USET
SOVEREIGNTY PROTECTION FUND

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The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20407

Re: Comments on Tribal Access to Federal Medical Supplies

Dear Secretary Becerra,

We write on behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) in response to the Department of Health and Human Services' (HHS) Dear Tribal Leader Letter on February 6, 2023, seeking input and recommendations for improving Tribal Nation access to the Strategic National Stockpile (SNS). While we support the renewed focus on emergency preparedness and adherence to Executive Order 14001 on a Sustainable Public Health Supply Chain, we remind the Biden Administration that the Consolidated Appropriations Act, 2023 provided the legal authority for Tribal Nations to directly access the SNS. The strategies for accessing the SNS proposed in the draft policy do not offer clear, direct pathways for Tribal Nation access, nor do they address prior concerns and recommendations expressed by Tribal Nations. We offer the following comments to HHS to ensure that Tribal Nation access to the SNS is reflective of Tribal sovereignty, self-governance, and existing legal authorities.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico[1]. USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues. Improved access to the SNS is vital to the health and wellbeing of Tribal Nations. At the height of the COVID-19 pandemic, Tribal Nations struggled to access critical supplies and countermeasures. For example, Tribal Nations received expired personal protective equipment (PPE) and faulty testing devices,

[1] USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

hindering our ability to respond effectively to the pandemic in our communities. Access to the SNS was not guaranteed to Tribal Nations as it was to other units of government resulting in Tribal Nations being forced to exhaust their limited resources before requesting from the SNS. Tribal Nations mainly accessed PPE and other medical countermeasures from the Indian Health Services' (IHS) National Supply Service Center, which often experiences issues with procuring and maintaining resources. Now that the COVID-19 pandemic has exposed these vulnerabilities, we must prepare for future crises and ensure that Tribal Nations will have timely, appropriate access to SNS resources when necessary.

Parity Access to the SNS is Required in Statute

When the Strategic National Stockpile was originally formed, only state health agencies and federal entities such as the Federal Emergency Management Agency (FEMA) were granted the authority to request resources from the SNS. This distribution scheme did not change significantly when administration of the SNS was transferred from the Centers of Disease Control and Prevention (CDC) to the HHS Assistant Secretary for Preparedness and Response (ASPR). Currently, under declared emergencies, state governors and local health authorities of large municipalities can ask ASPR for supplies from the SNS, and ASPR provides those resources directly to the requesting agency. Federal law and regulations maintain that Tribal Nations are "Public Health Authorities," meaning that we have the same public health authority designation as state and local governments, and the CDC. However, Tribal Nation access to the SNS is limited, and we continue to lack appropriate access to SNS resources despite our legal claim.

Beyond the fact that Tribal Nations should already have direct access to the SNS because of our designations as public health authorities, H.R. 2617, the Consolidated Appropriations Act, 2023, included language from the Tribal Medical Supplies Stockpile Access Act, directing HHS to provide parity access. Under Section 319F-5, the Act states that "in the event that the Secretary deploys the contents of the Strategic National Stockpile…. the Secretary shall, in consultation with the applicable states, make such contents or countermeasures ***directly available*** to Indian Tribes and Tribal organizations." This language clearly states that Tribal Nations are legally entitled to access SNS resources on par with other public health authorities. As the purpose of this consultation is to improve Tribal Nation access to the SNS, ASPR must fully acknowledge its legal obligations under statute to provide more direct access to these resources. We urge ASPR and the Administration to reconsider what "direct access" means in practice in order to meaningfully improve this process for Tribal Nations and organizations.

Tribal Nations Require Direct Access to the SNS

Given the statutory requirement to provide direct access to the SNS, as well as Tribal Nations' designation as public health authorities, USET SPF believes that the "strategies" for accessing the SNS proposed in the draft policy miss the mark. In the policy, ASPR has proposed a series of "pathways" for Tribal Nation access to the SNS, but these pathways remain more bureaucratic than the process available to state governments. Tribal Nations are directed to submit requests through state governments, the Indian Health Service (IHS) National Service Supply Center or through federal Regional Administrators with HHS and the Federal Emergency Management Agency (FEMA). USET SPF is unsure how these proposed strategies improve Tribal Nation access to critical resources, particularly given the legal obligation to provide more direct access. Many Tribal Nations lack a good working relationship with state governments, and federal officials historically fail to respect Tribal Nations as the sophisticated governments we are. Access protocols that require Tribal Nations to submit requests through state governments or layers of federal administrators fail to honor trust and treaty obligations and recognize Tribal sovereignty.

On the surface, the draft policy document appears to provide additional avenues for Tribal Nation access to countermeasures, but in reality, these strategies add layers of red tape and bureaucracy that are wholly unnecessary, particularly in the face of public health emergencies. Tribal Nations are sovereign governments

with the obligation to protect the health and wellness of our citizens, and in order to do that we need appropriate, timely access to medical countermeasures and resources. True direct access would allow Tribal Nations to access SNS resources using the same process as state governments. Tribal Nations would be provided with a catalog of available countermeasures and would receive timely updates concerning delivery. HHS ASPR, as an arm of the federal government, has trust and treaty obligations to Tribal Nations to provide for the health and wellbeing of our citizens. This requires treating us as the sovereign governments we are and allowing us to directly request the resources we need to respond to circumstances in our communities. Beyond better acknowledging Tribal sovereignty, direct Tribal access to the SNS will reduce response times to crises, allowing us to better meet the needs of our people as they arise.

Additionally, the federal government as a whole should better incorporate Tribal Nations into emergency preparedness and planning. Much of the discussion surrounding emergency response focuses on state and local governments, leading to gaps in understanding and the creation of plans that do not suit the priorities and circumstances of Tribal Nations. The federal government must allocate resources towards creating a national public health emergency plan that fully incorporates Tribal sovereignty.

ASPR Must Address Recommendations from Tribal Nations

In prior consultation with Tribal Nations, ASPR heard a series of recommendations and requests from Tribal Nations and organizations regarding access to the SNS. However, despite receiving these recommendations and including them in the draft policy document as "gaps," the proposed policy does not address these concerns. In our comments, Tribal Nations and organizations had requested methods for improved communication about resource requests, such as when the shipments would arrive and what exactly would be included. At present, Tribal Nations are unable to view inventory at the SNS, nor can they choose the quantity of resources that they are allocated. The current (and proposed) processes for requesting resources create unnecessary gaps in information for Tribal Nations, resulting in uncertainty and unpreparedness when unknown types and quantities of supplies arrive. Improved communication should also include avenues for recourse when Tribal Nations receive incorrect or expired resources, as several did during the COVID-19 pandemic. Poor communication in supply distribution results in resources being wasted and creates an undue burden on Tribal Nations.

Conclusion

While USET SPF is appreciative that HHS is interested in improving emergency preparedness in Indian Country, we believe that further improvements could be made to the policy. Despite HHS convening a workgroup to improve Tribal Nation access to the SNS, these policies remain overly bureaucratic and unrepresentative of Tribal sovereignty. Tribal Nations require direct access to medical countermeasures and resources available in the SNS and should not be required to coordinate with state governments or regional administrators who do not understand us and our priorities. HHS ASPR should reconsider the directives in current statute and develop means for Tribal Nations to fully utilize our authority as public health entities. We must not wait until the next disaster strikes to make progress on emergency preparedness in Indian Country. Should you have any questions or require additional information, please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at (615) 838-5906, or by email at lmalerba@usetinc.org.

Sincerely,

Kirk Francis
President

Kitcki A. Carroll
Executive Director