipped long distances of over 800 miles because the shelf life of the products might become unsatisfactory. FSIS believes these products include chicken deep-chilled to internal temperatures in the lower 20° F range and chicken whose internal temperatures processors want to keep at or below 28° F at all times during storage and shipment to maintain optimum shelf life. For example, to maintain all product in a truck at 26° F or higher, would mean that poultry in the warmest part of the truck on a long haul could be stored for as many as 4 days at 32° F. Participants at the public hearings reported shelf life of poultry from time of slaughter is about 2 weeks when it is held at 32° F. Processors and purchasers of poultry shipped long distances may not find such decreases in shelf life to be acceptable.

FSIS estimates that 28 percent (1.4 billion pounds) of the 5.1 billion pounds of chill pack product sold at retail falls into the long-distance-shipment category and might be affected by this proposed rule because it could not be labeled as "fresh." Consumers generally pay slightly more for fresh poultry than for frozen poultry. A conservative estimate of the price difference is 4 cents per pound (based on a difference in price between fresh and frozen turkey). The difference could range up to 10 cents per pound (a conservative estimate presented by knowledgeable persons at the public hearings held by FSIS). Should such a price differential develop between fresh and previously frozen poultry, FSIS estimates that the impact would range from about \$60 million to \$140 million.

Under the proposed rule, the products would also require relabeling with the descriptive term "previously frozen." However, FSIS believes these costs could be minimized considerably by use of pressure sensitive stickers until firms make routine label changes for existing products or exhaust label inventories. FSIS estimates the cost of pressure sensitive stickers to be about \$0.01 each.

Assuming the potentially affected 1.4 billion pounds of chill pack product were packaged in 2-pound packages, FSIS estimates use of the stickers would cost about \$7 million, excluding the cost for labor, during the first year of implementation if the proposed rule is adopted. About half of all labels submitted to FSIS each year for approval are for label changes on existing products. Thus, relabeling costs arising from the proposed rule would decrease as companies incorporate the proposed mandated changes with regularly scheduled label redesigns.

#### **Benefits of the Proposed Rule**

Consumers would benefit from the proposal because they would be assured that the poultry products they purchase would not be labeled in a false or misleading manner. Information from the public hearings held by FSIS and the survey conducted by the FSIS Meat and Poultry Hotline staff both indicate that consumers place considerable value on knowing how poultry products were handled prior to being offered for sale. The quality of the products offered for sale would not be changed because their shelf life would not be adversely affected. However, consumers would not be led to pay a higher price for products that have been previously frozen because the informative labeling would advise them of that fact. Any price decreases that might occur for products that were previously frozen would result in a savings for consumers who purchase those products.

If a price differential should develop between fresh and previously frozen chicken, then part of that differential will reflect increased prices and revenues for producers of fresh chicken, who will be benefitted as a result of the proposed rule. Consumers would also benefit because they expressed a willingness to pay more for truly fresh poultry that was accurately labeled as "fresh." Consumers would be assured that products they buy would meet their expectations. Truthful labeling information about the nature of poultry products would improve consumer knowledge about the products and aid them in purchasing decisions. FSIS believes that the benefits of labeling that is not false or misleading would be greater than any costs associated with the proposed rule. The proposed labeling strategy then offers consumers a true purchasing option that accurately reflects their expressed expectations.

#### **Executive Order 12778**

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local

jurisdictions are preempted under section 23 of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 467E) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected poultry products that are in addition to, or different than, those imposed under the PPIA. States and local jurisdictions may, however, consistent with requirements of the PPIA, exercise concurrent jurisdiction over poultry products that are outside official establishments for the purpose of preventing the distribution of poultry products that are misbranded or adulterated under the PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the PPIA, States that maintain poultry inspection programs must impose requirements that are at least equal to those required under the PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this rule. The administrative procedures specified in 9 CFR 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an inspector relating to inspection services provided under the PPIA. The administrative procedures specified in 9 CFR part 381, subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule with respect to labeling decisions.

#### **Effect on Small Entities**

The Administrator has determined that this proposed rule would not have a significant effect on small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The small entities that could be affected by the proposed rule would be small processors of raw poultry. However, the economic impact of the proposed rule on such poultry processors (small plants operating single-inspector processing lines) should be minimal because such processors currently ship poultry in ice pack or dry ice pack containers. The internal temperature of products refrigerated by these methods does not fall below 26° F, and products handled in this manner could be labeled as "fresh" according to the proposed requirements.

#### **Paperwork Requirements**

The proposed rule would specify the regulations permitting the use of the term "fresh" on the labeling of raw poultry products. The proposed rule