



Dear members of the Alcoholic Beverage Control Board,

January 13, 2019

The Eagle River Alehouse, LLC DBA Matanuska Brewing Company is appealing the determination of the AMCO "management team" under AS 04.11.560(a) that our company must submit a first waiver of operation (including the \$750 fee plus \$1000 late fee), for our package store license because it was operated for less than 240 hours in 2018. Our package store licence is a new license just issued in late December of 2018. We do not believe the intent of the statutory operating requirement applies to a new license issued in late December.

We began the process of applying for our package store license in September 2018 - we went through the advertising period, the city process, and worked with community councils in our areas to get it approved locally. Finally, after almost four months of hard work, the Municipality of Anchorage lifted its protest. On December 26, we were issued our license by AMCO. When being issued the license, we were informed that because we were being issued the license in late December, that we would not meet the minimum annual operating requirement of our newly-issued license. We were instructed to fill out a waiver form requesting that the board waive our 240-hour required operating time. The fee from AMCO for a first package store waiver is \$750. On top of that, we were told that because the waiver forms were due by November 30th this year, that our waiver form would be late and that we would be fined an additional \$1000 late penalty.

The intent of the 240-hour minimum operation of a license was to keep people and businesses from holding licenses without using them, or from creating monopolies. If I file for and am granted this waiver request, then it will also reduce the number of future waiver requests we can ever make. In addition, we are already paying for two full years of license operation, yet only getting one full year of operation, plus the last five days of 2018.

I want to say that we all want to follow the rules - to serve alcohol in a safe and professional manner to our guests. The AMCO staff were moved under the Department of Commerce because they should at least assist companies who engage in commerce. I do not believe the staff should be looking for ways to increase expenses on companies that have worked in good faith to meet all the requirements of the State to sell alcohol, even before they begin operating.

I request that the board overrules the staff's determination that a request for 2018 waiver and fees must be filed for our license. I also request that the AMCO director and staff are instructed to change this interpretation of the regulations and apply some common sense to their decision making.

Sincerely,

*Matthew A Tomter*

Matt Tomter  
Eagle River Alehouse, LLC  
DBA Matanuska Brewing Company  
(907) 854-8248

**From:** [McConnell, Erika B \(CED\)](#)  
**To:** [Matt Tomter](#); [Alcohol Licensing, CED ABC \(CED sponsored\)](#); [Alcohol, CED AMCO \(CED sponsored\)](#); [Sarah Oates](#)  
**Subject:** RE: Please disregard my first email. Request to be on next Board meeting Agenda  
**Date:** Friday, January 25, 2019 2:18:26 PM

---

Dear Mr. Tomter,

Thank you for your email. You will not be required to file for a waiver of operations for 2018 until you renew your license at the end of 2019. At that time it will be appropriate for you to appeal the requirement and for the board to address this issue. Because your communication was sent to [alcohol@alaska.gov](mailto:alcohol@alaska.gov), it will be provided to the board but will not be a separate agenda item at the next meeting. In addition or alternately, you could speak to the board during the public comment period of the next meeting.

Thank you,

*Erika McConnell*

Director  
Alcohol & Marijuana Control Office  
State of Alaska

**From:** Matt Tomter <tomtermatt@yahoo.com>  
**Sent:** Sunday, January 13, 2019 11:57 AM  
**To:** Alcohol Licensing, CED ABC (CED sponsored) <alcohol.licensing@alaska.gov>; Alcohol, CED AMCO (CED sponsored) <alcohol@alaska.gov>; McConnell, Erika B (CED) <erika.mcconnell@alaska.gov>; Sarah Oates <soates@alaskacharr.com>  
**Subject:** Please disregard my first email. Request to be on next Board meeting Agenda

**From:** [Sarah Oates](#)  
**To:** [McConnell, Erika B \(CED\)](#)  
**Cc:** [Matt Tomter](#); [Alcohol Licensing, CED ABC \(CED sponsored\)](#); [Alcohol, CED AMCO \(CED sponsored\)](#); [Dinegar, Harriet C \(LAW\)](#)  
**Subject:** RE: Please disregard my first email. Request to be on next Board meeting Agenda  
**Date:** Friday, January 25, 2019 4:57:49 PM  
**Attachments:** [Fwd Complete New License Application 5724 DBA Matanuska Brewing Company.msg](#)  
[Fwd AB-29 Waiver of Operations Application for License 5724.msg](#)  
[Please disregard my first email. Request to be on next Board meeting Agenda.msg](#)

---

Dear Ms. McConnell,

As you know, AS 04.11.560(a) states that an action of an officer, **employee**, or agent of the board relating to the administration or enforcement of this title may be appealed to the board by the aggrieved party.

The AMCO management team has already made the written determination that Mr. Tomter will need to file a waiver for the 2018 calendar year (emails attached). The language in 3 AAC 304.170(h) clearly contemplates that waiver applications are due within the calendar year for which they are being requested – hence the requirement for a “late fee” if filed after then – not at the end of the biennial period for which the license is issued (at the time of renewal). The renewal application is merely the vessel that is used to collect waiver applications that were not filed by the original deadline, otherwise the license is non-renewed. If waiver applications (or appeals regarding waiver applications) were not intended to be considered until the following year during the renewal period, then there would not be a mandatory late fee for not filing a waiver application during the respective calendar year.

Mr. Tomter is appealing the determination by the AMCO management team – composed of employees of the ABC Board – to the ABC Board itself regarding the requirement of a waiver application that was supposedly due no later than November 30, 2018, thus making it an appropriate matter to be considered by the Board at its February 19-20, 2019 meeting, as requested. This due process is clearly contemplated within the statute, and his request was made well in advance of the Board’s February 1, 2019 deadline for items to be included on the agenda.

I request that you include Mr. Tomter’s appeal as an item on the February 19-20, 2019 ABC Board meeting agenda, as he requested (email attached).

Thank you,

## **Sarah Daulton Oates**

President & CEO, Alaska CHARR

Office: 907.274.8133

Cell: 907.229.9972

[www.alaskacharr.com](http://www.alaskacharr.com)



Please consider the environment before printing this e-mail.

---

**From:** McConnell, Erika B (CED) [mailto:[erika.mcconnell@alaska.gov](mailto:erika.mcconnell@alaska.gov)]

**Sent:** Friday, January 25, 2019 2:18 PM

**To:** Matt Tomter; Alcohol Licensing, CED ABC (CED sponsored); Alcohol, CED AMCO (CED sponsored); Sarah Oates

**Subject:** RE: Please disregard my first email. Request to be on next Board meeting Agenda

Dear Mr. Tomter,

Thank you for your email. You will not be required to file for a waiver of operations for 2018 until you renew your license at the end of 2019. At that time it will be appropriate for you to appeal the requirement and for the board to address this issue. Because your communication was sent to [alcohol@alaska.gov](mailto:alcohol@alaska.gov), it will be provided to the board but will not be a separate agenda item at the next meeting. In addition or alternately, you could speak to the board during the public comment period of the next meeting.

Thank you,

*Erika McConnell*

Director

Alcohol & Marijuana Control Office

State of Alaska

**From:** Matt Tomter <tomtermatt@yahoo.com>

**Sent:** Sunday, January 13, 2019 11:57 AM

**To:** Alcohol Licensing, CED ABC (CED sponsored) <alcohol.licensing@alaska.gov>; Alcohol, CED AMCO (CED sponsored) <alcohol@alaska.gov>; McConnell, Erika B (CED) <erika.mcconnell@alaska.gov>; Sarah Oates <soates@alaskacharr.com>

**Subject:** Please disregard my first email. Request to be on next Board meeting Agenda

**From:** [Matt Tomter](#)  
**To:** [Sarah Oates](#)  
**Subject:** Fwd: Complete New License Application 5724 DBA Matanuska Brewing Company  
**Date:** Thursday, December 27, 2018 6:44:41 AM

---

Matthew A. Tomter, Managing Partner  
Anchorage Alehouse  
Eagle River Alehouse  
Matanuska Brewing Company  
907-854-8248  
[Tomtermatt@gmail.com](mailto:Tomtermatt@gmail.com)  
P.O. Box 773192  
Eagle River, AK 99577

Begin forwarded message:

**From:** "Alcohol Licensing, CED ABC (CED sponsored)"  
<[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)>  
**Date:** December 26, 2018 at 1:49:27 PM AKST  
**To:** "[tomtermatt@gmail.com](mailto:tomtermatt@gmail.com)" <[tomtermatt@gmail.com](mailto:tomtermatt@gmail.com)>  
**Cc:** "Alcohol Licensing, CED ABC (CED sponsored)"  
<[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)>, "CED AMCO Enforcement (CED sponsored)"  
<[amco.enforcement@alaska.gov](mailto:amco.enforcement@alaska.gov)>  
**Subject: Complete New License Application 5724 DBA Matanuska Brewing Company**

Hello,

Your new license application for 5724 DBA Matanuska Brewing Company has been finalized. Please contact [amco.enforcement@alaska.gov](mailto:amco.enforcement@alaska.gov) to schedule an inspection and receive your final license if you have not already done so.

Per our phone conversation I have confirmed with the management team that upon renewal of your license in the 2019 renewal cycle you will be required to submit the AB-29 waiver of operations application because you will not be able to meet the minimum 240 hours of operation for the 2018 calendar year. If you have questions or concerns regarding this matter please direct them to [alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov).

Thank You,

Mikal Milton  
Records and Licensing Supervisor  
Alcohol and Marijuana Control Office  
Phone: 907.269.0350  
[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)

[marijuana.licensing@alaska.gov](mailto:marijuana.licensing@alaska.gov)



Please consider the environment before printing this e-mail.

*Any guidance provided by this electronic communication is not a binding legal opinion, ruling, or interpretation that may be relied upon, but merely guidance concerning existing statutes and regulations. There may be other unique or undisclosed facts, circumstances, and information that may have changed any guidance provided in this communication.*

**CONFIDENTIALITY NOTICE:** *This communication is intended for the sole use of the individual or entity to whom it is addressed, is covered by the Electronic Communications Privacy Act (18 USC § 2510-2521), and may contain Confidential Official Use Only Information that may be exempt from public release under the Freedom of Information Act (5 USC § 552). If you are not the intended recipient, you are prohibited from disseminating, distributing, or copying any information contained in this communication.*

*The State of Alaska cannot guarantee the security of e-mails sent to or from a state employee outside the state e-mail system. If you are not the intended recipient or receive this communication in error, please notify the sender by reply e-mail and delete the original message and all copies from your computer.*

**From:** [Matt Tomter](#)  
**To:** [Sarah Oates](#)  
**Subject:** Fwd: AB-29 Waiver of Operations Application for License 5724  
**Date:** Friday, December 28, 2018 4:24:04 AM

---

Matthew A. Tomter, Managing Partner  
Anchorage Alehouse  
Eagle River Alehouse  
Matanuska Brewing Company  
907-854-8248  
[Tomtermatt@gmail.com](mailto:Tomtermatt@gmail.com)  
P.O. Box 773192  
Eagle River, AK 99577

Begin forwarded message:

**From:** "Alcohol Licensing, CED ABC (CED sponsored)"  
<[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)>  
**Date:** December 27, 2018 at 4:35:49 PM AKST  
**To:** "[tomtermatt@yahoo.com](mailto:tomtermatt@yahoo.com)" <[tomtermatt@yahoo.com](mailto:tomtermatt@yahoo.com)>  
**Cc:** "Alcohol Licensing, CED ABC (CED sponsored)"  
<[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)>  
**Subject:** **AB-29 Waiver of Operations Application for License 5724**

Hello,

Per our phone conversation today please find an explanation of the requirements for license 5724 to follow-

Because your application received board approvals and the necessary lift of protest in late December, you were presented with the following options-

- <!--[if !supportLists]-->1) <!--[endif]-->You could wait until Jan 1 or later to receive your license and be issued a 2019/2020 license.
- <!--[if !supportLists]-->2) <!--[endif]-->You could receive a 2018/2019 license, this will require
  - <!--[if !supportLists]-->a. <!--[endif]-->That the license be renewed at the 2019 renewal period rather than the 2020 period.
  - <!--[if !supportLists]-->b. <!--[endif]-->Upon renewal or sooner an AB-29 form would be required because the license will be unable to meet minimum operations.
    - <!--[if !supportLists]-->i. <!--[endif]-->This form would be half the biennial fee + the late fee because it cannot be submitted before the deadline for waivers, this would be a \$750+1,000=1750 fee.

Thank You,

Mikal Milton  
Records and Licensing Supervisor  
Alcohol and Marijuana Control Office  
Phone: 907.269.0350  
[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)  
[marijuana.licensing@alaska.gov](mailto:marijuana.licensing@alaska.gov)



Please consider the environment before printing this e-mail.

*Any guidance provided by this electronic communication is not a binding legal opinion, ruling, or interpretation that may be relied upon, but merely guidance concerning existing statutes and regulations. There may be other unique or undisclosed facts, circumstances, and information that may have changed any guidance provided in this communication.*

**CONFIDENTIALITY NOTICE:** *This communication is intended for the sole use of the individual or entity to whom it is addressed, is covered by the Electronic Communications Privacy Act (18 USC § 2510-2521), and may contain Confidential Official Use Only Information that may be exempt from public release under the Freedom of Information Act (5 USC § 552). If you are not the intended recipient, you are prohibited from disseminating, distributing, or copying any information contained in this communication.*

*The State of Alaska cannot guarantee the security of e-mails sent to or from a state employee outside the state e-mail system. If you are not the intended recipient or receive this communication in error, please notify the sender by reply e-mail and delete the original message and all copies from your computer.*



**From:** [McConnell, Erika B \(CED\)](#)  
**To:** [Sarah Oates](#)  
**Cc:** [Matt Tomter](#); [Alcohol Licensing, CED ABC \(CED sponsored\)](#); [Alcohol, CED AMCO \(CED sponsored\)](#); [Dinegar, Harriet C \(LAW\)](#)  
**Subject:** RE: Please disregard my first email. Request to be on next Board meeting Agenda  
**Date:** Monday, January 28, 2019 8:59:36 AM

---

Dear Ms. Oates,

Mr. Tomter was provided with a choice of when to have his license issued, and notified of the consequences of his choice. He chose to have a 2018/2019 license issued in December of 2018, which will require a waiver of operations for 2018 to be filed. However, no employee action under AS 04.11.560(a) has been taken, and Mr. Tomter cannot be considered aggrieved, as he has not been harmed to date. He has not filed the waiver or paid the fee to which he objects, and his license is not in jeopardy. He is free to operate through the remainder of the licensing period with no potential enforcement action hanging over his head.

The language in 3 AAC 304.170(h) contemplates that a waiver will be filed in the calendar year for which they are required, but there is no requirement for this—only a financial penalty for not doing so. I can take no enforcement action if a waiver is not filed. The minimum operating requirements are enforced only upon renewal (AS 04.11.330).

If Mr. Tomter wishes to file the waiver, pay the required fees, and submit a request for refund before close-of-business on February 1, I would be happy to calendar this item on the February agenda.

Sincerely,

*Erika McConnell*

Director  
Alcohol & Marijuana Control Office  
State of Alaska

---

**From:** Sarah Oates <soates@alaskacharr.com>  
**Sent:** Friday, January 25, 2019 4:57 PM  
**To:** McConnell, Erika B (CED) <erika.mcconnell@alaska.gov>  
**Cc:** Matt Tomter <tomtermatt@yahoo.com>; Alcohol Licensing, CED ABC (CED sponsored) <alcohol.licensing@alaska.gov>; Alcohol, CED AMCO (CED sponsored) <alcohol@alaska.gov>; Dinegar, Harriet C (LAW) <harriet.dinegar@alaska.gov>  
**Subject:** RE: Please disregard my first email. Request to be on next Board meeting Agenda

Dear Ms. McConnell,

As you know, AS 04.11.560(a) states that an action of an officer, **employee**, or agent of the board relating to the administration or enforcement of this title may be appealed to the board by the aggrieved party.

The AMCO management team has already made the written determination that Mr. Tomter will need to file a waiver for the 2018 calendar year (emails attached). The language in 3 AAC 304.170(h) clearly contemplates that waiver applications are due within the calendar year for which they are being requested – hence the requirement for a “late fee” if filed after then – not at the end of the biennial period for which the license is issued (at the time of renewal). The renewal application is merely the vessel that is used to collect waiver applications that were not filed by the original deadline, otherwise the license is non-renewed. If waiver applications (or appeals regarding waiver applications) were not intended to be considered until the following year during the renewal period, then there would not be a mandatory late fee for not filing a waiver application during the respective calendar year.

Mr. Tomter is appealing the determination by the AMCO management team – composed of employees of the ABC Board – to the ABC Board itself regarding the requirement of a waiver application that was supposedly due no later than November 30, 2018, thus making it an appropriate matter to be considered by the Board at its February 19-20, 2019 meeting, as requested. This due process is clearly contemplated within the statute, and his request was made well in advance of the Board’s February 1, 2019 deadline for items to be included on the agenda.

I request that you include Mr. Tomter’s appeal as an item on the February 19-20, 2019 ABC Board meeting agenda, as he requested (email attached).

Thank you,

## Sarah Daulton Oates

President & CEO, Alaska CHARR

Office: 907.274.8133

Cell: 907.229.9972

[www.alaskacharr.com](http://www.alaskacharr.com)



Please consider the environment before printing this e-mail.

---

**From:** McConnell, Erika B (CED) [<mailto:erika.mcconnell@alaska.gov>]

**Sent:** Friday, January 25, 2019 2:18 PM

**To:** Matt Tomter; Alcohol Licensing, CED ABC (CED sponsored); Alcohol, CED AMCO (CED sponsored); Sarah Oates

**Subject:** RE: Please disregard my first email. Request to be on next Board meeting Agenda

Dear Mr. Tomter,

Thank you for your email. You will not be required to file for a waiver of operations for 2018 until you renew your license at the end of 2019. At that time it will be appropriate for you to appeal the requirement and for the board to address this issue. Because your communication was sent to [alcohol@alaska.gov](mailto:alcohol@alaska.gov), it will be provided to the board but will not be a separate agenda item at the next meeting. In addition or alternately, you could speak to the board during the public comment period of the next meeting.

Thank you,

*Erika McConnell*

Director  
Alcohol & Marijuana Control Office  
State of Alaska

**From:** Matt Tomter <[tomtermatt@yahoo.com](mailto:tomtermatt@yahoo.com)>

**Sent:** Sunday, January 13, 2019 11:57 AM

**To:** Alcohol Licensing, CED ABC (CED sponsored) <[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)>; Alcohol, CED AMCO (CED sponsored) <[alcohol@alaska.gov](mailto:alcohol@alaska.gov)>; McConnell, Erika B (CED) <[erika.mccconnell@alaska.gov](mailto:erika.mccconnell@alaska.gov)>; Sarah Oates <[soates@alaskacharr.com](mailto:soates@alaskacharr.com)>

**Subject:** Please disregard my first email. Request to be on next Board meeting Agenda

**From:** [Sarah Oates](#)  
**To:** [Alcohol, CED AMCO \(CED sponsored\)](#)  
**Cc:** [Matt Tomter](#)  
**Subject:** Letter to the ABC Board  
**Date:** Wednesday, January 30, 2019 4:29:02 PM  
**Attachments:** [Minimum Operating Requirements for New Licenses.pdf](#)

---

Good afternoon,

Please include the attached document in the Alcohol Mailbox tab of the agenda.

Thank you,

## **Sarah Daulton Oates**

President & CEO, Alaska CHARR

Office: 907.274.8133

Cell: 907.229.9972

[www.alaskacharr.com](http://www.alaskacharr.com)



Please consider the environment before printing this e-mail.

Alaska Cabaret, Hotel,  
Restaurant and Retailer's Association



1503 W. 31<sup>st</sup> Avenue, Suite 202  
Anchorage, AK 99503  
(907) 274-8133 • Fax (907) 274-8640  
Toll Free In Alaska (800) 478-2427

January 30, 2019

Alcoholic Beverage Control Board  
[alcohol@alaska.gov](mailto:alcohol@alaska.gov)

Re: Minimum Operating Requirements for New Licenses

Dear members of the Alcoholic Beverage Control Board:

I am writing this letter in hopes that you will provide clarification and/or guidance to the AMCO staff, and to all existing and prospective licensees around the state regarding minimum operating requirements for new licenses. Specifically, I am requesting that this board clarifies – either through a directive to Ms. McConnell, or through a regulation project – that when a new license is issued after November 20, that the minimum operating requirement for that calendar year is automatically waived, without requirement of additional paperwork or penalty to the licensee.

AS 04.11.330(a)(3) requires that each license be operated for at least 240 hours per calendar year, otherwise a waiver of operating requirements (Form AB-29) must be filed and fees paid for each calendar year that the minimum operating requirement was not met (3 AAC 304.170). Neither the statute nor regulation contemplates what happens when a new license is issued in late November or in the month of December, making it nearly or entirely impossible for a new licensee to meet the 240-hour (essentially 30-day) requirement.

A new license was issued in late December of 2018 to a package store in Anchorage. The licensee was given two options:

1. wait until January to have the license issued, and thus completely miss out on the greatest selling period of the year (during a time when business are struggling and need every dollar they can earn); or
2. have the license issued right away, with the requirement that the following be filed for the 2018 calendar year:
  - a. Form AB-29 as a first waiver request;
  - b. \$750 first waiver fee; and
  - c. \$1000 late waiver fee because the waiver wasn't filed by November 30, 2018.

Neither of those options is at all reasonable. It is very challenging for a prospective licensee to determine exactly when the new license will be ready for issuance, as timing is largely dependent on the approvals of other people and agencies, and of AMCO staff priorities and workloads.

It is unfair to require a new business to have to wait extra time to begin operations, and to miss out on the busiest season of the year. It is unfair and absurd to penalize a business for something that was completely out of its control. It does not make sense that a business should have to waste one of its

very few waivers on this situation, or that a business should have to pay a late fee for a document that was supposedly due before the license even existed.

The minimum operating requirement was put in place to prevent licensees from monopolizing the market by obtaining licenses without operating them, for the sole purpose of preventing competitors from acquiring them. It was not put in place to place an additional financial burden on new businesses.

In the specific situation mentioned earlier, the licensee, Mr. Tomter, chose the second option, as he wanted to sell alcohol to people who were celebrating over the holidays. He provided a timely, written appeal to the ABC Board of the management team's determination that the waiver and fees would be necessary, yet Ms. McConnell has refused to place his appeal on an agenda until his license is due to renew at the next of this year. That correspondence is attached to this letter.

While Mr. Tomter can afford to pay the fines and fees, most new business cannot. Mr. Tomter is adamant that his appeal be considered by this board during this upcoming meeting in order to clear up this issue before the end of this calendar year. Ms. McConnell claims that there is no requirement for a waiver to be filed before the end of the respective calendar year – this is her basis for not including Mr. Tomter's appeal on the agenda. If that statement is true, then the \$1000 late penalty should be removed from 3 AAC 304.170(h). In fact, there is no additional work done by AMCO staff to justify the \$1000 late penalty for a waiver application that is filed in the subsequent year.

Frankly, I find it unfortunate and discouraging that I have to write this letter, as Mr. Tomter had repeatedly yet unsuccessfully attempted to have this issue cleared up through the appeal process set forth under AS 04.11.560(a).

I am sure that you understand the unfairness and absurdity of this issue, and I hope that you will immediately take action to prevent new businesses from being further set back in this tough economy.

Thank you for your consideration and guidance.

Respectfully,



Sarah D. Oates  
President & CEO  
[soates@alaskacharr.com](mailto:soates@alaskacharr.com)

## Sarah Oates

---

**From:** McConnell, Erika B (CED) <erika.mcconnell@alaska.gov>  
**Sent:** Monday, January 28, 2019 9:00 AM  
**To:** Sarah Oates  
**Cc:** Matt Tomter; Alcohol Licensing, CED ABC (CED sponsored); Alcohol, CED AMCO (CED sponsored); Dinegar, Harriet C (LAW)  
**Subject:** RE: Please disregard my first email. Request to be on next Board meeting Agenda

Dear Ms. Oates,

Mr. Tomter was provided with a choice of when to have his license issued, and notified of the consequences of his choice. He chose to have a 2018/2019 license issued in December of 2018, which will require a waiver of operations for 2018 to be filed. However, no employee action under AS 04.11.560(a) has been taken, and Mr. Tomter cannot be considered aggrieved, as he has not been harmed to date. He has not filed the waiver or paid the fee to which he objects, and his license is not in jeopardy. He is free to operate through the remainder of the licensing period with no potential enforcement action hanging over his head.

The language in 3 AAC 304.170(h) contemplates that a waiver will be filed in the calendar year for which they are required, but there is no requirement for this—only a financial penalty for not doing so. I can take no enforcement action if a waiver is not filed. The minimum operating requirements are enforced only upon renewal (AS 04.11.330).

If Mr. Tomter wishes to file the waiver, pay the required fees, and submit a request for refund before close-of-business on February 1, I would be happy to calendar this item on the February agenda.

Sincerely,

*Erika McConnell*

Director  
Alcohol & Marijuana Control Office  
State of Alaska

---

**From:** Sarah Oates <soates@alaskacharr.com>  
**Sent:** Friday, January 25, 2019 4:57 PM  
**To:** McConnell, Erika B (CED) <erika.mcconnell@alaska.gov>  
**Cc:** Matt Tomter <tomtermatt@yahoo.com>; Alcohol Licensing, CED ABC (CED sponsored) <alcohol.licensing@alaska.gov>; Alcohol, CED AMCO (CED sponsored) <alcohol@alaska.gov>; Dinegar, Harriet C (LAW) <harriet.dinegar@alaska.gov>  
**Subject:** RE: Please disregard my first email. Request to be on next Board meeting Agenda

Dear Ms. McConnell,

As you know, AS 04.11.560(a) states that an action of an officer, employee, or agent of the board relating to the administration or enforcement of this title may be appealed to the board by the aggrieved party.

The AMCO management team has already made the written determination that Mr. Tomter will need to file a waiver for the 2018 calendar year (emails attached). The language in 3 AAC 304.170(h) clearly contemplates that waiver applications are due within the calendar year for which they are being requested – hence the requirement for a “late fee” if filed after then – not at the end of the biennial period for which the license is issued (at the time of renewal). The renewal application is merely the vessel that is used to collect waiver applications that were not filed by the original deadline, otherwise the license is non-renewed. If waiver applications (or appeals regarding waiver applications) were

not intended to be considered until the following year during the renewal period, then there would not be a mandatory late fee for not filing a waiver application during the respective calendar year.

Mr. Tomter is appealing the determination by the AMCO management team – composed of employees of the ABC Board – to the ABC Board itself regarding the requirement of a waiver application that was supposedly due no later than November 30, 2018, thus making it an appropriate matter to be considered by the Board at its February 19-20, 2019 meeting, as requested. This due process is clearly contemplated within the statute, and his request was made well in advance of the Board's February 1, 2019 deadline for items to be included on the agenda.

I request that you include Mr. Tomter's appeal as an item on the February 19-20, 2019 ABC Board meeting agenda, as he requested (email attached).

Thank you,

## Sarah Daulton Oates

President & CEO, Alaska CHARR

Office: 907.274.8133

Cell: 907.229.9972

[www.alaskacharr.com](http://www.alaskacharr.com)



Please consider the environment before printing this e-mail.

---

**From:** McConnell, Erika B (CED) [<mailto:erika.mcconnell@alaska.gov>]

**Sent:** Friday, January 25, 2019 2:18 PM

**To:** Matt Tomter; Alcohol Licensing, CED ABC (CED sponsored); Alcohol, CED AMCO (CED sponsored); Sarah Oates

**Subject:** RE: Please disregard my first email. Request to be on next Board meeting Agenda

Dear Mr. Tomter,

Thank you for your email. You will not be required to file for a waiver of operations for 2018 until you renew your license at the end of 2019. At that time it will be appropriate for you to appeal the requirement and for the board to address this issue. Because your communication was sent to [alcohol@alaska.gov](mailto:alcohol@alaska.gov), it will be provided to the board but will not be a separate agenda item at the next meeting. In addition or alternately, you could speak to the board during the public comment period of the next meeting.

Thank you,

*Erika McConnell*

Director  
Alcohol & Marijuana Control Office  
State of Alaska

**From:** Matt Tomter <[tomtermatt@yahoo.com](mailto:tomtermatt@yahoo.com)>

**Sent:** Sunday, January 13, 2019 11:57 AM

**To:** Alcohol Licensing, CED ABC (CED sponsored) <[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)>; Alcohol, CED AMCO (CED sponsored) <[alcohol@alaska.gov](mailto:alcohol@alaska.gov)>; McConnell, Erika B (CED) <[erika.mcconnell@alaska.gov](mailto:erika.mcconnell@alaska.gov)>; Sarah Oates <[soates@alaskacharr.com](mailto:soates@alaskacharr.com)>

**Subject:** Please disregard my first email. Request to be on next Board meeting Agenda





Dear members of the Alcoholic Beverage Control Board,

January 13, 2019

The Eagle River Alehouse, LLC DBA Matanuska Brewing Company is appealing the determination of the AMCO "management team" under AS 04.11.560(a) that our company must submit a first waiver of operation (including the \$750 fee plus \$1000 late fee), for our package store license because it was operated for less than 240 hours in 2018. Our package store licence is a new license just issued in late December of 2018. We do not believe the intent of the statutory operating requirement applies to a new license issued in late December.

We began the process of applying for our package store license in September 2018 - we went through the advertising period, the city process, and worked with community councils in our areas to get it approved locally. Finally, after almost four months of hard work, the Municipality of Anchorage lifted its protest. On December 26, we were issued our license by AMCO. When being issued the license, we were informed that because we were being issued the license in late December, that we would not meet the minimum annual operating requirement of our newly-issued license. We were instructed to fill out a waiver form requesting that the board waive our 240-hour required operating time. The fee from AMCO for a first package store waiver is \$750. On top of that, we were told that because the waiver forms were due by November 30th this year, that our waiver form would be late and that we would be fined an additional \$1000 late penalty.

The intent of the 240-hour minimum operation of a license was to keep people and businesses from holding licenses without using them, or from creating monopolies. If I file for and am granted this waiver request, then it will also reduce the number of future waiver requests we can ever make. In addition, we are already paying for two full years of license operation, yet only getting one full year of operation, plus the last five days of 2018.

I want to say that we all want to follow the rules - to serve alcohol in a safe and professional manner to our guests. The AMCO staff were moved under the Department of Commerce because they should at least assist companies who engage in commerce. I do not believe the staff should be looking for ways to increase expenses on companies that have worked in good faith to meet all the requirements of the State to sell alcohol, even before they begin operating.

I request that the board overrules the staff's determination that a request for 2018 waiver and fees must be filed for our license. I also request that the AMCO director and staff are instructed to change this interpretation of the regulations and apply some common sense to their decision making.

Sincerely,

*Matthew A Tomter*

Matt Tomter  
Eagle River Alehouse, LLC  
DBA Matanuska Brewing Company  
(907) 854-8248

## Sarah Oates

---

**From:** Matt Tomter <tomtermatt@yahoo.com>  
**Sent:** Friday, December 28, 2018 4:24 AM  
**To:** Sarah Oates  
**Subject:** Fwd: AB-29 Waiver of Operations Application for License 5724

Matthew A. Tomter, Managing Partner  
Anchorage Alehouse  
Eagle River Alehouse  
Matanuska Brewing Company  
907-854-8248  
[Tomtermatt@gmail.com](mailto:Tomtermatt@gmail.com)  
P.O. Box 773192  
Eagle River, AK 99577

Begin forwarded message:

**From:** "Alcohol Licensing, CED ABC (CED sponsored)" <[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)>  
**Date:** December 27, 2018 at 4:35:49 PM AKST  
**To:** "[tomtermatt@yahoo.com](mailto:tomtermatt@yahoo.com)" <[tomtermatt@yahoo.com](mailto:tomtermatt@yahoo.com)>  
**Cc:** "Alcohol Licensing, CED ABC (CED sponsored)" <[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)>  
**Subject:** **AB-29 Waiver of Operations Application for License 5724**

Hello,

Per our phone conversation today please find an explanation of the requirements for license 5724 to follow-

Because your application received board approvals and the necessary lift of protest in late December, you were presented with the following options-

- 1) You could wait until Jan 1 or later to receive your license and be issued a 2019/2020 license.
- 2) You could receive a 2018/2019 license, this will require
  - a. That the license be renewed at the 2019 renewal period rather than the 2020 period.
  - b. Upon renewal or sooner an AB-29 form would be required because the license will be unable to meet minimum operations.
    - i. This form would be half the biennial fee + the late fee because it cannot be submitted before the deadline for waivers, this would be a \$750+1,000=1750 fee.

Thank You,

Mikal Milton  
Records and Licensing Supervisor  
Alcohol and Marijuana Control Office  
Phone: 907.269.0350  
[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)  
[marijuana.licensing@alaska.gov](mailto:marijuana.licensing@alaska.gov)

 Please consider the environment before printing this e-mail.

## Sarah Oates

---

**From:** Matt Tomter <tomtermatt@gmail.com>  
**Sent:** Thursday, December 27, 2018 6:45 AM  
**To:** Sarah Oates  
**Subject:** Fwd: Complete New License Application 5724 DBA Matanuska Brewing Company

Matthew A. Tomter, Managing Partner  
Anchorage Alehouse  
Eagle River Alehouse  
Matanuska Brewing Company  
907-854-8248  
[Tomtermatt@gmail.com](mailto:Tomtermatt@gmail.com)  
P.O. Box 773192  
Eagle River, AK 99577

Begin forwarded message:

**From:** "Alcohol Licensing, CED ABC (CED sponsored)" <[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)>  
**Date:** December 26, 2018 at 1:49:27 PM AKST  
**To:** "[tomtermatt@gmail.com](mailto:tomtermatt@gmail.com)" <[tomtermatt@gmail.com](mailto:tomtermatt@gmail.com)>  
**Cc:** "Alcohol Licensing, CED ABC (CED sponsored)" <[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)>, "CED AMCO Enforcement (CED sponsored)" <[amco.enforcement@alaska.gov](mailto:amco.enforcement@alaska.gov)>  
**Subject:** Complete New License Application 5724 DBA Matanuska Brewing Company

Hello,

Your new license application for 5724 DBA Matanuska Brewing Company has been finalized. Please contact [amco.enforcement@alaska.gov](mailto:amco.enforcement@alaska.gov) to schedule an inspection and receive your final license if you have not already done so.

Per our phone conversation I have confirmed with the management team that upon renewal of your license in the 2019 renewal cycle you will be required to submit the AB-29 waiver of operations application because you will not be able to meet the minimum 240 hours of operation for the 2018 calendar year. If you have questions or concerns regarding this matter please direct them to [alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov).

Thank You,

Mikal Milton  
Records and Licensing Supervisor  
Alcohol and Marijuana Control Office  
Phone: 907.269.0350  
[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)  
[marijuana.licensing@alaska.gov](mailto:marijuana.licensing@alaska.gov)



Please consider the environment before printing this e-mail.

Any guidance provided by this electronic communication is not a binding legal opinion, ruling, or interpretation that may be relied upon, but merely guidance concerning existing statutes and regulations. There may be other unique or undisclosed facts, circumstances, and information that may have changed any guidance provided in this communication.

**From:** [Sarah Oates](#)  
**To:** [Alcohol, CED AMCO \(CED sponsored\)](#); [Alcohol Licensing, CED ABC \(CED sponsored\)](#)  
**Cc:** [Sheri Musgrave](#); [McConnell, Erika B \(CED\)](#)  
**Subject:** Comment for Board Packet - Alaska State Fair Renewal  
**Date:** Wednesday, January 30, 2019 10:07:14 PM  
**Attachments:** [Alaska State Fair Renewal.pdf](#)

---

Good evening,

Please include the attached document with the February 19-20, 2019 board meeting tab for the Alaska State Fair's license renewal.

Thank you,

## **Sarah Daulton Oates**

President & CEO, Alaska CHARR

Office: 907.274.8133

Cell: 907.229.9972

[www.alaskacharr.com](http://www.alaskacharr.com)



Please consider the environment before printing this e-mail.

Alaska Cabaret, Hotel,  
Restaurant and Retailer's Association



1503 W. 31<sup>st</sup> Avenue, Suite 202  
Anchorage, AK 99503  
(907) 274-8133 • Fax (907) 274-8640  
Toll Free In Alaska (800) 478-2427

January 30, 2019

Alcoholic Beverage Control Board  
[alcohol@alaska.gov](mailto:alcohol@alaska.gov)  
[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)

Re: Renewal of the Alaska State Fair's Recreational Site License

Dear members of the Alcoholic Beverage Control Board:

It is essential that you renew the Alaska State Fair's recreational site license for a multitude of reasons – the Fair meets the qualifications of a recreational site license, the ABC Board set a precedent during the last renewal cycle when it determined that the Fair qualified for its license type, and it is in the best interests of the public.

On December 5, 2016, the ABC Board reviewed its first written statement from a recreational site licensee when it evaluated the Alaska State Fair's license renewal application for qualification as a recreational site as defined in AS 04.11.210. On that date, it determined that the Fair's events, including the Scottish Highland Games and the rodeo events, qualified it for renewal without conditions or restrictions.

Since then, the Fair has added Alaska Roller Derby to its list of events that are regularly held during a season, adding to its eligibility. Ms. McConnell has made a list of factors that she believes qualify a recreational site for this type of license, but those factors are not found in either statute or regulation. The Fair's license was not included by name or implication in either the 2014 or 2018 Legislative Audit list of licenses and recreation types that do not meet the qualifications for licensure.

Last year, the Legislature passed HB 299 which, in part, repealed AS 04.11.537 that had read:  
*In determining whether issuance, renewal, transfer, relocation, suspension, or revocation of a license is in the best interests of the public, the board need not conform to or distinguish its decision from any action it has taken in the past on applications presenting similar facts, but may instead base its decision only on the particular facts before it.*

In effect, and as clearly intended by the Legislature in hearings, the ABC Board is now required to apply precedent.

Because the Board evaluated the Fair for license renewal in 2016 and determined that it met the qualifications for a recreational site license, and because the Fair is arguably more qualified now than in 2016, the Board is bound by the precedent it set in 2016 to renew this license through 2020.

Ms. McConnell has requested that if the Board chooses to renew this license, that it do so with the condition that alcohol service be limited to those specific events that qualify the Fair for licensure. The actual Alaska State Fair is nearly a two-week event in and of itself that includes many shows and competitions throughout – many of which qualify the Fair for its recreational site license. For that reason, the Board should specifically allow for alcohol sales to take place during the hours of the Alaska State Fair, as has occurred for decades.

While the Fair does qualify for special events permits under AS 04.11.240, it is limited to five per calendar year. The Fair has already had to use one of its five unnecessarily because its repeated requests to have the licensed premises extended and modified to be alternating premises have been unanswered by Ms. McConnell for nearly six months. The Fair typically uses these permits for events that clearly do not fall within the guidelines of the recreational site statute, or that are in locations outside of the licensed areas. With there being only four permits remaining for 2019, the Fair will lose much-needed revenue if required to use another permit (or permits) for alcohol service during the Alaska State Fair.

In summary, I urge you to take the following actions today:

- approve the renewal application of the Fair’s recreational site license;
- clearly state for the record that the fall Alaska State Fair itself is a qualifying event for the license that would not require a separate permit; and
- approve the revised licensed premises diagram and alternating premises request that was repeatedly submitted to AMCO last fall.

Thank you for your consideration.

Respectfully,



Sarah D. Oates  
President & CEO

[soates@alaskacharr.com](mailto:soates@alaskacharr.com)