

required at the bottom of EnergyGuides for refrigerators, refrigerator-freezers, and freezers on the 1995 Representative Average Unit Costs of Energy for electricity (8.67 cents per kilowatt-hour) that was published by the Department of Energy ("DOE") on January 5, 1995,¹ and by the Commission on February 17, 1995.²

EFFECTIVE DATE: October 28, 1996.

FOR FURTHER INFORMATION CONTACT:

James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202-326-3035).

SUPPLEMENTARY INFORMATION: The Appliance Labeling Rule ("Rule") was issued by the Commission in 1979³ in response to a directive in the Energy Policy and Conservation Act of 1975.⁴ The Rule covers eight categories of major household appliances: refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, furnaces, and central air conditioners. The Rule also covers pool heaters⁵ and contains requirements that pertain to fluorescent lamp ballasts,⁶ certain plumbing products,⁷ and certain lighting products.⁸

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires that manufacturers include, on labels and fact sheets, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule requires that manufacturers also include, on labels for some products, a

secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report annually (by specified dates for each product type⁹) the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. Under § 305.10 of the Rule, to keep the required information on labels consistent with these changes, the Commission publishes new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission publishes a statement that the prior ranges remain in effect until new ranges of comparability are published.

The annual submissions of data for refrigerators, refrigerator-freezers, and freezers have been made and have been analyzed by the Commission. The ranges of comparability for these products have not changed by more than 15% from the current ranges for refrigerators, refrigerator-freezers, and freezers, which were published on November 13, 1995, and became effective on February 12, 1996.¹⁰ Therefore, the current ranges will remain in effect until new ranges of comparability are published for refrigerators, refrigerator-freezers, and freezers. As of the effective date of the current ranges (February 12, 1996), the disclosures of estimated annual operating cost required at the bottom of EnergyGuides for refrigerators, refrigerator-freezers, and freezers must be based on the 1995 Representative Average Unit Costs of Energy for electricity (8.67 cents per kilowatt-hour) that was published by DOE on January 5, 1995,¹¹ and by the Commission on February 17, 1995.¹² Because the current ranges will remain in effect until new ranges are published, this requirement to use the 1995 DOE cost for electricity (8.67 cents per kilowatt-hour) also will remain in effect until

new ranges of comparability are published for refrigerators, refrigerator-freezers, and freezers.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority

The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96-27528 Filed 10-25-96; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is adopting a new rule, Rule 143.8, which sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties assessable for violations of the Commodity Exchange Act (Act) and Commission rules. The new rule will implement the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996. The Commission is also adopting amendments to Rule 143.1 to refer to the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended.

EFFECTIVE DATE: November 27, 1996.

FOR FURTHER INFORMATION CONTACT:

Lawrence B. Patent, Associate Chief Counsel, or Thomas E. Joseph, Attorney/Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone Number: (202) 418-5450.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA),¹ requires the head of each

¹ 60 FR 1773.

² 60 FR 9295.

³ 44 FR 66466 (Nov. 19, 1979).

⁴ 42 U.S.C. 6294. The statute also requires DOE to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

⁵ 59 FR 49556 (Sept. 28, 1994).

⁶ 54 FR 28031 (July 5, 1989).

⁷ 58 FR 54955 (Oct. 25, 1993).

⁸ 59 FR 25176 (May 13, 1994, eff. May 15, 1995).

⁹ Reports for refrigerators, refrigerator-freezers, and freezers are due August 1.

¹⁰ 60 FR 56945.

¹¹ 60 FR 1773.

¹² 60 FR 9295.

¹ The FCPIAA is codified in a note at 28 U.S.C. 2461 note. The relevant amendments to the FCPIAA

agency to adjust by regulation the maximum amount of civil monetary penalties (CMPs) or, as applicable, the range of minimum and maximum CMPs, provided by law within the jurisdiction of that Federal agency by the cost-of-living adjustment defined in the FCPIAA, as amended.² The CMP maximums must be adjusted not later than a date 180 days after the date on which the DCIA was enacted, *i.e.*, by October 23, 1996, and at least once every four years thereafter. Since the purposes for the inflation adjustments include maintaining the deterrent effect of CMPs and promoting compliance with the law, the Commission intends to monitor the effects of inflation on its CMP maximums and adjust them as needed to implement the requirements and purposes of the FCPIAA.³

II. Relevant Commission CMPs

The inflation adjustment requirement applies to:

- any penalty, fine or other sanction that—
- (A) (i) Is for a specific monetary amount as provided by Federal law; or
- (ii) Has a maximum amount provided for by Federal law; and
- (B) Is assessed or enforced by an agency pursuant to Federal law; and
- (C) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. 28 U.S.C. 2461 note.

The Act provides for CMPs that meet the above definition, and are therefore subject to the inflation adjustment, in three sections, section 6(c) of the Act, section 6b of the Act, and section 6c of the Act.⁴

Penalties may be assessed pursuant to section 6(c) of the Act, 7 U.S.C. 9, against "any person" found by the Commission to have:

- (1) Engaged in the manipulation of the price of any commodity or futures contract;
- (2) Made willfully a misleading statement or omitted a material fact in an application or report filed with the Commission; or
- (3) Violated any provision of the Act or of the regulations or orders thereunder.

Penalties may be assessed pursuant to section 6b of the Act, 7 U.S.C. 13a, against any contract market which the Commission finds is not enforcing or has not enforced its rules, or any contract market, or any director, officer, agent, or employee of any contract market, that is violating or has violated any of the provisions of the Act or any of the rules or orders thereunder.

Penalties may be assessed by "the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States" pursuant to section 6c of the Act, 7 U.S.C. 13a-1, against "any person found * * * to have committed any violation (of the provisions of the Act or any rule, regulation or order thereunder)."

III. Relevant Cost-of-Living Adjustment

The cost-of-living adjustment is defined by the FCPIAA, as amended by the DCIA, as the amount by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index⁵ for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law. The adjusted CMP maximums are to be rounded based upon the size of the penalty and a specified formula. Further, in no case may the initial adjustment to a CMP maximum undertaken pursuant to these requirements exceed ten percent of such CMP maximum.

Congress last amended all relevant CMP maximums in the Futures Trading Practices Act of 1992, Pub. L. No. 102-546, 106 Stat. 3590 (1992).⁶ Therefore, the cost-of-living adjustment for the

CMP maximums that can be assessed and enforced by the Commission would be the amount by which the Consumer Price Index for all-urban consumers published by the Department of Labor for June, 1995 (*i.e.*, June of the year preceding this year) exceeds that index for June, 1992.⁷ After rounding according to the applicable formula,⁸ the maximum, inflation-adjusted CMP for each violation of the Act or Commission rules assessed against any person pursuant to Sections 6(c) and 6c of the Act will be \$110,000 or triple the monetary gain to such person for each such violation, and \$550,000 for each such violation when assessed pursuant to section 6b of the Act. For each of these CMP maximums, the inflation adjustment will not exceed the ten percent limit imposed by law upon the initial inflation adjustment. The FCPIAA provides that "any increase under (FCPIAA) in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect." Thus, the new CMP maximums may be applied only to violations of the Act that occur after the effective date of this rule.

IV. Related Matters

A. Effective Date

Adoption of Rule 143.8 would implement a statutory change regarding agency procedure or practice within the meaning of 5 U.S.C. 553(b)(3)(A) and therefore does not require notice.⁹ The

⁷ The Consumer Price Index for all-urban consumers published by the Department of Labor for June, 1995 was 456.7, and for June, 1992 was 419.9. Therefore, the relevant cost of living adjustment factor would equal 456.7 divided by 419.9.

⁸ The FCPIAA as amended by DCIA provides in relevant part for the rounding of any inflation adjustment "to the nearest—

* * *

(4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; * * *

(6) multiple of \$25,000 in the case of penalties greater than \$200,000."

Calculations of the Commission's inflation-adjusted CMP maximums are the following:

$(456.7/419.9) \times \$100,000 = \$108,763.99$

$(456.7/419.9) \times \$500,000 = \$543,819.96$

When rounded according to the statutory requirements, the inflation-adjusted CMP maximums would be \$110,000 and \$550,000.

⁹ 5 U.S.C. 553(b) generally requires notice of proposed rulemaking to be published in the Federal Register. That provision states, however, that except when notice or hearing is required by statute, notice is not required for:

(A) * * * interpretative rules, general statements of policy, or rules of agency organization, procedure or practice; or (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure

Continued

contained in the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134 (1996), will also be codified at 28 U.S.C. 2461 note.

² Excluded from this requirement is "any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986, the Tariff Act of 1930, the Occupational Safety and Health Act of 1970 or the Social Security Act." 28 U.S.C. 2461 note, as amended by Pub. L. No. 104-134.

Currently, for the relevant CMPs within the Commission's jurisdiction, the Act provides only for maximum amounts that can be assessed for each violation of the Act or the regulations thereunder; the Act does not set forth any minimum penalties. Therefore, the remainder of this release will refer only to CMP maximums.

³ Specifically, the FCPIAA states:

The purpose of [the FCPIAA] is to establish a mechanism that shall—

- (1) allow for regular adjustment for inflation of civil monetary penalties;
- (2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and
- (3) improve the collection by the Federal Government of civil monetary penalties.

⁴ 7 U.S.C. 9, 13a and 13a-1.

⁵ The Consumer Price Index means the Consumer Price Index for all-urban consumers (CPI-U) published by the Department of Labor. Interested parties may find the relevant Consumer Price Index over the Internet. Go to the Consumer Price Index Home Page at <http://stats.bls.gov/cpihome.htm>; first select, Most Requested Series; then select Consumer Price Index-All Urban Consumers, and finally select, US ALL ITEMS-1967=100-CUUR0000AAO.

⁶ The Futures Trading Practices Act of 1992 amended Section 6(c) of the Act "by striking '\$100,000' * * * and inserting 'the higher of \$100,000 or triple the monetary gain to such person';" amended Section 6b of the Act "by striking '\$100,000' * * * and inserting '\$500,000';" and added to Section 6c of the Act the relevant subsection allowing the Commission to seek a CMP in a civil court action and setting forth the maximum penalty that could be sought thereunder.

Commission also believes that opportunity for public comment is also unnecessary under 5 U.S.C. 553(b)(3)(B). The new rule does not effect any substantive change in Commission regulations, nor alter any obligation that a party has under Commission rules. No party must change its manner of doing business, either with the public or the Commission, to comply with the rule change. The new rule alters current Commission practice by adjusting the maximum CMP, based on a formula set out in the FCPIAA, which may be sought or imposed by the Commission in an enforcement proceeding, and by setting forth a requirement that the Commission adjust relevant CMP maximums for inflation at least once every four years. These changes are undertaken pursuant to a statutory requirement that all agencies make such adjustments and is intended to prevent inflation from eroding the practical, deterrent effect of CMPs.

While the new higher maximum CMPs may expose persons to potentially higher financial liability, in nominal terms, for violations of the Act or Commission rules or orders, the new rule does not require that the maximum penalty be imposed on any party. Nor does it alter any substantive due process rights that a party has in an administrative proceeding or a court of law that protect against imposition of excessive penalties. Further, the new rule only applies to violations of the Act, Commission rules or Commission orders that occur after the effective date of this rule. Accordingly, persons who are currently not in compliance with the provisions of the Act and Commission rules will have sufficient opportunity to consider the extent to which this change affects their potential liability for such violations and to take action to alter their behavior.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rules on small businesses. The rule will potentially affect those persons who are found by the Commission or the Federal courts to have violated the Act or Commission rules or orders. Some of these affected parties could be small businesses. Nevertheless, the Chairperson, on behalf of the Commission, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

thereon are impracticable, unnecessary or contrary to the public interest.

While the Commission recognizes that certain persons fined for violating the Act or Commission rules or orders may be small businesses, the rule does not mandate the imposition of the maximum fixed CMP set forth in the rule on any party. As is currently the case, the imposition of the maximum fixed CMP will occur only where the administrative law judge, the Commission or a federal court finds that the gravity of the offense warrants such a fine.¹⁰ Nor should the rule increase in real terms the economic burden of the fixed maximum CMPs set forth in the Act. Instead, the rule implements a statutory requirement that agencies adjust for inflation existing CMPs so that the real economic value of such penalties, and therefore the Congressionally-intended deterrent effect of such CMPs, is not reduced over time by inflation. Nor does the rule impose any new, affirmative duty on any party or change any existing requirements and thus no party who is currently complying with the Act and Commission regulations will incur any expense in order to comply with the new rule. Therefore, the Commission believes that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

Neither this rule nor the group of rules of which it is a part has a burden within the meaning and intent of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 17 CFR Part 143

Civil monetary penalty, Claims.

In consideration of the foregoing and pursuant to authority contained in sections 6(c), 6b and 6c of the Act, 7 U.S.C. 9, 13a, and 13a-1(d), and 28 U.S.C. 2461 note as amended by Pub. L. No. 104-134, the Commission hereby amends part 143 of chapter I of title 17 of the Code of Federal Regulations as follows:

¹⁰ Section 6(e) of the Act, 7 U.S.C. 9a(1), directs the Commission to "consider the appropriateness of [a] penalty to the gravity of the violation" when assessing a CMP pursuant to section 6(c) of the Act, 7 U.S.C. 9. In addition, the Commission's penalty guidelines state that the Commission when assessing any CMP will consider the gravity of the offense in question. In assessing the gravity of an offense, the Commission may consider such factors as whether the violations resulted in harm to the victims, whether the violations involved core provisions of the Act and whether the violator acted intentionally or willfully, as well as other factors. See, CFTC Policy Statement Relating to the Commission's Authority to Impose Civil Monetary Penalties and Futures Self-Regulatory Organizations' Authority to Impose Sanctions; Penalty Guidelines, Comm. Fut. L. Rep. [Current Transfer Binder] ¶ 26,265 (November 1994).

PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

1. The authority citation for Part 143 is revised to read as follows:

Authority: 7 U.S.C. 9 and 15, 9a, 12a(5), 13a, 13a-1(d) and 13(a); 31 U.S.C. 3701-3719; 28 U.S.C. 2461 note.

2. Section 143.1 is revised to read as follows:

§ 143.1 Purpose.

This part implements the Federal Claims Collection Act, as amended by the Debt Collection Act, 31 U.S.C. 3701-3719, and interpreted by the Department of Justice and General Accounting Office in the Federal Claims Collection Standards (4 CFR parts 101-105), and the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996. This part provides procedures which the Commission will use to collect claims owed the United States arising from activities under the Commission's jurisdiction, including amounts due the United States from fees, fines, civil penalties, damages, interest and other sources. This part further sets forth procedures for the Commission to determine and collect interest, penalties, and administrative costs on unpaid claims and to refer unpaid claims for litigation. This part also sets forth the maximum inflation-adjusted civil monetary penalties that may be assessed and enforced against persons for violations of the Commodity Exchange Act or regulations thereunder.

3. Section 143.8 is added to read as follows:

§ 143.8 Inflation-adjusted civil monetary penalties.

(a) Unless otherwise amended by an act of Congress, the inflation-adjusted maximum civil monetary penalty for each violation of the Commodity Exchange Act or the rules promulgated thereunder that may be assessed or enforced by the Commission under the Commodity Exchange Act pursuant to an administrative proceeding or a civil action in Federal court will be:

(1) For each violation for which a civil monetary penalty is assessed against any person (other than a contract market) pursuant to Section 6(c) of the Commodity Exchange Act, 7 U.S.C. 9, not more than the greater of \$110,000 or triple the monetary gain to such person for each such violation;

(2) For each violation for which a civil monetary penalty is assessed against any contract market or other person pursuant to Section 6c of the

Commodity Exchange Act, 7 U.S.C. 13a-1, not more than the greater of \$110,000 or triple the monetary gain to such person for each such violation; and

(3) For each violation for which a civil monetary penalty is assessed against any contract market or any director, officer, agent, or employee of any contract market pursuant to section 6b of the Commodity Exchange Act, 7 U.S.C. 13a, not more than \$550,000.

(b) The Commission will adjust for inflation the maximum penalties set forth in this section at least once every four years.

(c) Unless otherwise amended by an act of Congress, the penalties set forth in this rule or any penalty adjusted for inflation in the future pursuant to paragraph (b) of this section shall be applicable only to violations of the Commodity Exchange Act, Commission rules, or Commission orders which occur after November 27, 1996 or the date on which such future inflation adjustments become effective, as applicable.

Issued in Washington, DC, on October 21, 1996, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96-27557 Filed 10-25-96; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

Food Labeling

CFR Correction

In title 21 of the Code of Federal Regulations, parts 100 to 169, revised as of April 1, 1996, page 132, in the first column, § 101.79 is corrected in paragraph (b)(3) by revising “≤400 mcg (≤0.4 mg)” to read “≥400 mcg (≥0.4 mg)”.

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA11

Safety Standards for Underground Coal Mine Ventilation

CFR Correction

In Title 30 of the Code of Federal Regulations, parts 1 to 199, revised as of

July 1, 1996, on page 463, in the first column, in § 75.310(a)(4), in the sixth line, “June 10, 1996” should read “June 10, 1997”.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 92

Revitalizing Base Closure Communities and Community Assistance—Community Redevelopment and Homeless Assistance

CFR Correction

In title 32 of the Code of Federal Regulations, parts 1 to 190, revised as of July 1, 1996, part 92 is added as follows:

PART 92—REVITALIZING BASE CLOSURE COMMUNITIES AND COMMUNITY ASSISTANCE—COMMUNITY REDEVELOPMENT AND HOMELESS ASSISTANCE

Sec.

92.1 Purpose.

92.5 Definitions.

92.10 Applicability.

92.15 Waivers and extensions of deadlines.

92.20 Overview of the process.

92.25 HUD's negotiations and consultations with the LRA.

92.30 LRA application.

92.35 HUD's review of the application.

92.40 Adverse determinations.

92.45 Disposal of buildings and property.

Authority: 10 U.S.C. 2687 note.

§ 92.1 Purpose.

This part implements the Base Closure Community Redevelopment and Homeless Assistance Act (Pub. L. 103-421, approved October 25, 1994). It describes the roles and responsibilities of the Department of Defense (DoD), the Department of Housing and Urban Development (HUD), Local redevelopment Authorities (LRAs), and representatives of the homeless in planning and implementing the reuse of domestic military installations that are approved for closure or realignment. Specifically, this part describes the guidance DoD and HUD provide to the LRA, the planning documents the LRA develops and submits to DoD and HUD in planning the reuse of these installations, and the standards of review that HUD observes when reviewing the documents submitted by the LRA. Pub. L. 103-421 authorizes HUD to determine whether the plan for the reuse of the installation proposed by LRA balances the community development, economic redevelopment

and other development needs of the communities in the vicinity of the installation with the needs of the homeless in those communities.

§ 92.5 Definitions.

As used in this part:

CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*)

Communities in the vicinity of the installation. The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the LRA for the installation.

Consolidated Plan. The plan prepared in accordance with the requirements of 24 CFR part 91.

Continuum of care system. (1) Comprehensive homeless assistance system that includes:

(i) A system of outreach and assessment for determining the needs and condition of an individual or family who is homeless, or whether assistance is necessary to prevent an individual or family from becoming homeless;

(ii) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing finders;

(iii) Transitional housing with appropriate supportive services to help those homeless individuals and families that are not prepared to make the transition to independent living;

(iv) Housing with or without supportive services that has no established limitation on the amount of time of residence to help meet long-term needs of homeless individuals and families; and

(v) Any other activity that clearly meets an identified need of the homeless and fills a gap in the continuum of care.

(2) Supportive services enable homeless persons and families to move through the continuum of care toward independent living. These services include, but are not limited to case management, housing counseling, job training and placement, primary health care, mental health services, substance abuse treatment, child care, transportation, emergency food and clothing, family violence services, education services, moving services, assistance in obtaining entitlements, and referral to veterans services and legal services.

Day. One calendar day including weekends and holidays.

DoD. Department of Defense.

HHS. Department of Health and Human Services.