



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Texans Helping Businesses & Protecting Communities

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INDUSTRY NOTICE

December 4, 2020

To: **Businesses That Sell Directly to Consumers**

Re: **Qualifying as a Restaurant Under Gov. Greg Abbott's COVID-19 Executive Orders**

The following information does not allow a business to circumvent the requirements in [Executive Order GA-28](#) or any subsequent executive order. Any establishment that is opened as a restaurant must follow the checklist from the Governor's Strike Force to Open Texas. [You can find that checklist here](#).

Overview

Per the executive orders, restaurants that have less than 51% of their gross receipts from the sale of alcoholic beverages may open and provide dine-in services to the public.

Businesses that have not previously reported alcohol sales below 51% to TABC may apply to qualify as a restaurant in order to provide dine-in services.

There are two ways to apply and establish that a business's sale of alcoholic beverages makes up less than 51% of the total sales at the licensed location:

1. Apply by submitting an **Alcohol Sales Reporting Affidavit**, or
2. Apply for a **Food and Beverage Certificate** (retailers and brewpubs only).

1. Apply by Submitting an Alcohol Sales Reporting Affidavit

Eligibility: You must have food service facilities at the location, offer at least two entrees that customers may order, and offer food sales for the entire time that alcohol is offered.

- **Food service facilities:** A designated permanent area of the premises where food is stored or prepared for consumption at the licensed location. This can be a kitchen, food truck, or other facility where you, at minimum, prepare an assortment of pre-packaged items that were purchased off the location. Commercial cooking equipment is not required.
- **Entrees:** The main dish or course of a meal. A charcuterie board qualifies as an entree, as does each variation of the same food type (e.g., a chicken taco and a

beef taco will be considered two entrees).

You must show proof that you meet these requirements during the application process. You may be asked for photos of the food preparation facilities and a copy of the menu—and if using a third party to meet these requirements, a copy of the vendor contract for third-party services on the premises or a declaratory statement of intent to provide food service on the premises during your normal hours of operation.

To apply for restaurant status under the COVID-19 executive orders:

- Retailers (including brewpubs) should complete the [Retailer Version](#) of the affidavit. This calculates your business's gross receipts from April 1 through the date of submission to TABC.
- Manufacturers, brewers, distillers, and wineries that operate a taproom or tasting room should complete the [Producer Version](#) of the affidavit. This calculation is based on a projection of your future sales under your current business model.

The calculation on the affidavit must include the following figures:

- All on-premise sale of alcoholic beverages (including the value of any free or comped alcoholic beverages);
- All on-premise and to-go food sales; and
- All non-alcohol and non-food sales (e.g., T-shirts and other merchandise).

Calculation Note If Including Sales From a Third Party (such as a food truck): TABC-licensed/permitted businesses may only count the sales that occur within their location. The sales do not have to go through the TABC-licensed/permitted business's point of sale system; however, the third party must provide the TABC-licensed/permitted business with its sales data in order to include those sales in the calculation and for TABC to verify the data as necessary.

Calculation Note for Producers: If alcohol sales are grouped with another non-alcohol charge as a package (e.g., tour/tasting fees), separate the non-alcohol fees and include those in the calculation.

This calculation on the affidavit should *not* include:

- Off-premise sales of alcoholic beverages (to-go, delivery, or retail); or
- Wholesale sales of alcoholic beverages (sales to another permit holder).

To submit a restaurant status application:

- Submit a completed Alcohol Sales Reporting Affidavit ([Retailer Version](#) | [Producer](#)

[Version](#)) to audit@tabc.texas.gov.

- Your 51% status will not change until TABC has notified you directly that you may begin operating under a new status. Until then, you must follow the requirements under the current executive orders for your current TABC 51% status.

When maintaining records:

- Retailers must maintain records establishing the recent change in alcohol sales.
- Producers must maintain current and ongoing sales data to prove the business's eligibility when requested by TABC's audit staff. You do not need to submit underlying sales data records along with the affidavit unless requested.

2. Apply for a Food and Beverage (FB) Certificate (Retailers and Brewpubs Only)

Eligibility: You must be a non-FB Certificate holder who has food service facilities at your location (as outlined in Section 1's Eligibility requirements), offer at least two entrees that customers may order, offer food sales the entire time alcohol is offered, and meet all other requirements as set out in TABC Rule 33.5 (as amended on August 25, 2020).

Apply: Fill out a [Food and Beverage Certificate \(FB\) application form](#).

Calculation: The FB application allows businesses to include projected sales to reflect changing business models and practices. However, holding an FB Certificate does not guarantee that your business qualifies as a restaurant under Gov. Abbott's COVID-19 executive orders. You are still limited to less than 51% on-premise alcohol sales as detailed above. A business that applies for and obtains an FB and then operates in violation of the executive orders is subject to administrative action.

Submit: Email the completed [application](#) to licensing@tabc.texas.gov and mail the appropriate fees to TABC: Licensing Division, 5806 Mesa Drive, Austin, TX 78731.

If you are a current and active FB Certificate holder impacted by COVID-19 who has or will change your business model to sell less than 51% on-premise alcohol sales going forward, complete [this form](#) using the same standards provided in the Calculation section on Page 3 and email it to licensing@tabc.texas.gov.

After Receiving Notice That You Qualify as a Restaurant

You must still comply with all social distancing, capacity, and other health and safety protocols as required by local, state, and federal law and Gov. Abbott's COVID-19 executive orders.

View [TABC's COVID-19 Business Best Practices](#) for tips on operating your business under the current health protocols, maintaining proper records and remaining in compliance.

You must ensure that the food service at your location operates for the entire time that alcoholic beverages are being served.

For Businesses in Areas Where Bars May Reopen After A Prior Closure

If you reopened as a restaurant by filing a 51% Affidavit with TABC:

- You may begin operating like a bar (i.e., conduct alcohol sales at 51% or more) and you do NOT need to rescind the affidavit or file anything else with TABC.
- In the event that you're contacted by a TABC auditor who is doing a 51% audit on your business, you only need to tell the auditor that you're now operating as a bar because you're located in a county where bars may open.

If you reopened as a restaurant by acquiring a Food and Beverage Certificate:

- You may begin operating like a bar (i.e., conduct alcohol sales at 51% or more) without filing anything with TABC. However, you must comply with the 60% limit on alcohol sales if you wish to keep your Food and Beverage Certificate.
- If you expect your alcohol sales will be more than 60% of your total sales, TABC recommends that you cancel your Food and Beverage Certificate.

For Businesses in Areas Where Bars Must Close Again After a Prior Re-Opening

If you previously reopened as a restaurant by either filing a 51% Affidavit with TABC or acquiring a Food and Beverage Certificate:

- You may once again begin operating like a restaurant (i.e., alcohol sales are less than 51%) and you do NOT need to file anything with TABC if you are acting in accordance with your 51% Affidavit or your Food and Beverage Certificate application.
- If you plan to operate differently than as indicated in your 51% Affidavit or your Food and Beverage Certificate application, you must contact TABC by sending an email to audit@tabc.texas.gov.
- In the event that you're contacted by a TABC auditor who is doing a 51% audit on your business, notify the auditor that you're operating like a restaurant again, that you have a 51% Affidavit on file with TABC or a Food and Beverage Certificate, and that you'd like to exempt your sales data from the time that you were allowed to operate as a bar.