

EXECUTIVE ORDER NO. 63

WHEREAS, regulatory oversight serves the critically important purpose of protecting and promoting the environment, health, safety, and welfare of New Jersey, its resources, its people, its businesses, and its economy; and

WHEREAS, through administrative rulemaking, agency oversight, and regulatory enforcement, State departments, agencies, and other entities can and should contribute to the overall high quality of life in the State; and

WHEREAS, well-framed regulations can fulfill statutory goals and mandates and carry out the government's ongoing mission of promoting the health, safety, and welfare of New Jersey, the protection of our land, air, and water, and the prosperity of our economy; and

WHEREAS, ill-considered or ineffective regulation can deter progress, unduly burden businesses, hamper innovation and economic growth, and lead to stagnation, inefficiency, and inequity, while an informed and progressive approach to regulatory affairs can help avoid these shortcomings; and

WHEREAS, as a general matter, an agency should not propose or adopt a regulation without first making a reasoned determination that its benefits justify its costs, with the recognition that some benefits and costs are difficult to quantify; and

WHEREAS, regulations should foster and support innovation in New Jersey's economy, not hinder it, and so should be written in user-friendly language as often as practicable; and

WHEREAS, it is incumbent upon State government to focus on developing innovative, job-creating strategies that attract new businesses to New Jersey while retaining and growing businesses presently located within the State; and

WHEREAS, attracting and strengthening businesses may be advanced in part through regulatory measures conceived and designed to promote such goals; and

WHEREAS, if New Jersey is to remain a leader in environmental protection, including by taking up the mantle relinquished by the federal government when necessary, agencies enacting rules must at times exceed federal standards, because federal standards act as national minimums, which may not be suitable for a state that is the most densely populated in the nation and has a long industrial past; and

WHEREAS, low-income communities are often subjected to further disadvantages by the lack of attention towards "Environmental Justice," which includes, at a minimum, ensuring that residents of all communities receive fair and equitable treatment in decision-making that affects their environment, communities, homes, and health, and incorporating such considerations into the regulatory process; and

WHEREAS, building an innovation-based economy will result in shifts among types of jobs, and so regulations should be conceived and designed with an eye toward supporting fair wages, maximizing training opportunities, and facilitating the ability of New Jersey residents to pursue career paths that lead directly from school to work with additional opportunities as further experience and knowledge is gained; and

WHEREAS, open government, meaning a government that consults with residents, affected individuals and entities, and community organizations that represent and espouse a broad range of expertise and perspectives, is better able to craft policies and support regulations that foster the goals of predictability, clarity, and a high quality of life for the State's residents; and

WHEREAS, even as our administration promotes policy approaches that inform the development and broaden the impact of regulatory actions, we should also strive to identify ways to maximize regulatory efficiency by simplifying and streamlining the public's ease of access

to the machinery of government and to enhance the ability of regulated communities to communicate and interact with the regulatory agencies that oversee their actions, professions, occupations, and endeavors; and

WHEREAS, the Administrative Procedure Act ("APA"), N.J.S.A. 52:14B-4(a) and N.J.S.A. 52:14B-22, already requires a lengthy list of impact statements, among them socio-economic, regulatory flexibility, jobs impact, and, since 1995, a comparison with federal standards to "determine whether these federal standards sufficiently protect the health, safety and welfare of New Jersey citizens"; and

WHEREAS, Executive Order No. 1 (2010) froze and suspended all pending regulations for a period of ninety (90) days; and

WHEREAS, Executive Order No. 2 (2010) created the perception that going beyond federal standards is undesirable through its directive that agencies "shall . . . not exceed the requirements of federal law" unless required by state statute or where necessary to achieve a state-specific public policy goal; and

WHEREAS, the multiple provisions in Executive Order No. 2 (2010) presumptively setting federal standards as a maximum are not appropriate given New Jersey's longstanding authority and responsibility to protect the environment, health, safety, and welfare of its residents and communities, and are especially inappropriate at a time in which states are banding together to protect against the loss of federal regulatory protections crucial to the wellbeing of their residents;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT that:

1. Executive Orders No. 1 (2010) and No. 2 (2010) are hereby rescinded.

2. Consistent with applicable law, State entities shall strive to pursue the creation of a regulatory environment designed to support innovation, remove bottlenecks, and streamline interaction with the government, while supporting strong environmental, health, safety, and labor standards, by focusing on the following overarching, common sense goals:

- a. Where federal regulation is inadequate to protect the environment, health, safety, and welfare of New Jersey's residents and communities, New Jersey should develop its own regulatory framework where it has the legal authority to do so, and should seek to forge cooperative approaches with other states with similar interests where appropriate. Where federal regulation adequately protects the environment, health, safety, and welfare of New Jersey's residents and communities, New Jersey should operate under that framework in order to minimize confusion and complexity.
- b. When the federal government repeals or rolls back prior protections for public health, welfare, safety, or the environment, State entities should evaluate actions New Jersey might take to restore those protections at the state level and, when appropriate and authorized by law, act to fill the void left at the federal level.
- c. Governmental decisions should be based on the best available data, including scientific data if applicable. Where scientific evidence is an important element in developing or evaluating a rule, State entities should seek out and make productive use of scientific expertise available to them.

- d. State entities should identify and use the best, most innovative, and least burdensome tools and approaches to achieve their regulatory goals.

3. To carry out the goals set forth in Section 2, State entities should adhere to the following principles before issuing a rule proposal, to the extent permitted by law and to the extent applicable and practicable:

- a. State entities should engage with affected communities, and provide opportunities for various groups to work in partnership with the State in crafting solutions.
- b. The options State entities should consider may include, but are not limited to:
 - i. Gathering information through meetings and/or other discussions with affected communities in advance of formulating a proposed rule; and/or
 - ii. Publishing and broadly disseminating a notice of pre-proposal, and seeking comments.
- c. The means selected should be tailored to enable the State entity to accomplish its regulatory goals. Where a proposed rule is new, or makes significant and/or expansive changes to existing rules, the benefit from extensive stakeholder outreach will be greater.
- d. In evaluating options, the State entity should also take into account whether a law requires adoption of a rule within a specified timeline, and whether expedited, special, or emergency rulemaking is necessary.

4. To carry out the goals set forth in Section 2, State entities should also adhere to the following principles, to the extent permitted by law and to the extent applicable and practicable:

- a. When assessing the impacts of a rule pursuant to N.J.A.C. 1:30-5.1, including the economic impacts and the social impacts, State entities shall include a comparison of the proposed benefit to the public with the anticipated burden to the public.
- b. In conducting such an assessment, State entities should incorporate evaluation of quantifiable co-benefits, or benefits that are ancillary to the primary objectives of regulation, and other harder-to-quantify benefits. Each State entity should determine how best to identify and evaluate such benefits in the context of its particular work.
- c. Where the relevant data is available, State entities should consider distributed impacts, or the effects of a regulatory action across various subsets of the population and economy. Each State entity should determine how best to identify and evaluate such impacts in the context of its particular work.
- d. State entities should work to make available data sets relevant to determining distributed impacts, subject to the limitations associated with privacy laws, including but not limited to the Health Insurance Portability and Accountability Act, the Family Educational Rights and Privacy Act, the Privacy Act of 1974, the State Uniform Tax Procedure Act, and the Open Public Records Act. State entities should also understand that some of this information cannot be published for a variety of other reasons,

including confidentiality, trade secrecy, or security risks.

- e. As part of the distributed impacts analysis and where data is available, State entities should give due consideration to "Environmental Justice," meaning that in conceiving and fashioning proposed regulations, State entities should identify and address, as appropriate and practicable, disproportionately high and adverse human health or environmental effects of the program, policy, or activity on minority and low-income populations.
- f. State entities should take into account the cumulative impact of their regulations. Each State entity should determine how best to identify and evaluate such impacts in the context of its particular work.

5. To carry out the goals set forth in Section 2, State entities should consider how best to foster innovation in the economy and to minimize regulatory burdens, which may include but is not limited to:

- a. Taking appropriate steps to move application, approval, and permitting processes online where practicable;
- b. Providing, with the issuance of rule proposals and promulgation of new rules, summaries that give a straight-forward explanation of what the State entity intends to do or is doing, before the technical description of the regulatory changes;
- c. Scrutinizing and minimizing the number of steps within the entity's own decision-making processes, with the goal of reducing decision time; and

d. Considering practicable and beneficial alternatives to direct regulation, through means such as targeted incentives encouraging desired activity, to the extent permitted by law.

6. When possible and appropriate, State entities should provide education about the rules and means of compliance, and should establish channels to enable members of the affected and regulated communities to make compliance inquiries without increasing their exposure to enforcement. A State entity's response to regulatory noncompliance should be proportional to the circumstances.

7. To the extent permitted by law and to the extent practicable and beneficial, State entities should work together to eliminate conflicting rules and coordinate efforts into a unified response, which could include agreeing on one State entity to serve as lead agency so that regulated entities and applicants can receive timely, consistent, and informed answers to inquiries.

8. The director, administrator, or other head of each State entity shall be accountable for implementing this Executive Order to the extent applicable and practicable within that State entity.

9. Nothing in this Order shall be construed to confer any legal rights upon entities whose activities are regulated by State entities, nothing shall be construed to create a private right of action on behalf of any such regulated entities, and nothing shall be used as a basis for legal challenges to rules, approvals, permits, licenses or other actions or inaction by a State entity. Nothing in this Order shall be construed to supersede any federal, state, or local law.

10. For purposes of this Order, "State entity" shall mean any of the principal departments in the Executive Branch of State government and any agency, authority, board, bureau, commission, division, institution, office, or other instrumentality within or

created by any such department, and any independent State authority, commission, instrumentality, or agency over which the Governor exercises executive authority, as determined by the Attorney General.

11. This Order shall take effect on June 1, 2019.

GIVEN, under my hand and seal this
2nd day of April,
Two Thousand and Nineteen, and
of the Independence of the
United States, the Two Hundred
and Forty-Third.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor