TO:               All State Agency Heads

FROM:             Governor Kay Ivey

DATE:             March 16, 2020

RE:               Continuity of Government Operations During COVID-19 Response

As we continue to navigate the response to COVID-19 in our nation and state, it essential to keep government operations running to the maximum extent possible—even if that means altering the normal processes and procedures required by state law. For that reason, the emergency proclamation I issued on March 13, 2020, directed “the appropriate state agencies to exercise their statutory and regulatory authority to assist the communities and entities affected.”

If your agency possesses express statutory authority to adopt rules, one important authority available to you is the emergency rulemaking process under the Alabama Administrative Procedure Act. Under this process, your agency may adopt an emergency rule, with no or limited notice-and-comment opportunities, if required because of “an immediate danger to the public health, safety, or welfare.” Ala. Code § 41-22-5(b)(1). Although emergency rules are ordinarily effective for a period of 120 days, I reserve the right to extend the effectiveness of COVID-19-related emergency rules (through a supplemental emergency proclamation) if circumstances later warrant.

As you exercise emergency rulemaking powers under the APA or take other actions to address COVID-19, please do so in compliance with the following instructions:

1. State agencies should comply with the APA’s requirements for issuing emergency rules, including the requirement of issuing a “written statement of reasons” and the requirement of filling the emergency rule and statement of reasons with the Legislative Services Agency. You may file these documents with the LSA electronically via email by sending them to the Supervising Attorney of the LSA’s Administrative Procedure Division, Jenny Hagood, at jhagood@lsa.state.al.us.

2. Before adopting an emergency rule, state agencies should consult with interested stakeholders, and identify best practices from other states, to the extent reasonably practical under the circumstances. To the extent practical, state agencies should document their consultation and research efforts in the written statement of reasons accompanying the emergency rule.
3. When an emergency rule or other emergency measure is finalized, state agencies should send a copy (including a copy of the written statement of reasons, if applicable) to Alabama Department of Public Health Media and Communications Director Ryan Easterling at ryan.easterling@adph.state.al.us for inclusion on the DPH coronavirus website. State agencies should also post a copy of these documents in a prominent location on their own agency websites.

Thank you for all that you are doing to respond to this public health emergency. Working together, I am confident that we can take the necessary steps to effectively mitigate the consequences of COVID-19 in our state.