

ARTICLE 20

WEATHER MODIFICATION

Editor's note: This article was originally enacted as article 1 of chapter 151 in C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1972, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the comparative table located in the back of the index; and C.R.S. 1963.

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36-20-101. Short title.

This article shall be known and may be cited as the "Weather Modification Act of 1972".

Source: L. 72: R&RE, p. 632, § 1. C.R.S. 1963: § 151-1-1.

36-20-102. Legislative declaration.

The general assembly declares that the state of Colorado recognizes that economic benefits can be derived for the people of the state from weather modification. Operations, research, experimentation, and development in the field of weather modification shall therefore be encouraged. In order to minimize possible adverse effects, weather modification activities shall be carried on with proper safeguards, and accurate information concerning such activities shall be made available for purposes of regulation. While recognizing the value of research and development of weather modification techniques by governmental agencies, the general assembly finds and declares that the actual practice of weather modification, whether at public or private expense, is properly a commercial activity which the law should encourage to be carried out, whenever practicable, by private enterprise.

Source: L. 72: R&RE, p. 632, § 1. C.R.S. 1963: § 151-1-2.

36-20-103. Declaration of rights.

The general assembly declares that the state of Colorado claims the right to all moisture suspended in the atmosphere which falls or is artificially induced to fall within its borders. Said moisture is declared to be the property of the people of this state, dedicated to their use pursuant to sections 5 and 6 of article XVI of the Colorado constitution and as otherwise provided by law. It is further declared that the state of Colorado also claims the prior right to increase or permit the increase of precipitation by artificial means for use in Colorado. The state of Colorado also claims the right to modify weather as it affects the people of the state of Colorado and to permit such modification by activity within Colorado.

Source: L. 72: R&RE, p. 632, § 1. C.R.S. 1963: § 151-1-3.

36-20-104. Definitions.

As used in this article, unless the context otherwise requires:

(1) Repealed.

(2) "Director" means the executive director of the department of natural resources, as created by article 33 of title 24, C.R.S.

(2.5) "Ground-based winter cloud seeding" means the seeding of clouds between the months of November through May of each year by the use of ground generation equipment.

(3) (Deleted by amendment, L. 96, p. 966, § 1, effective July 1, 1996.)

(4) "Operation" means the performance in Colorado of any activity to attempt to modify or having the effect of modifying natural weather conditions other than usual and customary activities not conducted primarily for weather modification and having only a minor effect on natural weather conditions.

(4.5) "Operator" means any person who conducts a weather modification operation in Colorado.

(5) "Permit" means a certification of project approval to conduct a specific weather modification operation within the state under the conditions and within the limitations required and established under the provisions of this article.

(6) "Person" has the same meaning as that provided in section 2-4-401 (8), C.R.S.

(7) "Publication" or "publish" means a minimum of at least two consecutive weekly legal notices in at least one newspaper of general circulation in the county or counties, or portions thereof, included within the proposed operation. It shall not be necessary that notice be made on the same day of the week in each of the two weeks, but not less than one week shall intervene between the first publication and the last publication, and notice shall be complete on the date of the last publication. If there is no such newspaper, notice shall be by posting in at least three public places within the county, or portions thereof, included within a proposed operation. Publication of notices provided for in this article may be made, at the discretion of the director, by notices broadcast over any or all standard radio, FM radio, television stations, and cable television. Such broadcast notices shall make reference to locations or publications wherein details of the subject matter of the notices are located.

(8) "Research and development" means theoretical analysis, exploration, experimentation, and the extension of investigative findings and theories of a scientific or technical nature into practical application for experimentation and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes both in the laboratory and in the atmosphere.

(9) "Research and development operation" or "research and development project" means an operation which is conducted solely to advance scientific and technical knowledge in weather modification. Research and development operations may be conducted by state or federal agencies, state institutions of higher education, and bona fide nonprofit research corporations or by commercial operators under contracts with such entities solely for research purposes.

(10) "Weather modification" means any program, operation, or experiment intended to induce changes in the composition, behavior, or dynamics of the atmosphere by artificial means.

Source: L. 72: R&RE, p. 633, § 1. **C.R.S. 1963:** § 151-1-4. **L. 73:** p. 1535, § 1. **L. 92:** (1) repealed, p. 955, § 8, effective March 19; (2.5) added, p. 1912, § 1, effective July 1. **L. 96:** (3) and (6) amended and (4.5) added, p. 966, § 1, effective July 1.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

36-20-105. Administration.

(1) The executive director of the department of natural resources is hereby charged with the administration of this article.

(2) The director shall issue all permits provided for in this article. The director is hereby empowered to issue rules and regulations the director finds necessary to facilitate the implementation of this article, and the director is authorized to execute and administer all other provisions of this article pursuant to the powers and limitations contained in this article.

Source: L. 72: R&RE, p. 634, § 1. **C.R.S. 1963:** § 151-1-5. **L. 96:** (2) amended, p. 966, § 2, effective July 1.

**36-20-106. Advisory committee - appointment - duties - sunset review.
(Repealed)**

Source: L. 72: R&RE, p. 634, § 1. **C.R.S. 1963:** § 151-1-6. **L. 86:** (4) added, p. 425, § 61, effective March 26. **L. 87:** (2)(a) amended, p. 975, § 96, effective March 13. **L. 92:** Entire section repealed, p. 956, § 9, effective March 19.

36-20-107. Duties of the director.

(1) The director shall establish rules and regulations, in accordance with article 4 of title 24, C.R.S., necessary to effectuate the purposes of this article.

(2) Repealed.

Source: L. 72: R&RE, p. 635, § 1. **C.R.S. 1963:** § 151-1-7. **L. 73:** p. 1535, § 2. **L. 92:** (1) and (2)(a) amended, p. 957, § 10, effective March 19; (2)(b) amended, p. 1912, § 2, effective July 1. **L. 96:** (2) repealed, p. 967, § 3, effective July 1.

36-20-108. Powers of the director.

(1) The director may issue permits applicable to specific weather modification operations. For each operation, said permit shall describe the specific geographic area authorized to be affected and shall provide a specific time period during which the operation may continue, which period may be discontinuous but for operations other than ground-based winter cloud seeding may not have a total duration exceeding one calendar year from the day of its issuance. A separate permit shall be required for each operation. Permits for ground-based winter cloud seeding shall have a duration of five years. If a permit for a ground-based winter cloud seeding operation is renewed, the second permit shall have a duration of five years and any third or subsequent permit shall have a duration of ten years. The director shall issue only one active permit for activities in any geographic area if two or more projects therein might adversely interfere with each other.

(2) The director shall, by regulation or order, establish standards and instructions to govern the carrying out of research and development or commercial operations in weather modification that the director considers necessary or desirable to minimize danger to land, health, safety, people, property, or the environment.

(3) (a) The director may make any studies or investigations, obtain any information, and hold any hearings the director considers necessary or proper to assist the director in exercising the director's power or administering or enforcing this article or any regulations or orders issued under this article.

(b) All hearings conducted under this article shall be conducted pursuant to the provisions of this article and article 4 of title 24, C.R.S., and the director or the director's designee shall conduct any hearing required by this article or the director may, by the director's own action, appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., subject to appropriations made to the department of personnel, to conduct any hearing required by this article. Any hearing shall be conducted under the provisions and within the limitations of article 4 or title 24, C.R.S., and this article.

(4) (a) The director may, upon approval of the governor, represent the state in matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification, but, before any such compacts may be implemented, the consent of the general assembly must be obtained.

(b) The director may represent the state and assist counties, municipalities, and public agencies in contracting with commercial operators for the performance of weather modification or cloud-seeding operations. Counties, municipalities, and other public agencies of this state are hereby granted the authority to contribute to and participate in weather modification.

(5) In order to assist in expanding the theoretical and practical knowledge of weather modification, the director may participate in and promote continuous research and development in:

(a) The theory and development of weather modification, including processes, materials, ecological effects, and devices related to such matters;

(b) The utilization of weather modification for agricultural, industrial, commercial, municipal, recreational, and other purposes;

(c) The protection of life and property and the environment during research and operational activities.

(6) The director may conduct and may contract for research and development activities relating to the purposes of this article.

(7) The director, subject to limits of the department of natural resources' appropriation, may hire any technical or scientific experts or any staff deemed necessary to carry out the provisions of this article.

(8) Subject to any limitations imposed by law, the department of natural resources, acting through the director, may accept federal grants, private gifts, and donations from any other source. Unless the use of the money is restricted, or subject to any limitations provided by law, the director may:

(a) Spend it for the administration of this article;

(b) By grant, contract, or cooperative arrangement, use the money to encourage research and development by a public or private agency; or

(c) Use the money to contract for weather modification operations.

(9) The director shall prescribe those measurements reasonably necessary to be made prior to and during all operations to determine the probable effects of an operation.

Source: L. 72: R&RE, p. 636, § 1. **C.R.S. 1963:** § 151-1-8. **L. 76:** (3)(b) amended, p. 587, § 27, effective May 24. **L. 78:** (3)(b) amended, p. 274, § 99, effective May 23. **L. 87:** (3)(b) amended, p. 975, § 97, effective March 13. **L. 92:** (1), (3)(b), and (9) amended, p. 957, § 11, effective March 19; (1), (2), and (3)(a) amended, p. 1913, § 3, effective July 1. **L. 95:** (3)(b) amended, p. 666, § 105, effective July 1. **L. 96:** (1) and (3)(b) amended, p. 967, § 4, effective July 1.

36-20-109. Permit required - exemptions.

(1) No person may engage in activities for weather modification and control without a weather modification permit issued by the director; nor may any person engage in any activities in violation of any term or condition of the permit.

(2) The director, to the extent he considers exemptions practical, may provide by regulation for exempting the following activities from the fee requirements of this article:

(a) Research, development, and experiments conducted by state and federal agencies, state institutions of higher education, and bona fide nonprofit research organizations;

(b) Laboratory research and experiments; and

(c) Activities of an emergency nature for protection against fire, frost, hail, sleet, smog, fog, or drought.

Source: L. 72: R&RE, p. 637, § 1. C.R.S. 1963: § 151-1-9. L. 96: (1) amended, p. 968, § 5, effective July 1.

36-20-110. Issuance of license. (Repealed)

Source: L. 72: R&RE, p. 637, § 1. C.R.S. 1963: § 151-1-10. L. 96: Entire section repealed, p. 968, § 6, effective July 1.

36-20-111. License fee - expiration. (Repealed)

Source: L. 72: R&RE, p. 638, § 1. C.R.S. 1963: § 151-1-11. L. 96: Entire section repealed, p. 968, § 7, effective July 1.

36-20-112. Permit required - when issued.

(1) The director, in accordance with regulations, shall issue a weather modification permit to each applicant who:

(a) (Deleted by amendment, L. 96, p. 969, § 8, effective July 1, 1996.)

(b) Pays the permit fee, if applicable;

(c) Furnishes proof of financial responsibility adequate to meet obligations reasonably likely to be attached to or result from the proposed weather modification operation. Such proof of financial responsibility may, but at the discretion of the director shall not be required to, be shown by presentation of proof of a prepaid insurance policy with an insurance company licensed to do business in Colorado, which insurance policy shall insure liabilities in an amount set by the director and provide a cancellation clause with a thirty-day notice to the director, or by filing with the director an individual, schedule, blanket, or other corporate surety bond in an amount approved by the director. The director shall not require proof of financial responsibility in excess of the limitations imposed by section 24-10-114, C.R.S., from any political subdivision of the state authorized to conduct ground-based winter cloud seeding weather modification activities pursuant to this article.

(d) Submits a complete operational plan for each proposed project prepared by the operator in control which includes a specific statement of objectives, a map of the proposed operating area which specifies the primary target area and shows the area reasonably expected to be affected, the name and address of the operator, the nature and object of the intended operation, the person or organization on whose behalf it is to be conducted, and a statement showing any expected effect upon the environment and methods of determining and evaluating the same. This operational plan shall be placed on file with the director and with any other agent as the director may require.

(e) Publishes a notice of intent to modify weather in the counties to be affected by the weather modification program before the operator secures a permit and before beginning operations. The published notice shall designate the primary target area and indicate the general area which might be affected. It shall also indicate the expected duration and intended effect and state that complete details are available on request from the operator or the director or from the other agent specified by the director. The publication shall also specify a time and place, not more than one week following the completion of publication, for a hearing on the proposed project. Proof of publication shall be furnished to the director by the operator.

(f) Receives approval under the criteria set forth in subsection (3) of this section;

(g) Provides the information that is requested by the director regarding the qualifications, education, and experience of the operator.

(2) Before a permit may be issued, the director or his authorized agents shall hold a public hearing on the proposed project. Said hearing shall be held in a place within a reasonable proximity of the area expected to be affected by the proposed operation.

(3) No permit may be issued unless the director determines, based on the information provided in the operational plan and on the testimony provided at the public hearing:

(a) (Deleted by amendment, L. 96, p. 969, § 8, effective July 1, 1996.)

(b) That the project is reasonably expected to benefit the people in said area or benefit the people of the state of Colorado;

(c) That the project is scientifically and technically feasible;

(d) (Deleted by amendment, L. 96, p. 969, § 8, effective July 1, 1996.)

(e) That the project does not involve a high degree of risk of substantial harm to land, people, health, safety, property, or the environment;

(f) That the project is designed to include adequate safeguards to prevent substantial damage to land, water rights, people, health, safety, or to the environment;

(g) That the project will not adversely affect another project; and

(h) That the project is designed to minimize risk and maximize scientific gains or economic benefits to the residents of the area or the state.

Source: L. 72: R&RE, p. 638, § 1. C.R.S. 1963: § 151-1-12. L. 92: (1)(a) and (1)(c) amended, p. 1914, § 4, effective July 1. L. 96: IP(1), (1)(a), (1)(d), (1)(e), (3)(a), (3)(c), and (3)(d) amended and (1)(g) added, p. 969, § 8, effective July 1.

36-20-113. Permit fee.

(1) The fee for each permit or the renewal thereof under section 36-20-114 shall be at least one hundred dollars. If the operation is a commercial project, the director shall set a fee that is sufficient to pay the direct costs of review of the permit application, public hearings regarding the application, and monitoring of permit operations under this article. Said fees are intended to provide at least a portion of the moneys necessary to administer this article. Said fees shall be deposited into the Colorado water conservation board construction fund created in section 37-60-121, C.R.S.

(2) (Deleted by amendment, L. 2006, p. 957, § 16, effective July 1, 2006.)

Source: L. 72: R&RE, p. 639, § 1. C.R.S. 1963: § 151-1-13. L. 96: Entire section amended, p. 970, § 9, effective July 1. L. 98: Entire section amended, p. 1342, § 68, effective June 1. L. 2006: Entire section amended, p. 957, § 16, effective July 1.

36-20-114. Limits of permit.

(1) Except for ground-based winter cloud seeding, a separate permit is required annually for each operation. If an operation is to be conducted under contract, a permit is required for each separate contract. Subject to the provisions of subsection (2) of this section, a permit may be granted for more than one year's duration. A permit for ground-based winter cloud seeding shall be issued for a period of five years. If a permit for a ground-based winter cloud seeding operation is renewed, the second permit shall have a duration of five years and any third or subsequent permit shall have a duration of ten years.

(2) The director may conditionally approve a project other than ground-based winter cloud seeding for a continuous time period in excess of one year's duration. Permits for such operations must be renewed annually. In approving the renewal of a permit for a continuous program, the director may waive the procedures for initial issuance of a permit in section 36-20-112 and, upon review and approval of the project's operational record, the director may issue a renewed permit for the operation to continue. In such instances, the fees imposed pursuant to section 36-20-113 may be prorated and paid on an annual basis.

(3) A project permit may be granted by the director without prior publication of notice by the operator in cases of fire, frost, hail, sleet, smog, fog, drought, or other emergency. In such cases, publication of notice shall be performed as soon as possible and shall not be subject to the time limits specified in this article or in article 4 of title 24, C.R.S.

Source: L. 72: R&RE, p. 639, § 1. **C.R.S. 1963:** § 151-1-14. **L. 92:** (2) amended, p. 957, § 12, effective March 19; entire section amended, p. 1914, § 5, effective July 1. **L. 96:** Entire section amended, p. 970, § 10, effective July 1.

36-20-115. Modification of permit.

(1) The director may revise the terms and conditions of a permit if:

(a) The operator is first given notice and a reasonable opportunity for a hearing on the need for a revision; and

(b) It appears to the director that a revision is necessary to protect the health or property of any person or to protect the environment.

(2) If it appears to the director that an emergency situation exists or is impending which could endanger life, property, or the environment, the director may, without prior notice or a hearing, immediately modify the conditions of a permit or order temporary suspension of the permit on the director's own order. The issuance of such order shall include notice of a hearing to be held within ten days thereafter on the question of permanently modifying the conditions or continuing the suspension of the permit. Failure to comply with an order temporarily suspending an operation or modifying the conditions of a permit shall be grounds for immediate revocation of the permit.

(3) It shall be the responsibility of the operator conducting any operation to notify the director of any emergency which can reasonably be foreseen or of any existing emergency situations in subsection (2) of this section which might in any way be caused or affected by the weather modification operation. Failure by the operator to so notify the director of any such existing emergency, or any impending emergency which should have been foreseen, may be grounds, at the discretion of the director, for revocation of the permit for operation.

Source: L. 72: R&RE, p. 640, § 1. **C.R.S. 1963:** § 151-1-15. **L. 96:** (1)(a), (2), and (3) amended, p. 971, § 11, effective July 1.

36-20-116. Scope of activity.

Once a permit is issued, the operator shall confine his or her activities within the limits of time and area specified in the permit, except to the extent that the limits are modified by the director. The operator shall also comply with any terms and conditions of the permit as originally issued or as subsequently modified by the director.

Source: L. 72: R&RE, p. 640, § 1. **C.R.S. 1963:** § 151-1-16. **L. 96:** Entire section amended, p. 971, § 12, effective July 1.

36-20-117. Reports of operator.

(1) The director may promulgate rules requiring any operator who has been issued a weather modification permit to file certain reports regarding operations conducted under the permit.

(2) (Deleted by amendment, L. 96, p. 971, § 13, effective July 1, 1996.)

(3) All reports filed under the provisions of this section are declared to be public records subject to the provisions and limitations of part 2 of article 72 of title 24, C.R.S.

Source: L. 72: R&RE, p. 640, § 1. **C.R.S. 1963:** § 151-1-17. **L. 73:** p. 1536, § 3. **L. 92:** (2) amended, p. 958, § 13, effective March 19; entire section amended, p. 1915, § 6, effective July 1. **L. 96:** Entire section amended, p. 971, § 13, effective July 1.

36-20-118. Operations affecting weather in other states.

Weather control operations may not be carried on in Colorado for the purpose of affecting weather in any other state if that state prohibits such operations to be carried on in that state for the benefit of Colorado or its inhabitants.

Source: L. 72: R&RE, p. 641, § 1. **C.R.S. 1963:** § 151-1-18.

36-20-119. Suspension - revocation - refusal to renew.

(1) The director may suspend or revoke a permit if it appears that the operator no longer has the qualifications necessary for the issuance of an original permit or has violated any provision of this article.

(2) The director may refuse to issue another permit to any applicant who has failed to comply with any provision of this article.

Source: L. 72: R&RE, p. 641, § 1. **C.R.S. 1963:** § 151-1-19. **L. 96:** Entire section amended, p. 972, § 14, effective July 1.

36-20-120. Operation under permit. (Repealed)

Source: L. 72: R&RE, p. 641, § 1. **C.R.S. 1963:** § 151-1-20. **L. 96:** Entire section repealed, p. 972, § 15, effective July 1.

36-20-121. Hearing required.

(1) Except as provided in section 36-20-115, the director may not suspend or revoke a permit without first giving the operator notice and a reasonable opportunity to be heard with respect to the grounds for the director's proposed action.

(2) Said hearing shall be conducted by an administrative law judge.

Source: L. 72: R&RE, p. 641, § 1. **C.R.S. 1963:** § 151-1-21. **L. 87:** (2) amended, p. 976, § 98, effective March 13. **L. 96:** (1) amended, p. 973, § 16, effective July 1. **L. 2001:** (2) amended, p. 1277, § 45, effective June 5.

36-20-122. Governmental immunity.

The state and its agencies, counties, and municipalities, all other public entities (as defined in section 24-10-103 (5), C.R.S.) within the state, and the officers and employees thereof are immune from liability resulting from any weather modification operations approved or conducted by them under the provisions and limitations of this article. Nothing in this section shall be construed as providing any broader waiver of immunity than is provided by article 10 of title 24, C.R.S.

Source: L. 72: R&RE, p. 641, § 1. **C.R.S. 1963:** § 151-1-22. **L. 77:** Entire section R&RE, p. 1630, § 1, effective May 20.

36-20-123. Legal recourse - liability - damages.

(1) The mere dissemination of materials and substances into the atmosphere pursuant to an authorized project shall not give rise to the contention or concept that such use of the atmosphere constitutes trespass or involves an actionable or enjoined public or private nuisance.

(2) (a) Failure to obtain a permit before conducting an operation, or any actions which knowingly constitute a violation of the conditions of a permit, shall constitute negligence per se.

(b) The director may order any person who is found to be conducting a weather modification operation without a permit to cease and desist from said operation. Any person who fails to obey said order commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 72: R&RE, p. 641, § 1. **C.R.S. 1963:** § 151-1-23. **L. 79:** (2)(b) amended, p. 1349, § 1, effective July 1. **L. 89:** (2)(b) amended, p. 849, § 131, effective July 1. **L. 96:** (2) amended, p. 973, § 17, effective July 1. **L. 2002:** (2)(b) amended, p. 1552, § 331, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

36-20-124. Permit as defense in actions.

The fact that a person was issued a permit under this article, or that the person has complied with the requirements established by the director pursuant to this article, is not admissible as a defense in actions for damages or injunctive relief brought against the person.

Source: L. 72: R&RE, p. 642, § 1. C.R.S. 1963: § 151-1-24. L. 96: Entire section amended, p. 973, § 18, effective July 1.

36-20-125. Judicial review.

Judicial review of any action of the director may be had in accordance with the provisions of section 24-4-106, C.R.S.

Source: L. 72: R&RE, p. 642, § 1. C.R.S. 1963: § 151-1-25. L. 2001: Entire section amended, p. 1277, § 46, effective June 5.

36-20-126. Penalties.

(1) (a) Any person responsible for conducting a weather modification operation without first having procured the required permit and any person who contracts with or pays another person known to be without a permit to conduct a weather modification operation commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(b) Any person operating an aircraft conducting a weather modification operation, which operation has not received the required permit, shall have this violation reported to the United States department of transportation, federal aviation administration, by the director.

(2) Any person who makes a false statement in the application for a permit, who fails to file any report as required by this article, or who violates any other provisions of this article, except as otherwise provided in section 36-20-123 and subsection (1) of this section, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. Each such violation shall be a separate offense.

Source: L. 72: R&RE, p. 642, § 1. C.R.S. 1963: § 151-1-26. L. 79: Entire section amended, p. 1349, § 2, effective July 1. L. 89: (1)(a) amended, p. 850, § 132, effective July 1. L. 96: (1)(a) and (2) amended, p. 973, § 19, effective July 1. L. 2002: (1)(a) amended, p. 1552, § 332, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1)(a), see section 1 chapter 318, Session Laws of Colorado 2002.

36-20-127. Repeal of article.

This article is repealed, effective July 1, 2011. Prior to such repeal, the function of the issuance of permits for specific weather modifications operations through the director shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 91: Entire section added, p. 690, § 70, effective April 20. L. 94: Entire section amended, p. 1457, § 10, effective May 25. L. 96: Entire section amended, p. 974, § 20, effective July 1.