

MEMORANDUM

To: Mat Weaver, Brian Patton, Tim Luke
Cc: Shelley Keen, Aaron Golart

From: Roger Chase
Gary Spackman

Re: Rulemaking for Small Scale Suction Dredge Mining

On January 16, 2020, Governor Little signed an executive order titled “ZERO-BASED REGULATION” numbered Executive Order No. 2020-1. The order states, in part:

Ongoing Review Process for Existing Rules

2. Each rule chapter effective on June 30, 2020, shall be reviewed by the agency that promulgated the rule according to a schedule established by the Division of Financial Management (DFM) as follows: a. All rule chapters, excluding those issued by Constitutional officers, shall be reviewed and, if applicable, be promulgated as specified in this Executive Order no later than sine die in 2026;

b. The agency review schedule shall be staggered across agencies and within agencies if the agency has five (5) or more rule chapters. DFM shall ensure the volume of rules that are reviewed by the agencies in any given year is such that the public can engage and provide meaningful input in any individual rulemaking, with approximately twenty percent (20-percent) of rule chapters subject to review each year;

The Governor’s office has not specifically instructed agencies how to comply with the executive order. Nonetheless, IDWR will be required, beginning in calendar year 2021, to “review” approximately 20% of its rules annually, and to “*publish a notice of proposed rulemaking . . .*”] Furthermore, IDWR “*must perform a retrospective analysis of the rule chapter, . . . and hold, at a minimum, two public hearings that are designed to maximize public participation in the rulemaking process.*”

Some questions were raised in the 2020 Legislature about Rule 61.01 (Standards for Suction Dredges) and Rule 61.03 (Mechanized Equipment Prohibited Below High Water Mark) of the Idaho Water Resource Board’s Stream Channel Alteration Rules governing small scale suction dredge mining. As a result, **staff is instructed to consider those two rules in calendar year 2021 pursuant to the Governor’s Executive Order no. 2020-01.**

We recognize that the prioritization of rules related to small scale suction dredging and the possible larger review of stream channel alteration rules may require dedication of significant time, and that the normal duties of stream channel alteration staff may be interrupted.