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Enforcement of the Infection Protection Act (IfSG) Corona Pandemic: Proof of Testing for Persons Entering from Risk Areas

**Announcement of the Bavarian State Ministry of Health and Care
(GR on proof of testing for persons entering Bavaria)**

**of 15 January 2021, file no. G51o-G8000-2020/415-75 and of 23 February 2021,
file no. G51s-G8000-2021/505-9**

Pursuant to Article 28(1) sentence 1 of the Infection Protection Act in conjunction with Sections 3 and 4 of the Ordinance of the Federal Government on Protection against Entry-Related Infection Risks relating to the SARS-CoV-2 coronavirus after the recognition of an epidemic situation of national significance by the German Bundestag (Coronavirus Entry Ordinance - CoronaEinreiseV) of 13 July 2020 (*Federal Gazette* AT 13.01.2021 V1) and Section 65, sentence 2, no. 2 of the Responsibilities Ordinance (ZustV), the Bavarian State Ministry of Health and Care issues the following

General Ruling

1. Instructions for entry from risk areas
 - 1.1 Persons who are subject to Section 3(1) of the CoronaEinreiseV must, as stipulated in Section 3(1) sentence 1 CoronaEinreiseV, submit proof of testing as per Section 3(3) CoronaEinreiseV without delay, at the latest within 48 hours of entry, to the local authority responsible for the place of habitual residence or, if none exists in Bavaria, to the local authority responsible for the place where the person stays first.
 - 1.2 Persons who are subject to No. 1.1 and do not, within the time periods specified there, submit to the responsible local authority proof of testing as stipulated in Section 3(3) CoronaEinreiseV, are obliged under Article 36(10) sentence 2 IfSG to undergo immediate testing for the presence of infection with the SARS-CoV-2 coronavirus, including a swab to collect sample material for examination by a laboratory doctor, and to submit the test result to the responsible local authority without delay.
2. Instructions for persons who have, in the last ten days before entry into the Federal Republic of Germany, stayed in a high incidence area as defined in Section 3(2) sentence 1 no. 1 CoronaEinreiseV or in a risk area where certain variants of the SARS-CoV-2 coronavirus have appeared (virus variant area) as defined in Section 3(2) sentence 1 no. 2 CoronaEinreiseV.
 - 2.1 Persons who are subject to Section 3(2) CoronaEinreiseV must, as stipulated in Section 3(2) sentence 1 CoronaEinreiseV, immediately submit the requisite proof of testing to the local authority responsible for the place of habitual residence or, if none exists in Bavaria, to the local authority responsible for the place where the person stays first, at the latest within 24 hours of entry.

- 2.2 If persons who are subject to Section 3(2) CoronaEinreiseV do not, upon entry, have proof of testing as defined in Section 3(3) CoronaEinreiseV at their disposal, then pursuant to Article 36(10) sentence 2 IfSG they must undergo testing upon or immediately after entry and submit the proof of testing to the responsible local authority without delay.
3. The bodies responsible for the exercise of police or border police duties are authorised to check the requisite proof of testing for the relevant authority.
4. Nos. 1 and 2 do not apply to persons who enter the Free State of Bavaria for transit purposes only and leave again immediately by direct route.
5. Any violation of the obligation to undergo a clinical examination as specified in Article 36(10) sentence 2 IfSG can be punished as an offence pursuant to Article 73(1a) no. 19 IfSG. Any violation of the obligation specified in Section 3(1) or Section 3(2) CoronaEinreiseV to submit proof of testing can be punished as an offence pursuant to Article 73(1a) no. 24 IfSG in conjunction with Section 9 no. 4 CoronaEinreiseV.
6. Insofar as this General Ruling is based on Article 28(1) sentence 1 IfSG, it is immediately enforceable by operation of law. Otherwise, its immediate enforcement is ordered.
7. This General Ruling takes effect on 16 January 2021 and expires on 30 April 2021 at midnight. In deviation from sentence 1, No. 1.2 takes effect on 18 January 2021. At midnight of 15 January 2021, the General Ruling on the test obligation for entry to Bavaria of 21 December 2020 (BayMBl. 2020 No. 771) expires.

Reasons

Pursuant to Article 28(1) sentence 1 IfSG, the competent authority takes the requisite protective measures if sick persons, persons suspected of being sick, persons suspected of being contagious or carriers are identified, to the extent and for as long as is necessary to prevent the spread of transmissible diseases.

By Ordinance pursuant to Article 36(8) and (10) IfSG of 13 January 2021, *Federal Gazette* AT 13.01.2021 V1 (CoronaEinreiseV), the Federal Government has established regulations for persons entering Germany from risk areas. According to Section 3(1) CoronaEinreiseV, persons who, within the 10 days before entry, have spent time in a risk area that is neither a high-incidence area nor a virus variant area as defined in Section 3(2) sentence 1 CoronaEinreiseV, must, no later than 48 hours after entry, be in possession of a medical certificate or a test result confirming that they are not infected with the SARS-CoV-2 coronavirus and must present this certificate or test result to the competent authority upon demand. According to Section 3(2) CoronaEinreiseV, persons who, within the 10 days before entry, have spent time in a high-incidence area or in a virus variant area, must carry with them upon entry a medical certificate or a test result confirming that they are not infected with the SARS-CoV-2 coronavirus and must present this certificate or test result to the competent authority or the authority or office commissioned by such authority upon demand.

Section 4(1) sentence 1 CoronaEinreiseV contains exemptions from the obligation to furnish proof stipulated in Section 3(1) CoronaEinreiseV for persons who, within the 10 days before entry, have spent time in a risk area that is neither a high-incidence area nor a virus variant area. According to Section 4(1) sentence 2 CoronaEinreiseV, upon request the competent authority may, in justified individual cases, grant further exemptions if there is a valid reason or restrict exemptions specified in Section 4(1) sentence 1 CoronaEinreiseV.

According to Article 36(10) sentence 2 IfSG, persons who fail to present a medical certificate or test result required on the basis of an ordinance pursuant to Article 36(10) sentence 1 no. 1 IfSG - the CoronaEinreiseV being one such ordinance - are obliged to undergo a medical examination in order to rule out their having contracted the transmissible disease that has led to the declaration of an epidemic situation of national importance.

This General Ruling serves to concretise the aforementioned obligations laid down in federal law for Bavaria. The competence of the State Ministry of Health and Care results from Section 65 sentence 2 no. 2 ZustV.

SARS-CoV-2 is a pathogen as defined in Article 2 no. 1 IfSG, which is spreading all over the world within a short space of time. It was noticeable that the infection also spread rapidly among the population in Bavaria. The German Bundestag has declared an epidemic situation of national importance due to the spread of the SARS-CoV-2 coronavirus. Especially elderly people and people with pre-existing medical conditions have a very high risk of falling ill. As there is still neither an effective therapy nor a sufficient quantity of vaccine available, the risk of an increase in the incidence of infection continues to exist unabated, with serious consequences for the life and health of the population and a potential overburdening of the health system. According to the risk assessment issued by the Robert Koch Institute, the situation worldwide and in Germany is still a very dynamic and serious one; the health hazard is still judged to be very high for all groups of the German population.

The pandemic is continuing around the world. In many countries, including Germany, infection rates have risen sharply again in recent weeks and months. At the same time, a mutation of the SARS-CoV-2 coronavirus has been found in the United Kingdom of Great Britain and Northern Ireland as well as in the Republic of South Africa, which, based on the information currently available, is likely to have a higher level of contagiousness.

A state of catastrophe was again declared in Bavaria and it was necessary to impose extensive restrictions, including a night-time curfew.

On top of the continuing national restrictions, it must therefore be ensured that entries into the Free State of Bavaria do not give new impetus to the national infection situation and do not - as was already the case at the beginning of the pandemic - lead to new outbreaks of infection.

As the dangerous worldwide epidemic continues to exist and new infections must be expected, particularly from risk areas, it is essential to demand in general that persons subject to Section 3 (1) or (2) Corona EinreiseV present the proof required under Section 3 (1) and (2) Corona EinreiseV and that persons who cannot present an up-to-date negative test result be tested for the presence of the SARS-CoV-2 coronavirus.

The Free State of Bavaria is located on the southeastern fringe of the Federal Republic of Germany. Due to its geographical location, Bavaria has long external borders with the Republic of Austria and the Czech Republic. Both countries are Member States of the European Union. Between the regions on both sides of the state borders, many important labour and economic relations exist within the European Single Market. If - as is currently the case - an increased risk of infection exists in neighbouring states and these states have consequently been classified as risk areas within the meaning of Article 2 No. 17 IfSG, it is essential that, while borders remain open in principle, the aspects of infection protection are not disregarded. In the past, it has been observed that the border regions show an above-average incidence of infection. Based on the data published by the Robert Koch Institute on 12 January 2021, the 7-day incidence for 19 of the 26 districts in the border region is higher than the average Bavarian 7-day incidence. The exemptions from the testing and proof obligations stipulated by the CoronaEinreiseV which are envisaged for inward and outward cross-border commuters must therefore be restricted to the effect that inward and outward commuters must, in every calendar week during which at least one entry takes place, possess weekly proof of testing as per Section 3(3) CoronaEinreiseV and present this proof upon demand.

Re no. 1:

No. 1 contains instructions for persons entering from risk areas which are neither a high-incidence area as defined in Section 3(2) sentence 1 no. 1 nor a virus variant area as defined in Section 3(2) sentence 1 no. 2 CoronaEinreiseV.

No. 1.1 provides that persons who are subject to Section 3(1) CoronaEinreiseV must submit the proof of testing specified in Section 3(3) and required by Section 3(1) CoronaEinreiseV without delay, at the latest within the period stipulated in the CoronaEinreiseV of 48 hours after entry. Proof of testing must be submitted to the local authority responsible for the place of habitual residence or, if none exists in Bavaria, to the local authority responsible for the place where the person stays first.

No. 1.2 restricts the exemptions envisaged in Section 4(1) sentence 1 nos. 1 and 3 CoronaEinreiseV pursuant to Section 4(1) sentence 2 clause 2 CoronaEinreiseV to the effect that inward commuters and outward commuters who prior to entry have stayed in a risk area that is neither high-incidence area or a virus variant area must, in every calendar week during which at least one entry takes place, possess weekly

proof of a test as defined in Section 3(3) CoronaEinreiseV, and must present it without delay upon the request of the responsible local authority or a body commissioned by such authority. The restriction applies only to inward and outward commuters within the meaning of Section 4(1) sentence 1 no. 3 CoronaEinreiseV, but it also applies to such commuters if they spent less than 24 hours in the risk area or enter the Federal Republic of Germany for a stay of less than 24 hours. In this respect, the exemption pursuant to Section 4(1) sentence 1 in conjunction with Section 2(1) no. 3 CoronaEinreiseV is restricted. The other exemptions remain unchanged.

According to Article 36(7) sentence 2 IfSG in conjunction with Section 1(3) of the Test Requirement Ordinance (TestpflichtV), the persons specified in Section 1(1) TestpflichtV are obliged to undergo a test including the swab which is necessary to take a sample. This test is ordered for the persons specified in no. 1.1 and no. 1.2 by no. 1.3.

Re no. 2:

No. 2 contains instructions for persons who have, in the last ten days before entry into the Federal Republic of Germany, stayed in a high incidence area as defined in Section 3(2) sentence 1 no. 1 CoronaEinreiseV or in a risk area where certain variants of the SARS-CoV-2 coronavirus have appeared (virus variant area) as defined in Section 3(1) sentence 1 no. 2 CoronaEinreiseV.

No. 2.1 provides that persons who are subject to Section 3(2) CoronaEinreiseV must submit the required proof of testing to the responsible local authority without delay, at the latest within 24 hours after entry. Persons entering from high incidence areas and virus variant areas must already possess the relevant proof of testing upon entry. The period specified in no. 2.1 therefore represents a deadline for submission of the test result to the responsible local authority, not a deadline for the testing and for receipt of the test result. The appropriate local authority is determined to be the competent authority for submission of the test result.

According to Article 36(10) sentence 2 IfSG, the persons specified in no. 2.1 are obliged to undergo a test including the swab which is necessary to take a sample if they fail to present an adequate test result. This test is ordered in no. 2.2 for the persons specified in no. 2.1 upon or immediately after entry. Persons entering via the Bavarian airports of Munich, Nuremberg and Memmingen may therefore have to undergo testing at the test centre set up at the airport.

Re no. 3:

The proof required under the CoronaEinreiseV (confirmation of registration on entry or substitute registration and proof of testing) must be submitted to the competent authority as defined by the Infection Protection Act. No. 1 and no. 2 designate the responsible local authority as the competent authority. No. 3 authorises the agencies responsible for the performance of police and border police duties to inspect the documents. This is intended to simplify and improve monitoring of the obligations to furnish proof. These monitoring options are granted in addition to the monitoring options of the authority entrusted with the police control of cross-border traffic as provided for in the CoronaEinreiseV.

Re no. 4:

By virtue of no. 4, persons who enter the Free State of Bavaria for transit purposes only and leave again immediately by direct route are exempted from the orders of the General Ruling.

Re no. 5:

Any intentional or negligent violation of the obligation to undergo a clinical examination can be penalised by fine pursuant to Article 73(1a) no. 19 IfSG. Any violation of the obligations to present proof as stipulated in the CoronaEinreiseV can be penalised by fine pursuant to Article 73(1a) no. 24 IfSG in conjunction with Section 9 CoronaEinreiseV.

Re no. 6:

Where the General Ruling is based on Article 28(1) sentence 1 IfSG, it is immediately enforceable pursuant to Article 28(3) in conjunction with Article 16(8) IfSG. With regard to the instructions based on Sections 3 and 4 of the CoronaEinreiseV, their immediate enforcement is ordered pursuant to Section 80(2) sentence 1 no. 4 of the Rules of the Administrative Courts (VwGO). Combating the pandemic necessitates the prompt submission of proof of testing and - to the extent that such proof is not submitted - prompt testing of persons who are obliged to tolerate appropriate testing pursuant to Article 36(10) sentence 2 IfSG. Only by

means of prompt testing is it ensured that infections are detected and chains of infection thus interrupted. The immediate enforcement of the instructions is therefore in the public interest.

Re no. 7:

No. 7 regulates the entry into force and expiry of the General Ruling. Upon entry into force of this General Ruling, the General Ruling on the test obligation for entry to Bavaria of 21 December 2020, BayMBl. 2020 No. 771, was repealed.

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