

FREE RANGE EGG LABELLING INFORMATION STANDARD

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Summary

1. In the Explanatory Statement the problem that necessitates the Egg Labelling Information Standard (the Standard) is identified to be representation of free range eggs not farmed under conditions that consumers might expect when they buy them. The Explanatory Statement emphasised - "In particular, some eggs labelled free range have been found to come from hens that either cannot or do not go outside on most ordinary days".
2. The definition according to the Standard "is access based so that producers are not required to ensure that hens go outside during daylight hours every day across the laying cycle" (sic). Indeed a definition that would require hens to go outside every day is not desirably practical but on the other hand it would be prudent to frame the definition to emphasise that hens are expected to venture outside most days. The expectation to venture outside most days was identified as a key issue for consumers in the Explanatory Statement but these 2 words are nowhere to be found in the Standard or the Explanatory Statement.
3. The maximum stocking density of 10,000 hens per hectare facilitates the creation of very large flocks although reputable researchers have identified this impedes hens from venturing outside the shed. This presents a challenge for the management of such flocks beyond the standard management of small free range flocks. To meet this challenge the management must strive for excellence in order to achieve an outcome dependent situation rather than intention oriented outcome. Consumers should not be expected to pay premium price for intentions to produce a product.
4. In lieu of emphasising the need to strive for excellence the Explanatory Statement approach management responsibility by referring to absence of 'poor conditions' rather than provision of optimal conditions. A wide gap could exist between the absence of poor conditions and existence of optimal conditions. A message that concentrates on the minimal rather than the optimal is unlikely to achieve in this case the optimal consumers' expected outcome.
5. No references have been made to compliance with a Code, industry standards or any existing guidelines such as the RSPCA guidelines for free range flocks. Although the current Model Code of Practice for the Welfare of Animals – Poultry contains clear guidance on the length of time that hens should have access to the range, this aspect is ignored in the Explanatory Statement in lieu of words such as 'regularly and routinely' that do not provide a measurable guide and practically allows access even for a short period of time provided it is offered regularly.
6. Rather than framing the free-range concept around outcome that requires hens to venture out most of the days, the Standard and the Explanatory Statement offer ambiguous wording. Instead of using terminology such as 'daily usage' or 'most days' with inclusion of exemptions, instead of providing a framework based on optimal practice, the Standard through the Explanatory Statement adopts the minimalist approach (referring to poor

conditions rather than optimal conditions) and provides largely subjective and unenforceable conditions.

7. Since the free range concept in the Standard is access dependent rather than usage dependent, the scope for auditing or monitoring is limited. Even the scope for auditing the number of hens in a flock is practically limited.
8. The scope for meaningful auditing and assessment is also limited because the Standard relies on subjective terminology and references to farming standards or Codes have not been incorporated. This does not inspire confidence in the ability of the Standard to deliver a product that meets even the bare minimum of consumers' expectations.
9. The exemptions ('disregard occasions') would be better framed with an overarching concept that meets consumers' expectations and enables hens to free range most days rather than concentrating more on exemptions than consumers' expectations and introducing exemptions with either no quantified limits or of such nature that may enable producers to use them to justify non-compliance. Although the Standard emphasises that the producer bears an evidential burden in relation to whether they have made a representation in compliance with Part 2, the nature of some of the exemptions practically precludes the ability to meet this burden or to successfully investigate it. The length of time exceptions may apply without affecting the status of the flock is not addressed.
10. Exceptional circumstances are regarded as 'a question of fact', are poorly defined and thus, provide a broad latitude of interpretation and a high level of uncertainty for producers and consumers alike. The decision on what constitutes exceptional circumstances is by default left to the Court although the likelihood that Court will be asked to arbitrate is low and the desirability is even lower. The length of time exceptional circumstance may prevail without affecting the free range status is not addressed. Denial of access may be fully justified or even sanctioned by governments on some occasions but it would be contrary to reasonable consumers' expectations and fair practice to continue to represent eggs from such flocks as free range when the exceptional circumstances persist for weeks or months.
11. The labelling requirements fall short of the ability of consumers or retailers to accurately identify genuine free range eggs, especially once removed from their packaging. Although all eggs sold in Australia (unless exempt) are required to be stamped with the producer's unique identifier, the identifier code does not enable the consumer to distinguish the production method. Following the EU example that requires the production method to be stamped on the eggs would increase the ability to prevent eggs produced on non-free range farms to be sold as free range eggs and provide the consumer with the ability to recognise free range eggs even when removed from the packaging.
12. The sale of free range eggs (not in the packaging) from different stocking densities in the same venue has not been addressed by the Standard.
13. The potential for eggs from different housing systems to be mixed on farms that have multiple housing systems and grade and process their own eggs or the potential for mixing of eggs in processing facilities that receive eggs from multiple farms has not been addressed.

Introduction

I am making this submission as a consumer and a service provider that over the years has visited many poultry farms with different housing systems. My knowledge of poultry farming has made it difficult for me to purchase free range eggs in supermarkets and retail shops because my confidence in the integrity of the free range marketing system has been eroded.

It is the observations on repeated visits to the same farms that provide real insight on the reality of the housing system on these farms. As the explanatory Statement said **“It is relatively easy to mislead consumers and there is a financial incentive for producers to do so” (sic)**. Presumably with this in mind, the draft national standard on free range egg labelling was prepared.

Although it clarifies the stocking density, unfortunately the Egg Labelling Standard does little to effectively address what it set out to do – preventing incorrect/false marketing of eggs from hens “that either cannot or do not go outside on most ordinary days” (sic).

The Explanatory Statement emphasised the need to farm the hens under conditions that consumers might expect when they buy them. Whether 1500 hens per hectare or 10,000 hens per hectare is written on the label, consumers still expect the label and the eggs to be true to expectations – be produced by free range flocks rather than flocks with a potential to use the range. Therefore, it is imperative to provide assurance to consumers that regardless of the stocking density, flocks not only have access but actually use the range on most days. Without this assurance, free range eggs are nothing but eggs laid in a barn equipped with multiple pop-holes. Unfortunately, because some producers run multiple housing systems on the same site and others use a common grading facility to process eggs from different farms, the eggs could also be cage eggs and the Standard has not provided consumers with the assurance to the contrary.

Two requirements are stated in the Standard

- The hens that laid the eggs were subject to a stocking density of 10,000 hens or less per hectare.
- The eggs are laid by hens that had meaningful and regular access to an outdoor range during daylight hours across the laying cycle.

Stocking density of 10,000 hens or less per hectare.

The Standard defines stocking density for hens - the maximum number of hens per hectare that have access to an outdoor range on any day across the laying cycle.

Would 10,000 hens that have access to half a hectare for half a day and half a hectare for the second half of the day be free range hens (paddock rotation)?

This is probably less of a concern to the consumer than other issues arising from the standard. Part 2 Section 7 B stipulates that “the hens were subject to a stocking density of 10,000 hens per hectare or less”. “Subject to” in the Cambridge Dictionary is “likely to experience”. This implies an expectation that the 10,000 hens are likely to experience this reality on the range. This is also consumers’ expectations according to the Explanatory Statement. A reasonable and fair expectation of the average consumer is that when it is stated that the hens were subject to a stocking density of 10,000 hens per hectare or less on the range, a significant proportion of the flock actually used the range daily on most days of the year.

The likelihood of achieving this reality with large flocks is low. Several studies found the number of hens outdoors to be inversely related to flock size with a smaller fraction of the population using the range in larger flocks. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4880845/>. The daily utilisation of the range by a flock of 20,000 hens housed in one shed with access to 2 hectares would depend on extremely dedicated management that is motivated to encourage the flock to use the range and pays utmost attention to all aspects that may prevent the hens from venturing out, removes unnecessary attractions inside the shed and at the same time provides tempting and what the chickens view as secured conditions on the range. This can't be achieved by eliminating 'poor conditions' but rather by providing excellent conditions. For flocks of this size, far more than basic conditions are required to bring about a reasonable use of the range. The Standard does not recognise the impact of flock size on the behaviour of the hen and offers very little to circumvent this handicap by not emphasising the need for exceptional efforts to encourage large flocks to venture into the range.

Any sense of the great challenge involved in the management of large free range flocks is lost through a series of explanations and exemptions that create a significant gap between legitimate public expectations, large flock behaviour and the failure of the Standard to convey to producers the reality of the challenge. Even the basic requirement to purchase strains of birds more suitable for the range is lost in the Explanatory Statement.

Creating a definition of free range flocks without recognising the mammoth challenge to achieve effective utilisation of the free range area by large flocks is insufficient at best or worse- is counter-productive.

The available acreage

The acreage available to the birds is a relatively easily measurable quantity. However, it is difficult to count the number of birds in a flock when birds are in the shed on litter and on the range. Sale dockets could be used but they are of limited use when flocks are mixed or the producer has several enterprises or claims high mortality. During the days of regulated egg marketing and the quota system, the egg board employed inspectors in order to regulate the quota system and ensure that the number of birds on farms correlated with the number of quotas purchased. This wasn't a straight forward task even when the birds were caged. Nevertheless, with a mind set to find the accurate number of hens on a farm, it is not an impossible task provided a system is in place to regularly monitor the stocking density on free range farms. Is this part of the proposal?

If part of the proposal was to enforce a system of auditing of production, sale dockets, mortality etc. by accreditation organisations, it would be possible to find all the necessary details and consumers' confidence could be satisfied.

Hens have meaningful and regular access to an outdoor range

The appropriate stocking density on the range could be debated on various grounds including hen welfare and the likelihood of diseases like avian influenza in large free range flocks. The 2 avian influenza outbreaks in free range hen flocks in Australia have been reported in very large flocks (50,000 and 160,000). Notwithstanding the disease risk aspect, the expectation of consumers must be an important element and indeed consumers expect the hens to use the range on most days of the year. This is clearly stated in the Explanatory Statement.

A survey found that the majority of respondents buy free range eggs because they believe that they are better quality (86%) and 90% cited not wanting to support the caged egg industry as a reason for

buying free range. This preference for free range eggs is not for 'part time' free range flocks but for eggs derived from hens that use the range most days and for significant periods during the day. Providing access without the flock using the range daily on most days of the year is far from what in the mind of consumers, who pay premium price, constitutes a genuine free range egg.

The Standard states that "the intention is that hens must be able to regularly or routinely access an outdoor range during daylight hours across the laying cycle".

Regular is defined as 'often', fixed pattern, with equal intervals or frequency, rhythmical, with no unexpected or unusual variation or in conformity with ordinary practice.

The provision of access once or twice a week for 52 weeks would meet this definition of 'regular and meaningful' access unless an expected ordinary practice serves as a guide. However, the Standard appears to shy away from any reference to an expected practice or pattern.

2 key words are missing – "most days".

The Standard provides ample 'disregard occasions' but fails to define regular or establish a best practice code.

Disregard occasions

The Standard outlines the following 'disregard occasions' to make allowance for hens not allowed access to the range.

- (i) the hens were undergoing nest box training; or
- (ii) the weather conditions endangered the safety or health of the hens; or
- (iii) the hens would have been exposed to predators;
- (iv) the hens were being medicated or otherwise cared for;
- (v) there were exceptional circumstances that prevented the hens from accessing the range

The combination of the 5 disregarded occasions (or exemptions), especially combined with the lack of definition or explanation of the regular pattern, have the capacity to circumvent the ability to provide confidence that the eggs have been derived from a flock that uses the range area on most days of the year. Unless free range flocks are regularly monitored through unscheduled visits or by installing cameras, the 5 reasons above would provide sufficient excuses to deny access on regular basis. As the Standard stated there are sufficient incentives to do so and identifying offenders becomes even more unlikely.

The Standard in Part 3 states that "the person bears an evidential burden in relation to whether they have made a representation in compliance with Part 2".

Unless elements of the Standard and in particular 'disregard occasions' are clearly defined, the burden of proof for producers becomes a challenge and furthermore, the ability to prove the validity of the claimed exemptions becomes a nightmare in both cases – genuine claims and false claims.

Nest box training

This is a necessary management tool but there is a necessity to define the maximum length of time rather than leave the door open to producers to decide for how long hens 'require' training.

Predators (the hens would have been exposed to predators);

Exposure is defined as the state of having no protection from something harmful (Oxford Dictionary) or “the state of being put into a situation in which something harmful or dangerous might affect you” (Macmillan Dictionary).

It provides producers with never ending excuses to deny hens’ access to the range. In the absence of a verifiable imminent risk, hens could be locked for days and the risk of exposure could be genuine, imaginary or untrue. If producers are caught (a challenge by itself) not providing flocks access to the range they could claim that a fox has been seen or a fox has taken a few hens. Mortality records can be manipulated. How could a potential exposure to predators be assessed retrospectively if the need arose to investigate the compliance with access to the outdoors?

An eagle was seen hovering high in the sky. How can these “reasons” be proved or disproved retrospectively?

Potential exposure to predators is a foreseen danger in free range enterprises and all practical steps available should be utilised to minimise the risk rather than locking birds in the shed. The Standard should at least specify in this respect that this exemption depends on certain conditions. For example, provided all other available measures including good fencing, guard dogs etc. have been in place and there is a sound reason to suspect that they are insufficient.

Cared for and medicated

The Model Code of Practice for the Welfare of Animals – Domestic Poultry 4th Ed (subsection 2.4.5.3 specifies 8 hours access unless a severe outbreak of disease occurs. The Standard appears to be more relaxed in this respect stating that access can be denied if “hens were being medicated or otherwise cared for”. This practically allows withdrawal of access for a variety of reasons that are largely ill-defined. It does not enable a reasonable degree of auditing and provides a basketful of excuses for those that wish to find them.

Ill-defined reasons such as “care” should not be accepted as a reason to deny access to the outdoors. A serious disease or condition that requires medication should be diagnosed by a veterinarian who also prescribes the medication. Therefore, if for health reasons the flock must be kept indoors/medicated, a veterinary certificate should be issued specifying the need to keep the flock indoors and for how long. A veterinary visit will also enable the producer to meet the evidentiary proof that the producer is required to meet.

Whether eggs produced by flocks kept indoors for lengthy periods for health reasons should continue to be sold as free range eggs is a question that has not been addressed in the Standard.

Weather conditions that may endanger the safety or health of hens may include hot days, cold days, rainy days, windy days, flood etc. and virtually could provide on-going “reasons” to deny access to the range. Unless the free range flock is audited regularly and records are investigated the reasons could become the norm rather than the exception. Prolonged weather conditions that require denial of access to the range should result in a status change of the eggs sold to consumers. Consumers do not pay premium price for eggs that have been designated to be free range eggs but rather for eggs that are such.

Exceptional circumstances that prevented the hens from accessing the range

The explanatory Statement outlines that “What constitutes exceptional circumstances is a question of fact, but may include other circumstances in which the hens were endangered or where it would be adverse to the welfare of the hens if they accessed the range”. This provides a broad latitude of interpretation by the producer as well as by others. The use of ambiguous words like ‘meaningful or regular’ rather than what consumers expect – MOST DAYS” provides a fertile ground for misunderstanding.

The facts are either ordinary and probable or extraordinary and unforeseen. However, the explanatory Statement that includes hen endangerment and adverse welfare impact under ‘exceptional circumstances’, only helps to muddy the water. Such circumstances in a free range flock should be a foreseen circumstance. The risk from predators should be a foreseen circumstance and as outlined earlier it may provide a range of unjustifiable excuses.

Who decides what exceptional circumstances are?

Indeed what constitutes exceptional circumstances “is a question of fact” and ultimately a judgement is required if the matter is challenged. The scope of abuse of exceptions is tempting unless reasons for exemptions can be verified or at least there is a statutory requirement for producers to register the event within a certain time period with a nominated agency.

Exceptional circumstances could in the mind of some also include sickness in the family, absentee of a worker etc. These indeed may be genuine reasons but a better explanation should be provided to ensure that everybody is on the same page.

An example is an outbreak of disease like avian influenza. The outbreak in 2012 in Maitland NSW was used as a reason by producers 1000’s km away to lock the hens for months. Meanwhile these eggs were sold as free range eggs.

An outbreak of avian influenza is uncommon and may be interpreted to be an event to which ‘exceptional circumstances’ is applicable. However, the decision to use such an event to justify denial of hen access to the range could be questionable since avian influenza viruses are always carried by wild birds regardless of outbreaks in poultry and the potential exposure of a flock to AI virus can be regarded as a foreseen circumstance.

If the potential risk is deemed to be higher than normal, it is up to government to issue a specific order as was done in some European countries. Inherent in consumers’ expectations is the need for a sunset clause specifying the period of time eggs can be sold as free range eggs in circumstances that legitimately justify denial of access to the range. This aspect is neglected in the Standard and the Explanatory Statement.

Ultimately the acceptance of exceptional circumstances as a defence rests with the Court in the event that these matters are brought to court attention but the likelihood and desirability of court involvement is questionable. Practically, during the routine management of a farm it is left to the producer to decide what exceptional circumstances are and guidance is necessary for the sake of producers and the sake of consumers who would like to believe in the integrity of the system.

Generally, in the absence of regular auditing, the chances of being caught are slim and the variety of exemptions may provide a safe haven for producers who do not comply with the spirit of the Standard. This could not inspire a lot of confidence in consumers who wish to purchase genuine free range eggs.

Meaningful and regular access to an outdoor range during daylight hours.

The pitfalls that could be associated with the word 'regular' was discussed earlier. The word 'meaningful' is used often in the Standard but is not defined or quantified.

What is a meaningful use of the range or a meaningful access to the range during daylight hours?

What is the minimum time on ordinary days that the birds must have access to the range for it to be regarded as meaningful?

'Meaningful' is a subjective term. What is meaningful to one person is not necessarily meaningful to another person.

The decision on what is meaningful is largely left with the producer but it is the consumer that needs to know exactly what meaningful is in the eyes of the producer.

Even if the word 'substantial' was used rather than meaningful or in conjunction with 'meaningful, it would have improved the outcome of the Standard. Further improvement would be achieved by incorporating a Code or established industry standards in the Standard.

It is unclear why the specified 8 hours access to the range in the Model Code of Practice for the Welfare of Animals – Domestic Poultry 4th Ed (subsection 2.4.5.3) was not used to guide the Standard.

It is unclear why there is no reference to the Model Code as a guiding document in any part of the Standard.

At times access may vary but unless an optimal period of access is given, it is unrealistic to expect producers to decide what is meaningful and to expect the consumer to buy FR eggs without knowledge of the most basic of consumer's expectation – A minimum time that birds were allowed access to the range (and whether they use the range). Surely, it is not the intention of this Standard to imply that free range eggs are those derived from flocks that have access to the range at regular intervals of once a week for 1 hour during 52 weeks.

Conditions required not to prevent, impede or discourage hens from accessing the range

The Standard clarifies that

- "the definition is access based so that producers are not required to ensure that hens go outside during daylight hours every day across the laying cycle but are required to provide conditions which encourage access to and use of the range.
- Where the indoor environment in which the laying hens are kept when not on the outdoor range impedes, prevents or discourages the hens from accessing that range, then the hens will not have meaningful and regular access to the range.

Several conditions could impede access including the size of the flock. This was discussed earlier in some detail. The provision of food and water inside the shed, the number of pop- holes, their size, height and distribution as well as the stocking density inside the shed are all also likely to play a role. Some references to these elements are made in the Model Code of Practice for the Welfare of Animals – Poultry (4th edition).

In the absence of clear reference to a Code or a sound explanation of shed structure and management elements that could impede access, it is left to individual producers to decide what, in

their opinion, impedes access. This introduces a significant lack of uniformity to the concept of free range eggs and leaves consumers to ponder whether the product they buy is genuine.

Required to provide conditions which encourage access and use of the range

Unless these conditions are specified and incorporated into a Code this is not a meaningful requirement. Producer A may believe that the canopy of a tree provides shade and shelter and encourages the use of the range but producer B may believe that this would also provide an encouragement for wild birds to visit the range and thus increase the risk of diseases. Producer C may argue that providing drinking water outside the shed encourages the birds to use the range but producer D would argue that this could also encourage presence of wild birds and increase the risk of avian influenza.

‘Meaningful’ is not a clear objective term and it can also be tempered with other ‘meaningful’ yet conflicting objectives.

The RSPCA Layer Hens Standard specifies that at least 8m² of natural and/or artificial overhead shade/shelter per 1000 birds must be provided and distributed across the outdoor area and that birds must be observed to be using shade/shelter structures and action taken to modify facilities if use is deficient.

<https://www.rspca.org.au/sites/default/files/website/what-we-do/working-with-farming-industry/RSPCALayerhensStandards.pdf>

The above illustrates one of the main issues of the proposed Standard – the lack of specific guidelines or parameters to guide both the producer and the consumer.

The Explanatory Statement explains the encouragement principle through a negative example - “if the outdoor range was poorly maintained or configured in a way that adversely affected the hens’ experience”.

Unless optimal maintenance is outlined in the statement or by a Code, referring to a negative state of the range does not provide qualitative or quantitative criteria to guide producers or the regulator. It is particularly of little value when the aim should be to facilitate the use of the range by large flocks.

Labelling and display requirements

The Standard lists the labelling requirements stating that a person must not label packaging for eggs for wholesale or retail sale unless 3 conditions are being met. The Standard explains that the intention is that a person reading the label would be able to discern that the term free range is used in relation to the eggs contained in the packaging.

This labelling requirement deals with the ability of the consumer to discern what is on the label but not necessarily what is ‘behind’ the label and as the explanatory Statement said there is a financial incentive for producers to falsify the production system of the eggs.

The label provides little assurance that the eggs inside the package are genuine free range eggs and it provides no assurance that eggs sold not in their original packaging (see Part 2 Section 9) are genuine free range eggs. This is particularly the case for eggs packed on farms with multiple housing systems and eggs packed in grading facilities that receive eggs from multiple farms.

Farms with multiple housing systems or eggs processed and packaged in grading facilities that receive eggs from multiple farms.

Consumers generally do not possess in-depth knowledge of poultry farming and the processing and packaging of eggs. It is the responsibility of the legislator to enact regulations that enhance the protection of the public against misleading claims including the mitigation of the potential for eggs from one housing system to be sold as eggs from another one.

The Standard strived to address in some detail the display requirements of eggs (section 9) but did not address the potential for eggs from different housing systems to be mixed on farms that have multiple housing systems and grade and process their own eggs or the potential for mixing in egg processing facilities that receive eggs from multitude of farms.

Style and placement of display signage appear to receive more attention than risks associated with the processing and packaging of eggs. Far greater scope for 'confusion', mishandling, misplacement etc. exists during the packaging stage in such facilities than during the display stage in the odd shop that sells individual eggs.

Eggs sold without packaging

Individual egg stamping was introduced in Australia in Standard 4.2.5 and the reason given by FSANZ was that tracing of eggs to the farm of origin is not possible without it because among others, eggs are being removed from their packaging, swapped or placed in reused cartons. This was a requirement additional to the already existing requirements for details on the packaging. Following this rationale it is difficult to accept that Part 2 subsection 9 enables either the seller or the consumer to distinguish between free range egg and other eggs since the stamp only provides a unique identifier of the producer but not the housing system. The egg stamp may enable the authorities to trace the egg to a producer, if required, but it does not enable the consumer (or the seller in some cases) to distinguish the production method when eggs are being separated from their packaging. Adopting the EU requirements to stamp the production method on each egg would address this aspect.

The stocking density must be prominently displayed on the sign

The Standard requires a prominent and clear sign and reasonable separation if eggs from other housing systems are being sold in the same venue. However, it does not address the sale of free range eggs (not in the packaging) from different stocking densities in the same venue.