

**TO: Deputy Secretary**  
**Through: IHS/ES \_\_\_\_\_**  
**ES \_\_\_\_\_**

**FROM: Director**

**SUBJECT: Implementation Plan for Asian American and Pacific Islander Departmental Initiative**

I am responding to your December 31, 1997, memorandum requesting an implementation plan for the Asian American and Pacific Islander Departmental Initiative. While the Indian Health Service (IHS) supports the intent of the Departmental Initiative, the IHS will not be providing an implementation plan. The Framework for the Department of Health and Human Services' Asian American and Pacific Islander Initiative contains no role for the IHS. This is consistent with the IHS mission, which is to serve American Indians and Alaska Natives (AI/AN). The IHS has no activities that are specific to Asian Americans and Pacific Islanders.

### **DISCUSSION**

The limitations on the IHS to fully participate in this departmental initiative are generally prescribed in law, court decisions, and Federal policy. These limitations address who the IHS is to serve; who is to receive preferred contracts and grants; and who it can employ.

The IHS is specially authorized to provide Federal health services to AI/ANs, based upon a special government-to-government relationship between Indian tribes and the United States. This relationship was first set forth in the 1830s by the U.S. Supreme Court and has subsequently been reconfirmed by numerous treaties, statutes, and judicial actions. The only individuals the IHS can service are members of approximately 550 Federal recognized tribes.

The IHS contracts with tribes and Indian organizations to carry out a variety of services, including comprehensive health care, policy consultation, and special projects. The authorities for these contracts are the Buy Indian Act (25 USC 47); Self-Determination Act, Title I (P.L. 93-638, as amended) contracts; and Self-Determination, Title III (P.L. 93-638, as amended) compacts. These laws require the IHS to give preference to tribal organizations and Indian firms.

The IHS is required by law to give preference in hiring to qualified individuals who are members of federally recognized tribes. Indian preference in hiring was prescribed in the Indian Reorganization Act of 1934. Subsequent court cases, namely the Morton v. Mancari in June 1974, upheld these preference policies in granting preference in hiring and promotions. In the 1977 decision in the case Tyndall v. U.S., the court held that "absolute preference [will be granted], without exception, to qualified Indian applicants in filling all vacancies with the IHS no matter how such vacancies are created, including all initial hiring, reassignments, lateral transfers, promotions or any other personnel action intended to fill a vacancy." Accordingly, the IHS has issued policies and merit promotion plans that adhere to these requirements.

In conclusion, the IHS is bound very closely to the AI/AN people it serves and employs, which provides very little flexibility to fully support the Initiative. However, the IHS will do everything it can to support the Initiative whenever the primary requirements to AI/ANs have been met.

If further information is needed, please have your staff contact Mr. Leo Nolan, Principal Program Analysis Officer, at (301) 443-4245.

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Assistant Surgeon General

cc: IHS/ES  
DFEE/EEB