STATE OF DISASTER EMERGENCY PROCLAMATION

Executive Department
State of Kansas
Topeka, Kansas

By the Governor

By virtue of the authority vested in me by the Kansas Constitution Article I, Section 3, the Kansas Emergency Management Act, Chapter 48, Article 9, of the Kansas Statutes Annotated ("KEMA"), other relevant Kansas statutes, and any common law authorities to meet the inherent dangers of disasters or the imminent threats of disasters to which the State and its citizens are exposed, and upon advice of the State Adjutant General as the Director of the Division of Emergency Management, I hereby proclaim a State of Disaster Emergency as follows:

GOVERNOR'S INTENT TO PROTECT KANSANS FROM THE ECONOMIC CONSEQUENCES OF COVID-19 AND THE IMMINENT THREAT OF FUTURE OUTBREAKS

As Governor, I am responsible for meeting the dangers to the state and people presented by disasters.[1] Upon finding that a disaster has occurred or that the occurrence or the threat thereof is imminent, I must issue a proclamation declaring a state of disaster emergency. Today, there exists a new disaster and a new imminent threat of a disaster, and as such, I must issue a proclamation to protect, aid, and support the residents of Kansas and to maintain the activation of the state disaster emergency plan.

Without this Proclamation, the vital services necessary to help Kansans, as set forth in detail below, will immediately cease, which will exacerbate the disaster and threat of disaster for counties and individuals state-wide, slow the State's economic recovery, cause widespread confusion, and allow an unnecessary and avoidable catastrophe occur. This Proclamation is necessary to protect Kansas from the current economic disaster and the imminent threat of additional disasters due to new spikes or outbreaks of COVID-19 cases.

The intent of this Proclamation is to help Kansans and the State recover economically and to prevent the imminent threat of further COVID-19 surges. No gubernatorial executive orders issued under the authority premised on this Proclamation will be used to restrict businesses from operating or to restrict the movement or gathering of individuals. Nor will any gubernatorial executive orders subjecting Kansans to criminal prosecution be issued under authority premised on this Proclamation.

As always, I encourage all Kansans to comply with the health guidelines from the Centers for Disease Control and Prevention and the Kansas Department of Health & Environment.

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[1] KEMA imposes a general responsibility on the governor to meet the dangers to the state and people presented by disasters, which include epidemics and contagious and infectious diseases. AG Opinion No. 2020-6.

Additionally, the *Ad Astra: A Plan to Reopen Kansas* guidance is designed to help the local governments, citizens, and businesses of Kansas open and operate in a safe and productive manner. Compliance with this plan will help protect each other, help speed up our economic recovery, and allow us to prevent and address any future outbreaks or surges in COVID-19 cases.

NATURE OF THE DISASTER AND THE THREAT OF IMMINENT DISASTERS AS OF MAY 26, 2020

Economic Insecurity:

As of May 26, 2020, there is now significant economic insecurity for Kansans due to unemployment, which has become an unprecedented menace to the health, morals, and welfare of the people of this State.[2] New outbreaks of COVID-19 also threaten increased economic instability and present considerable risks and complications to the State's economic recovery. The economic fallout from the COVID-19 pandemic described above will likely be the sharpest downturn in the history of Kansas. The pandemic has now damaged the stability of local, state, national, and global economies with increasing threats of layoffs, furloughs, and significant decreases in pay. Involuntary unemployment and underemployment places a serious burden upon not only the unemployed or underemployed individual, but also his or her family and their ongoing wellbeing.

The state of unemployment and the continued threat to the Kansas economy presented by the presence of COVID-19 are unprecedented and constitute a disaster to the public health, safety, and welfare of Kansans that requires quick action and activation of the Kansas Response Plan to respond to the economic threats facing Kansans.

Threats to the Food Supply:

As of May 26, 2020, there are now significant threats to the food supply in the United States and Kansas. The food supply is currently disrupted by new COVID-19 outbreaks and has caused the closure of meat processing plants or has caused plants to run at less than full capacity. The Department of Agriculture is working with multiple food processing plants due to outbreaks of employees and county residents testing positive for COVID-19.[3] The Centers for Disease Control and Prevention (CDC) Rapid Response Teams are now deployed with testing supplies and equipment to support the State due to the present disaster.[4] Four counties with meat processing plants are using non-congregant housing, contracted by KDEM, to support meat processing plant employees who have contracted or been exposed to COVID-19.[5] The current disaster requires the these services.

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[2] The public policy of Kansas, as expressed in K.S.A. 44-702, is that economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of Kansas. *See also* Kansas Department of Labor's Labor Market Report for April 2020, released May 22, 2020, available at https://www.dol.ks.gov/docs/default-source/home-page-news/2020/labor-market-report-april-2020.pdf.

[3] Situation Report 75, May 26, 2020.

[4] *Id.*

[5] *Id.*

Additionally, due to national meat processing plant closures, there is now a backlog of swine that are ready for slaughter, and hundreds of thousands of hogs have grown too large to be slaughtered commercially forcing farmers to kill them and dispose of their carcasses without processing them into food. KDHE's Bureau of Waste Management is evaluating mass euthanasia sites for composting permits.[6] KDHE's Bureau of Environmental Field Services is assisting hog producers to adjust their operations to allow for selective euthanasia due to packing plants reducing capacity in other states.[7] This new crisis not only threatens the food supply but also the economic wellbeing of hundreds of farmers and employees in Kansas.

The CDC has reported COVID-19 cases among U.S. workers in 115 meat and poultry processing facilities in 19 states.[8] Among approximately 130,000 workers at these facilities, there have been nearly 5,000 positive cases and 20 deaths.[9] Factors potentially affecting risk for infection include difficulties with workplace physical distancing and hygiene and crowded living and transportation conditions. The food production industry is considered critical infrastructure, as described by the U.S. Department of Homeland Security, and its workers must be able to operate in an environment of enhanced security. As COVID-19 now sees major outbreaks in Central and South America, the pandemic has created a massive new threat to global food security. The imminent threats to the food supply have caused and will continue to cause increased food insecurity for Kansans. Additionally, the new threats to the food supply in the United States and Kansas will impact national security.

This Proclamation is necessary for the State to continue to support these workers and businesses, to secure the adequate and safe functioning of the food supply system, and to help the economic recovery of Kansas.

Imminent Threat of Surges of COVID-19 Infections during Reopening:

As of May 26, 2020, there is a new imminent threat of surges in COVID-19 infections in the State of Kansas as statewide restrictions on businesses and individual movement and gatherings are lifted that endangers the State's economic recovery. Since May 15, 2020, fifteen counties in the State have for the first time issued an emergency declaration resulting from the pandemic, indicating a further threat to the State's economic recovery. Indeed, the new risk of COVID-19 outbreaks after the lifting of all statewide restrictions creates a significant threat to the economic wellbeing of all Kansans. Without the continued ability to distribute testing supplies, medical supplies, and personal protective equipment, and to provide contact-tracing, medical services capacity, and other resources, the state will be unable to prevent, mitigate, or respond to the imminent risk of a new outbreak of COVID-19 cases that imperils our economic recovery.

AREA AFFECTED BY THE DISASTER

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[6] *Id.*
[7] *Id.*
[8] https://www.cdc.gov/mmwr/volumes/69/wr/mm6918e3.htm
[9] *Id.*

All 105 counties in Kansas; Iowa Tribe of Kansas and Nebraska; Kickapoo Tribe of Kansas; Prairie Band of Potawatomi Nation; and Sac and Fox Nation of the Missouri in Kansas and Nebraska.

DATE THAT DISASTER AFFECTED THE AREA

May 26, 2020, and continuing

SERVICES ENABLED BY THIS PROCLAMATION

To meet these new dangers facing all Kansans, as Governor, I must proclaim a state of disaster emergency to implement the Kansas Response Plan and utilize the full resources of the State, the National Guard, KDEM, other state agencies, and any available federal funding and resources. These resources are desperately needed by the counties of this State. The economic disaster and the threat of new imminent disasters requires the delivery of the following services provided by KDEM, KDHE, the Kansas National Guard, and the federal government:

1. A total of 678 National Guard personnel are supporting numerous field missions in counties throughout the State, and their service is necessary to meet the disaster and threat of disaster currently facing the State.

2. KDEM and the National Guard are providing numerous types of vital food support to Kansans and communities to protect against the threat to the food supply.

3. KDEM and the National Guard are delivering medical and non-medical personal protective equipment ("PPE") to hospitals, first responders, and others, and this service is necessary to meet the imminent threat of surges in COVID-19 infections.

    a. Over 7,000 cases of PPE have been delivered across the state, which includes over 3.2 million individual pieces of PPE delivered throughout the State;

    b. Today, through KDEM, I am sending 340 cases of PPE to 14 different locations that need this vital equipment because of the current disaster.

4. The Kansas Department of Corrections has requested that KDEM and the emergency response provide support personnel, including 35 medical support personnel, 10 prisoner transport personnel, and 20 food preparation and operations personnel.

5. KDEM has made 26 deliveries of Remdesivir to 10 counties. Remdesivir is delivered to hospitals to treat critical patients, and this service is potentially life-saving for those patients. KDEM needs the ability to continue making these deliveries immediately when needed throughout the State.

6. KDEM is providing non-congregate shelter for positive and exposed persons who are essential workers. There are currently 50 contracts related to non-congregate sheltering

needed for the present disaster. Continuing to provide this support will mitigate the threat to the food supply and the threat of surges in COVID-19 infections.

7. Medical workers and first responders now rely on the Battelle Critical Care Decontamination System to decontaminate their PPE. This system is provided by KDEM and continuing to provide this service will mitigate the threat of surges in COVID-19 infections.

8. KDEM manages donations and warehouse space necessary to store PPE. This storage is necessary due to the threat of new COVID-19 outbreaks as statewide restrictions are lifted and the economy reopens.

9. KDHE is providing community-based testing under the State Emergency Response Plan. Increased testing will help the State mitigate the threat of, or respond to, future outbreaks and allows businesses, employees, and customers to resume economic activity with increased confident that outbreaks will be prevented or mitigated.

10. KDEM is transporting testing samples and has transported over a thousand samples to state labs since April 29, 2020. By transporting the tests via KDEM couriers, the tests arrive at the lab the same date they are collected and results are provided the following day. Without this same-day service, the results of the tests will be delayed and the ability to contact-trace will be severely limited, risking additional illness and death as well as economic insecurity.

11. KDEM is providing 16 translators to support contact-tracing operations to mitigate the current and imminent threat of a new COVID-19 outbreak.

12. The Civil Air Patrol provides needed emergency transportation.

Without this Proclamation, the services set forth above cannot be provided, creating an unnecessary and avoidable economic burden to all Kansans, but more importantly leaving Kansas unable to address the unprecedented economic threat caused by COVID-19 and the imminent threat of continued illness and death. Additionally, without this Proclamation and the emergency response it enables, the following significant problems will likely occur:

1. Possible closure of meat processing plants;

2. Inability to assist hog farmers with the euthanasia and disposal of excess hogs;

3. The loss of unemployment benefits;

4. Significant delay and the potential to severely frustrate the economic recovery of the State;

5. Reduced PPE inventory for health care workers and first responders;

6. KDEM would be unable to receive, sort, package, and transport PPE and other commodities to health care workers and first responders;

7. Food shortage and an inability of State agencies to provide the various food programs needed to assist Kansans;

8. Reduced testing and a lack of timely test results;

9. Inability to conduct contact-tracing missions;

10. Increased outbreaks of COVID-19 in the prison population;

11. Increased outbreaks of COVID-19 in nursing homes;

12. Inability to service or transport ventilators or anesthesia machines;

13. Inability to coordinate mission assignments or take emergency actions necessary to deal with issues related to the current disaster;

14. No immunity for State employees or volunteers providing vital services;

15. Inability to initiate and maintain the Kansas Response Plan; and

16. Increased costs to the State as a result of losing federal funding.

If the state of disaster emergency declared by this Proclamation is not extended, these services must end in 15 days.

PROCLAMATION

I hereby proclaim and order the Adjutant General of the State of Kansas to activate the disaster response and recovery portions of the Kansas Response Plan. The Adjutant General shall coordinate local and inter-jurisdictional disaster plans applicable to the political subdivisions of areas affected by this Proclamation.

Any or all of the powers conferred upon the Governor by the Kansas Emergency Management Act may be delegated to the Adjutant General as deemed appropriate during this period of proclaimed State of Disaster Emergency. This may be delegated by written orders, or oral orders subsequently reduced to writing with reference to this Proclamation.

I hereby suspend the provision of any regulatory statute prescribing the procedures for conduct of state business, or the order or rules and regulations of any state agency which implements such statute, if strict compliance with the provisions of such statutes, order or rule and regulation would prevent, hinder, or delay in any way necessary action in coping with the disaster as set forth in K.S.A. 48-925(c)(1).

Any agreements or contracts executed pursuant to the State of Disaster Emergency Proclamations issued on March 12, 2020, or April 30, 2020, may continue under this new Proclamation to the extent permissible pursuant to the terms of such agreements or contracts.

If a court of competent jurisdiction declares that any provision of this Proclamation, any order issued under the authority it invokes, or any section or subsection of any order issued under the authority it invokes is to any extent invalid, illegal, or incapable of being enforced, such provision shall be excluded to the extent of such invalidity, illegality, or unenforceability, all other terms hereof shall remain in full force and effect to ensure the activation of the disaster response and recovery portions of the Kansas Response Plan to assist and protect Kansans during this disaster.

This Proclamation shall be filed promptly with the Division of Emergency Management, the Office of the Secretary of State and each city clerk or county clerk, as appropriate, in the area to which this Proclamation applies. Further dissemination of this Proclamation shall occur by means calculated to bring its contents to the attention of the general public.

DONE At the Capitol in
Topeka Under the Great Seal of
The State this 26th, day of May
A.D., 2020

THE GOVERNOR: Laura Kelly

Secretary of State

Assistant Secretary of State