

ANTICIPATED QUESTIONS AND RESPONSES

Proposed Farm Restaurant Act — Prepared for internal use and stakeholder conversations

This document accompanies the proposed Farm Restaurant Act and anticipates the questions most likely to be raised by legislators, agency staff, industry groups, farmers, and advocacy organizations, providing a ready, accurate answer to each. Its purpose reflects the same intent as the Act itself: Virginia’s existing agritourism law was built on the understanding that a working farm is not a commercial property and should not be regulated as one, and that agritourism itself includes preparing and serving the very food a farm grows. This Act, and this document, lean directly into that existing intent — seeking to keep local and state government from imposing commercial-scale requirements on a farm doing what its own agritourism law was already written to encourage.

1. Public Health and Food Safety Advocates

“The Participatory Guarantee System sounds like farmers checking each other’s homework instead of a real inspector doing it. Isn’t this weakening food safety for political convenience?”

This conflates two separate things the Act deliberately keeps separate: sourcing verification and food safety inspection. The Participatory Guarantee System applies only to confirming where the food came from — the 51 percent sourcing threshold. It has no role in food safety. Every Farm Micro-Gathering, Limited Farm Restaurant, Farm Restaurant, and Farm TFE permit holder remains fully subject to inspection and enforcement by the Virginia Department of Health under 12VAC5-421, exactly as any other permitted food establishment in Virginia — temperature control, handwashing, sanitation, and all substantive food safety requirements apply in full, unchanged, to every permit holder under this Act.

On the substance of peer verification itself: this is not a novel or untested concept. Certified Naturally Grown and comparable Participatory Guarantee Systems have operated successfully for small farms across the United States for years, and academic research (Cirad and others) confirms these systems are just as robust as third-party certification when they use non-reciprocal inspections and systematic rotation of verifiers — both of which this Act requires. This is an established, credible model already operating successfully among American small farms, being applied here to a narrow, non-safety-related compliance question — not an untested shortcut around inspection.

A real, working version of this peer network already exists independent of this Act: the Farm Restaurant Guild, a voluntary community founded to support farms through exactly this process, offering mentorship and coordinated peer verification well beyond what the law itself requires.

2. The Restaurant and Hospitality Industry

“Why does a Farm Restaurant get a lighter compliance path than a conventional restaurant serving the same kind of meal to the same kind of customer? Isn’t that unfair competition?”

The comparison assumes the two are functionally the same business, and they are not. A conventional restaurant is a commercial food-preparation operation built around purchasing, storing, and preparing ingredients sourced from a supply chain — the building code, occupancy, and permitting framework was designed specifically for that model. A Farm Restaurant is, by definition and by the 51 percent sourcing threshold this Act requires, primarily built around food grown on the property itself. That is not a comparable business model; it is closer to the relationship between a farm winery and a commercial bar. Virginia has already accepted this distinction for wine, beer, and spirits through §§ 15.2-2288.3, 15.2-2288.3:1, and 15.2-2288.3:2 — this Act asks the General Assembly to apply the identical, already-accepted logic to food.

It is also worth noting what this Act does not do: it does not exempt Farm Restaurants from the Virginia Food Regulations, from food handler certification, from local building and fire safety authority, or from any substantive food safety standard. What is proportionate is the certificate of occupancy pathway and the administrative fee structure — both calibrated to the scale of a working farm, not the scale of a commercial

restaurant chain. The Farm Restaurant Permit fee itself is not a special new fee; it is tied directly to the same standard restaurant permit fee already charged by local health districts, exactly as the Farm TFE fee is tied to the standard TFE fee.

This distinction is not theoretical for me personally. I own and operate both a traditional licensed restaurant, Goatocado, and a working farm building toward Farm Restaurant status, Celeste Farms. Having run both businesses, I can speak directly to how genuinely different they are in practice — sourcing, supply chain, cost structure, and the regulatory logic each was actually built for. This proposal does not ask anyone to imagine the distinction; it reflects a distinction I live on both sides of.

3. The Virginia Fire Services Board and Fire Safety Community

“Isn't this just another exemption layered onto a farm-building safety gap the Board has already said is inadequate? Doesn't this add to the problem rather than fix it?”

This Act does not touch, expand, or rely on the farm-building exemption from the Uniform Statewide Building Code (§ 36-97) that the Board's 2023 findings and the Chair's November 2023 letter addressed. That is a separate, dormant question this Act explicitly declines to resolve, stating so directly in its own text. What this Act does instead is build new safety infrastructure specifically for food-service events that did not previously exist anywhere in Virginia law: for any Farm TFE event over 49 guests, a mandatory written occupant load consultation from the local fire marshal under the Statewide Fire Prevention Code — the same enforcement mechanism the Technical Advisory Committee itself identified in its own July 2023 meeting as the more appropriate vehicle for ongoing, as opposed to construction-only, enforcement.

Framed accurately, this Act is not another exemption — it is the first piece of Virginia law to actually implement the SFPC-based approach the Committee discussed but never had a legislative vehicle to enact. That is a natural point of alignment with the Fire Services Board's own stated position, not a point of conflict, and the Board's leadership is a natural ally in seeing this framework put into practice.

4. Alcohol Service (ABC Licensing)

“Farm dinners often include wine or beer. Does this Act address alcohol service?”

No, and the Act says so explicitly — it includes a savings clause stating plainly that nothing in it modifies, limits, or otherwise affects any requirement of Title 4.1 or ABC Authority regulations. Virginia already provides a path for wine and beer at farm dinners through Title 4.1's caterer and banquet licensing — specifically the Mixed Beverage Caterer's license and the Mixed Beverage Limited Caterer's license (capped at 12 events per year), both of which allow a licensed caterer to sell and serve alcohol at a private gathering with notice to the ABC Authority, on a model structurally similar to the food catering framework this Act already relies on. A Banquet Special Event license is also available specifically for beer and wine where mixed beverages are not needed.

The open question, worth flagging honestly rather than avoiding, is whether that existing ABC pathway should be similarly right-sized for a farm running recurring, seasonal events, the way this Act right-sizes the VDH side. That is a legitimate follow-on conversation for a future session, best raised with the ABC Authority and the Farm Bureau directly, not something this Act should attempt to resolve within VDH's regulatory lane.

5. Liability for Food-Service-Specific Risk

“Does Virginia's agritourism liability statute cover a guest getting sick from food served at a farm dinner?”

This is a genuine open question, and the honest answer is likely no, or at least not clearly. Virginia Code § 3.2-6401 protects an agritourism operator from liability for injury or death from the “inherent risks of agritourism activities” — defined as surface and subsurface conditions, the behavior of animals, and the

ordinary dangers of structures or equipment used in farming and ranching operations. Foodborne illness is not naturally described by that list, and a repurposed barn hosting a ticketed dinner may not clearly qualify as “ordinary” farming or ranching use in the moment it is being used for food service.

This Act does not attempt to resolve this question, and it should not — expanding a liability statute is a fundamentally different and more contested legislative fight than a permitting and classification framework, and folding it into this proposal risks drawing in opposition (such as the Virginia Trial Lawyers Association) that has nothing to do with the merits of the Farm Restaurant concept itself. This is worth raising as a distinct, future legislative project, ideally with input from an attorney specializing in agricultural or tort law.

6. Local Government Associations (VACo and VML)

“This preempts local zoning and permitting authority over farm properties. Why should the state override local control?”

This Act already accounts for this objection directly, and it is worth walking through the specific carve-outs rather than treating the preemption as absolute. Section 2, subsection C explicitly preserves local authority over: generally applicable health, safety, and building code requirements; septic system capacity, wastewater disposal, and private well regulations; reasonable site plan review for traffic, parking, and access; and the local Building Department's independent authority over certificate of occupancy determinations. What this Act removes is narrower and more specific: a locality's ability to require commercial zoning reclassification, a conditional use or special use permit, or any requirement exceeding what a comparable non-farm food service operation would face — the exact pattern that produced the enforcement dispute underlying this proposal.

This protection is also not unconditional across the board — it is scaled to real, measurable impact. A Farm Micro-Gathering is protected without limit, since its 18-guest daily cap corresponds to roughly nine vehicle trips a day, well under the 50-trip threshold Virginia already uses to determine when a farm winery needs additional local clearance. A Limited Farm Restaurant and a Farm Restaurant are each protected up to 50 vehicle trips a day, the exact same threshold already applied to farm wineries and breweries today — a Limited Farm Restaurant that sustainably exceeds it doesn't lose its permit, but begins a two-year transition to a full Farm Restaurant Permit. A Farm TFE is protected up to 12 public events a year, the same limit Virginia's own ABC law already applies to banquet and special event licenses. Above these thresholds, a farm does not lose its permit; it simply falls back to a narrower protection requiring a locality to demonstrate substantial impact before imposing anything further. Every one of these numbers is drawn from a standard Virginia already applies elsewhere, not invented for this Act.

It is also worth noting that VACo has already accepted an analogous preemption for farm wineries and breweries under §§ 15.2-2288.3 and 15.2-2288.3:1, following a similar pattern: initial skepticism, followed by acceptance once genuine safety and infrastructure authority was preserved for localities. This Act is built on the same template.

7. Fiscal Impact

“What does this actually cost the Commonwealth to implement?”

This Act is deliberately structured to minimize new state cost. None of the four permit fees is a new fee set by this Act — the Farm Micro-Gathering fee is tied to the existing standard local health district inspection fee, the Limited Farm Restaurant and Farm Restaurant fees are each tied to the existing standard restaurant permit fee already charged by local health districts, and the Farm TFE fee is tied directly to the existing standard annual Temporary Food Establishment permit fee already charged by local health districts under 12VAC5-421. If any underlying fee changes, the corresponding fee under this Act changes with it automatically, without further legislative or regulatory action. No new fee schedule needs to be built or maintained.

Sourcing compliance itself carries minimal cost, since it relies primarily on the Participatory Guarantee Verification framework in Section 3-E — periodic peer verification conducted by other permit holders, Virginia Cooperative Extension agents, or other qualified parties, rather than routine state or local health district review. Documentary review and staff time are only required in the narrow case of a filed complaint or a missed verification, not as a standing administrative burden.

The facility inspection required for the Farm Micro-Gathering Permit is directly offset by its own fee, structured the same way as the Farm TFE and Farm Restaurant fees: equal to the standard local health district fee already charged for a routine food establishment inspection under 12VAC5-421, and adjusting automatically if that standard fee changes. No new fee schedule needs to be created, and this tier's inspection cost is no more of a burden on local health districts than any other routine inspection they already perform and charge for today.

8. Why Farms Specifically, Not Other Small Food Businesses

“Why should a farm get this treatment and not a small bakery or an independent food truck operator facing similar cost pressures?”

The distinction is not about farms deserving more favorable treatment as small businesses — it is about the specific relationship between the food being served and the land it is served on, which is the same distinction Virginia has already drawn for wine, beer, and spirits under §§ 15.2-2288.3, 15.2-2288.3:1, and 15.2-2288.3:2. A bakery or food truck sources ingredients through a commercial supply chain regardless of its size; the regulatory framework built for commercial food establishments fits that model reasonably well. A farm growing 51 percent or more of what it serves is engaged in a fundamentally different activity — agricultural production paired with direct sale — that the existing commercial framework was never built to accommodate proportionately. This Act does not create a general small-business carve-out; it extends a specific, already-established agricultural precedent to a category of production Virginia law has not yet caught up to.

9. Why the Parking and Lighting Standard Is Proportionate, Not Absent

“If localities can't require commercial-grade parking and lighting, doesn't that just mean nobody is responsible for guest safety in the parking area?”

No — the standard is proportionate, not absent, and it is consistent with a posture Virginia law has already established for agritourism generally. Virginia Code § 3.2-6401 already tells visitors, through a required posted warning, that they assume the inherent risks of being on a working farm, distinct from a commercial property. Entering the property at all is part of the agritourism experience itself — walking a gravel path, driving an unpaved driveway, crossing an open field at dusk, parking beside a fence lit by string lights rather than a commercial light pole. A grass or gravel parking area and driveway, with string lights, temporary fixtures, or other portable lighting, reflects that same working-farm reality — it is not a failure to address safety, it is safety addressed at a standard appropriate to an agricultural property rather than a permanent commercial development. The one condition the Act preserves is that any such driveway or access road remain passable for emergency vehicles — proportionate does not mean inaccessible in a genuine emergency.

The objective of the required warning is to make the visitor aware of exactly this distinction before they choose to engage with the business — a commercial restaurant parking lot and a farm are different environments, assume different risks, and warrant different standards, and the visitor is entitled to know that and decide for themselves whether to visit. That is the entire function § 3.2-6401 already serves: informed choice, not concealment of risk.

This reasoning supports why the substantive standard for parking and lighting is proportionate rather than commercial-grade. It is not a basis for adding new documentation, disclosure, or approval steps on top of the Farm TFE framework — a signed guest risk acknowledgment form, a mandatory pre-event traffic plan sign-

off, or any process beyond the 72-hour notification already required under Section 3D.5 would run contrary to the Act's purpose. The design intent of the Farm TFE Permit is to minimize administrative burden for occasional, discrete events, and that intent should guide how this standard is implemented during rule-making.

10. Why Is the Administrative Burden So Light for Farm TFE, and How Is That Actually Safe?

“This all sounds very minimal. What actually stops a farm from cutting corners if there's so little ongoing oversight?”

The Act draws a deliberate line between administrative burden and food safety, and only the former is minimized. Every substantive food safety requirement — temperature control, handwashing, a certified food handler present at every event, full VDH inspection and enforcement authority — applies in full to every Farm Micro-Gathering, Limited Farm Restaurant, Farm Restaurant, and Farm TFE permit holder, with no reduction of any kind. What is minimized is the paperwork and process layered on top of that floor: a one-time occupant load consultation per structure rather than a repeated review for every event, a single annual permit rather than repeat single-event applications, sourcing verified through a peer network rather than routine logs, and an unpaved parking area or driveway rather than a commercial-grade buildout. None of this touches whether food is prepared and served safely; all of it touches how much it costs a farm hosting a handful of dinners a year to demonstrate that it is.

The reasoning behind this distinction is straightforward: a farm hosting three or four curated dinners a year is not the same regulatory subject as a restaurant operating daily, and treating the two identically in administrative terms would price small, occasional agritourism operations out of existing at all — without making a single guest safer. The tiering in this Act reflects that directly: Farm Micro-Gathering, the lightest tier, is scoped to small, recurring hosting with minimal administrative touch; Limited Farm Restaurant, the middle tier, adds real dedicated infrastructure and annual inspection once a farm's activity outgrows that scale; Farm Restaurant, for a farm operating permanent food service, carries the most oversight — regular inspection on a schedule, the same as any restaurant — while still remaining proportionate to an agricultural operation rather than a full commercial restaurant standard. Farm TFE sits alongside any of these three as an occasional-event tool, not a competing tier. Greater frequency and scale earns greater scrutiny under this Act; it does not earn identical treatment to a commercial restaurant at any tier.

It is also worth noting, carefully, that public visibility — online reviews, social media, local reporting — provides a real, if informal, layer of accountability for any food service business today, farm or otherwise. This is a legitimate reason the administrative burden in this Act can be kept light without corresponding real-world risk. It should not, however, be used as a substitute for the food safety floor itself in any conversation about this Act — that floor stands on its own regulatory merit under 12VAC5-421, unchanged by this proposal, and should be described that way rather than as something reinforced by public opinion.

11. What Happens If a Farm Disagrees with a Decision

“What actually stops a local health district from doing to another farm what happened to Celeste Farms — sitting on a decision, or making a demand with no real basis?”

This Act builds a real answer to that question directly into its text, not left to hope or good faith alone. A local health district now has a fixed deadline to act — 30 days for a Farm Micro-Gathering application, 60 days for a Limited Farm Restaurant or Farm Restaurant application, 45 days for a Farm TFE application — and if the district does not act in time, the application is deemed approved automatically. Any denial must cite the specific written provision of this Act, or the specific food safety requirement under 12VAC5-421, that it rests on; a denial that does not cite anything is void on its face. And if a farm disagrees with a denial, suspension, revocation, or interpretation, there is now a real administrative appeal to the State Health Commissioner, with a fixed 45-day decision deadline and the burden resting on the district to justify its decision — not on the farm to disprove it.

This provision exists because of a real, lived gap: the enforcement dispute underlying this proposal involved a compliance question that sat without resolution for an extended period, and a demand that was ultimately confirmed to have no legal basis, discovered only after significant cost and litigation. This Act does not merely make the front door easier to walk through — it ensures that if a farm disagrees with a decision, there is a real, timely, and accessible way to have it reviewed short of a lawsuit.

12. Could the Farm Micro-Gathering Permit Be Used With a Food Truck or Other Already-Licensed Equipment?

“The Micro-Gathering Permit doesn't specify what equipment can be used to prepare the food. Couldn't a farmer just use a well-equipped food truck instead of a home-style setup, and isn't that stretching the permit beyond what it was meant for?”

The permit is deliberately silent on equipment beyond what's already required, and that is not an oversight. Its conditions — an 18-guest and three-meal daily cap, farm sourcing, a genuinely operating agricultural producer, guest disclosure, a certified food handler present, and a passed facility inspection — are what define the permit, not the specific tools used to prepare the meal. A farmer who uses their own separately licensed and inspected mobile food unit to prepare a Micro-Gathering meal is not exploiting a gap; they are voluntarily exceeding the permit's actual floor, since a permitted food truck already carries its own independent inspection, temperature control, and handwashing requirements under its own mobile food unit permit. Nothing about that arrangement is less safe than what this permit otherwise allows, and the food truck's own permit conditions remain fully in force regardless of how it is used.

This is the same logic that runs through this Act generally: proportionate administrative burden, not reduced food safety. A farmer who chooses to prepare a small gathering's food using already-inspected equipment is adding a real safety layer beyond the permit's minimum, not circumventing one.

13. Who Decides Which Tier a Farm Operates Under — the Farm, or the Health District?

“A farm's activity could arguably fit more than one tier. Who actually decides whether something is a Micro-Gathering, a Farm TFE event, or a Farm Restaurant — and couldn't a health district use that ambiguity to force a farm into a more burdensome tier than it needs?”

The Act deliberately places this choice with the applicant, not the local health district, and says so explicitly. Section 3-A states plainly that the choice between the Micro-Gathering Permit, the Limited Farm Restaurant Permit, or a Farm TFE Permit rests with the applicant, based on the nature of their own planned activity, and that this is not a basis for a health district to deny or challenge an application that otherwise meets the tier's actual conditions. The same principle protects the boundary between Farm TFE and Farm Restaurant: Section 3D.3 states directly that a frequent or regularly recurring discrete occasion, such as a weekly reservation-based dinner series, remains a Farm TFE event regardless of how often it occurs — frequency alone can never be used to argue a farm should be reclassified into a more burdensome tier.

This is not an incidental detail. It is a direct response to the exact kind of dispute that motivated this Act in the first place — a regulator using an undefined, subjective judgment call as leverage to demand more than the law actually requires. Each tier's conditions are specific and objectively checkable: guest counts, meal counts, sourcing percentages, whether a food handler is present, whether a facility has passed inspection. None of them depend on a health district's subjective read of a farm's “real” intentions.

14. What Happens If a Limited Farm Restaurant Outgrows Its Threshold?

“A Limited Farm Restaurant is protected up to 50 vehicle trips a day. What actually happens if a farm succeeds and grows past that — does it lose its permit, or get forced to shut down?”

No. If a Limited Farm Restaurant sustainably exceeds 50 vehicle trips a day, averaged over a rolling 90-day period, the local health district or zoning authority provides written notice, and the farm has 90 days to choose: pursue a Farm Restaurant Permit, or reduce operations back under the threshold. A farm that chooses

to pursue a Farm Restaurant Permit has one year to submit a complete application, and two years for the resulting Farm Restaurant to be inspected and operating — and any delay caused by the local health district, zoning authority, or Building Department's own review timeline doesn't count against either deadline.

The Limited Farm Restaurant Permit stays fully valid throughout this entire process, regardless of which path the farm takes. A farm that meets its chosen path's deadlines keeps its full zoning protection without interruption. A farm that neither applies nor reduces within those deadlines keeps its permit and keeps operating — it does not lose its permit, and it is not shut down. What it loses is the stronger zoning protection under subsection B, falling back to the same baseline protection every other tier in this Act already has when it exceeds its own threshold, where a locality must still demonstrate a substantial impact before requiring anything further.

Prepared by Ian Newell to accompany the proposed Farm Restaurant Act, reflecting the thought and stakeholder consideration behind its provisions.