

ANTICIPATED QUESTIONS AND RESPONSES

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

This document accompanies the Farm Restaurant Proposed 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 TFE and Farm Restaurant 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.

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.

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. Neither permit fee is a new fee set by this Act — 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, currently \$40 statewide, and the Farm Restaurant fee is tied the same way to the existing standard restaurant permit fee. If either 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.

The larger cost driver in a bill like this is typically new inspection or verification staffing. This Act avoids that by relying primarily on the Participatory Guarantee Verification framework in Section 3-C — periodic peer verification conducted by other permit holders, Virginia Cooperative Extension agents, or other qualified parties, rather than routine state or local health district re-inspection. 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 primary implementation cost is Board of Health rule-making within the timeline already specified in Section 4, not ongoing staffing.

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 3A.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 TFE and Farm Restaurant 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 TFE, the lighter of the two tiers, is scoped to occasional, curated events; Farm Restaurant, for a farm operating permanent food service, already carries meaningfully more oversight — regular inspection on a schedule, not just peer verification — while still remaining proportionate to an agricultural operation rather than a full commercial restaurant standard. Greater frequency and scale earns greater scrutiny under this Act; it does not earn identical treatment to a commercial restaurant at either 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. Accountability When a District Gets It Wrong

“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 — 45 days for a Farm TFE application, 60 days for a Farm Restaurant 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 district gets a decision wrong, there is a real, timely, and accessible way to correct it short of a lawsuit.

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