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Thursday  
September 18, 1980

# REGISTRATION

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## Highlights

- 62007** **Refuge and migration assistance for Cubans and Haitians** Presidential determination
- 62170** **Air Pollution Control** EPA/DOT propose policy and guidance on implementation of the Clean Air Act requirement for meeting basic transportation needs; comments by 11-3-80
- 62204** **Safety** OFR announces a public meeting 9-23 through 9-26-80 on proposed changes to the Uniform Building Code by the International Conference of Building Officials
- 62178** **Grant Programs—Education** ED announces that funds will be available for the award of grants under the Metric Education Program and invites applications by 11-25-80
- 62316** **Low and Moderate Income Housing** HUD/FHC proposes revision to Minimum Property Standards; comments by 11-17-80 (Part III of this issue)
- 62392** **Consumer Protection** CPSC announces its intention to develop proposed safety standard for chain saws in an effort to reduce risk of injury to consumers; comments by 10-20-80 (Part IV of this issue)

CONTINUED INSIDE

1979 to allow respondent's subsidiary, Scholl, Inc., to continue to market Solvex athlete's foot products, under license from the acquirer of the divested assets, until December 31, 1980, and having placed such request on the public record for a period of thirty (30) days, and no comments thereon having been received, and having considered such request and determined that reopening and modification of the order is warranted:

*It is ordered.* That the proceeding be, and it hereby is, reopened.

*It is further ordered.* That Paragraph I of the order be, and it hereby is, modified to read as follows:

I

*It is ordered.* That, subject to the prior approval of the Federal Trade Commission, respondent Schering-Plough, through its officers, directors, agents, representatives, employees, subsidiaries, affiliates, divisions, successors and assigns, shall, within one (1) year from either the date Schering-Plough acquires Scholl or service of this Order, whichever comes later, divest the assets, tangible and intangible, acquired, improved or added by respondent as a result of its acquisition of Scholl and utilized by Scholl primarily for the manufacture, distribution or sale in the United States of Solvex athlete's foot products. Such assets shall include all raw material reserves, inventory, machinery, equipment, trade names, trademarks, patents, licenses, research and development projects, good will and other property of whatever description; provided, however, that nothing in this provision shall prohibit or prevent Schering-Plough, its subsidiaries, affiliates, divisions, successors or assigns, from continuing to market Solvex athlete's foot products, under license from the acquirer of the assets to be divested, until no later than December 31, 1980.

By the Commission. Commissioner Bailey did not participate.

Carol M. Thomas,

Secretary.

[FR Doc. 80-28813 Filed 9-17-80; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 120a

#### Land Acquisitions

September 5, 1980.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

#### ACTION: Final rule.

**SUMMARY:** These are new regulations governing the acquisition of land by the United States in trust status for individual Indians and Indian tribes. They cite the statutory authorities and set forth the policies and procedures which are to be followed in such acquisitions.

**EFFECTIVE DATE:** October 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** Raymond W. Jackson, Area Realty Officer, Phoenix Area Office, Bureau of Indian Affairs, P.O. Box 7007, Phoenix, Arizona 85011, telephone (602) 241-2275.

**SUPPLEMENTARY INFORMATION:** Proposed regulations were published in the Federal Register, Volume 43, No. 144 at 32311 on July 26, 1978. Many comments and suggestions were received during the 3-month comment period, including several requests for public hearings. In response to those requests, public hearing were held in Seattle, WA on March 28; in Minneapolis, MN and Oklahoma City, OK on April 3; in Spokane, WA, on April 4; in Pierre, SD, Albuquerque, MN on April 5; and in Billings, MT on April 11, 1979.

The written comments and the testimony received at the seven hearings dealt with virtually every section of the proposed regulations, as well as the general policies involved, in considerable detail and included many suggestions for revision of the proposal. The general areas of comment, some of the major suggestions, and the changes which have been made in the proposed regulations are discussed below.

The proposed § 120a.1 stated that the regulations were to govern acquisition of land in trust status and in restricted status. Some persons questioned whether any acquisitions contemplated by these regulations should be in other than trust status. Also, the inclusion of a reference to acquisition in restricted status raised questions about whether an attempt was being made to regulate fee simple acquisitions by Indians where title might become restricted by operation of law. In response to these questions, § 120a.1 has been revised to delete any reference to acquisition of land in restricted status and a sentence has been added stating that the regulations do not apply to acquisitions of land by Indians in fee simple status. Another sentence has been added to this section to make it clear that the regulations do not pertain to acquisition of interests in trust status by inheritance or escheat because some individuals believed that the proposed language was subject to a contrary interpretation. It was also pointed out that the Alaska

Native Claims Settlement Act does not contemplate the further acquisition of land in trust status, or the holding of land in such status, in the State of Alaska, with the exception of acquisitions for the Metlakatla Indian Community; consequently a sentence has been added to § 120a.1 to specify that the regulations do not apply, except for Metlakatla, in the State of Alaska.

The language of the proposed § 120a.2(b), which defined a tribe, was criticized because it required that a group be currently recognized by the U.S. Government. "Currently" was interpreted to mean "at the time of the regulations". Also, many Federal agencies recognize Indian groups for different purposes and for their particular programs; therefore, the language used may have been interpreted to be much broader than intended. To resolve these problems, the definition was changed to delete the word "currently" and to specify recognition by the Secretary of the Interior as eligible for special programs and services from the Bureau of Indian Affairs. The word "sovereign" was deleted because the Indian Reorganization Act definition of "tribe" includes groups other than sovereign entities. Also, reference to Alaska native groups and villages, except Metlakatla, has been eliminated for the reason mentioned above. Another criticism of this definition was its failure to include tribal corporations. Tribal corporations were not included because the acquisition authority in the Indian Reorganization Act is limited to an "Indian tribe or individual Indian"; however, it has been pointed out that other statutory authority does provide for the acquisition of land in trust for tribal corporations; namely, section 2 of Public Law 91-229 (84 Stat. 120; 25 U.S.C. 489). In view of this, the definition has been changed to include corporations for limited purposes.

Some individuals objected to the definition of an "individual Indian" found in § 120a.2(c) because, in their opinions, it was either too broad or too narrow. As explained in the original publication, this definition is one based on administrative precedent and applicable statutes. No changes have been made except for minor editorial corrections and except for further refinement of the definition as it applies to Alaska natives.

Several comments criticized the definition of "Indian" in proposed § 120a.2(d) on the basis that the use of this term to refer to both individuals and groups was confusing. For this reason the definition has been eliminated and

the text of the other sections has been revised to accommodate this change.

Problems with the definition of an "Indian reservation" contained in proposed § 120a.2(g), now (f), were perceived by many because of the possible implication that the disestablishment or total allotment of a reservation necessarily extinguished the reservation, or because the question of the boundaries of some reservations is pending determination. Revised language has been inserted to resolve these problems.

A minor editorial change has been made in proposed § 120a.2(h), now (g). The definition of a "tribal consolidation area" set out in proposed § 120a.2(i), now (h), was criticized because some tribes do not now have an Indian reservation and because the expression "in close proximity to" was not precise. To partially resolve these difficulties the offending language has been deleted. Also, a phrase has been added indicating that a land acquisition plan is to cover acquisition of land for a tribe in trust status. Other objections to this definition reflected a wide range of sentiment ranging from too liberal to unreasonably restrictive. The provision for Secretarial approval should keep the approval of plans within reasonable limits.

The land acquisition policy specified in § 120a.3 was the subject of much objection: some from those who believe it is too restrictive and some from those who maintain it is too broad. Changes have been made to reflect the intent that land acquired under these regulations be taken in trust status, as opposed to restricted status. Also, since some question about whether tribal self-determination and economic development would include providing housing for Indians, § 120a.3(a)(3) has been modified to specifically cover acquisition of land for Indian housing. Additional editorial changes have been made which are not intended to change the meaning of the section. The policy itself is within the scope of existing statutory authority and, it is believed, reflects Congressional intent.

The proposed § 120a.4 concerning statutory restrictions on tribal property has been deleted because it was not directly pertinent to acquisition of land in trust status and because it was the source of substantial confusion about the intent of these regulations.

Proposed § 120a.5, now § 120a.4, dealing with transfer of land from fee to trust status, has been revised to eliminate redundancies and to bring it into harmony with changes made in other sections already discussed. These changes should eliminate most of the

objections to this section. The title of the section has been revised to remove any implication that the acquisitions described in the body of the section are the only kind contemplated. Also, the provision dealing with acquisitions in Oklahoma under section 5 of the Indian Reorganization Act has been made into a separate section, § 120a.5.

Proposed § 120a.6 has been deleted because its substance is covered in other sections.

Proposed § 120a.7 is renumbered § 120a.6 and has only editorial revisions.

Proposed § 120a.8 has been deleted because it has been determined that the Act of February 14, 1931, as amended, does not authorize land acquisition in trust status.

Proposed § 120a.9 is now § 120a.7. A new paragraph (b) has been added to provide that a tribe may acquire a fractional land interest in trust status if the interest to be acquired is in fee status prior to such acquisition. This section was one of the most severely criticized by spokesmen for Indian tribes. In an effort to respond to these objections, a new paragraph (e) has been added to make it possible for a tribe to also acquire an undivided interest in trust or restricted land, if the owners of a majority of remaining trust or restricted interests agree. This section has also been changed to make it apply to individuals as well as tribes. This change is in response to problems which have developed when an individual acquires a fractional interest in property and uses it to the exclusion of, and with no accountability to, the other owners.

A new § 120a.8 has been added to require tribal consent to a nonmember's acquisition of land in trust status on the tribe's reservation, unless the nonmember already owns an undivided interest, in trust or restricted status, in the parcel of land to be acquired. This addition is intended to support tribal self-determination.

Proposed § 120a.10 is now § 120a.9 and has only editorial changes. Many commentators objected to the requirement for information which would support and justify the approval of the acquisition of land in trust status. Because of the discretionary nature of trust land acquisitions, it is considered not only appropriate but also requisite to have support for the Secretary's decision in the record. The need for this requirement is increased by the addition of a new section 120a.10, which prescribes factors to be considered in evaluating requests.

Many objections were received about the acquisition of fee lands in trust status. These comments primarily concerned the erosion of tax base and

the serious jurisdictional problems that can arise when land outside of reservation is acquired in trust status. Many of the suggestions go beyond the scope of existing statutory authority and the proper purview of these regulations: e.g., the proposal that in-lieu taxes be paid for land transferred from fee to trust status.

A number of persons recommended that an economic impact analysis be made before any land acquisition regulations are adopted. However, trust land acquisitions occur whether or not such regulations are promulgated. The main purposes of these regulations are to enunciate land acquisition policy and to bring uniformity into the application of that policy.

In order to insure that conflicting interests are evaluated before land is acquired in trust status, a new § 120a.10 has been added setting forth the factors that will be considered by the Secretary when evaluating a land acquisition request. Among other things, this will require the consideration of economic impact for each acquisition before it is approved. Other factors, such as potential jurisdictional problems, the need for the land and its intended use, and the ability of the Bureau of Indian Affairs to administer the trust on the land, also must be considered.

Tribal representatives expressed the opinion that a specific time limit for acting on requests should be included in § 120a.11. While a specific time has not been included, the section has been changed to require that the applicant be promptly notified of decisions. Also, in response to several suggestions, the section now requires that the applicant be given the reasons for denial of a request.

Section 120a.12 has been subject to certain revisions. Some individuals suggested that the Secretary in requiring that liens, encumbrances, or infirmities of title be eliminated before bringing land into trust, limit that requirement to those which make the title unmarketable. Others suggested that the regulations require the elimination of all liens, particularly those arising from taxes and assessments. There are some liens, encumbrances, or infirmities which, although not making the title unmarketable, could impose burdens on the United States were the title to be taken in trust without eliminating them. The section has been modified to require the elimination of those which render the title unmarketable and to provide discretion in requiring the elimination of those which do not cause unmarketability.

Section 120a.13 remains the same with only minor editorial changes.

The primary author of this document is Raymond W. Jackson, Area Realty Officer, Phoenix Area Office, Bureau of Indian Affairs, P.O. Box 7007, Phoenix, Arizona 85011, telephone (602) 241-2275.

It has been determined that this rule is not of sufficient significance to require the preparation of a regulatory analysis under Executive Order 12044 of March 23, 1978, and 43 CFR 14.

The authority for adoption of these regulations is contained in 5 U.S.C. 301; 25 U.S.C. 1 and 2; 25 U.S.C. 450h, 450k, 464, 465, 501, 1466, 1469, 1495 and 1498; and 209 DM 8.

The title of Subchapter K, Chapter I, of Title 25 of the Code of Federal Regulations is revised and a new Part 120a is added as follows:

**SUBCHAPTER K—LANDS: SURFACE AND SUBSURFACE ESTATES AND RESOURCES (RECORDS AND TITLE DOCUMENTS: ACQUISITIONS: PATENTS, ALLOTMENTS AND SALES)**

**PART 120a—LAND ACQUISITIONS**

- Sec.  
 120a.1 Purpose and scope.  
 120a.2 Definitions.  
 120a.3 Land acquisition policy.  
 120a.4 Acquisitions in trust of lands owned in fee by an Indian.  
 120a.5 Trust acquisitions in Oklahoma under Sec. 5 of the I.R.A.  
 120a.6 Exchanges.  
 120a.7 Acquisition of fractional interests.  
 120a.8 Tribal consent for nonmember acquisitions.  
 120a.9 Requests for approval of acquisitions.  
 120a.10 Factors to be considered in evaluating requests.  
 120a.11 Action on requests.  
 120a.12 Title examination.  
 120a.13 Formalization of acceptance.

Authority: R.S. 181; 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 stat. 1471, as amended; 48 stat. 985, as amended; 49 Stat. 1967, as amended; 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended; 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d-10, 1466, and 1495, and other authorizing acts.

Cross-Reference: For regulations pertaining to: The inheritance of interests in trust or restricted land, see parts 15, 16, and 17 of this title and 43 CFR Part 4; the purchase of lands under the BIA Loan Guaranty, Insurance and Interest Subsidy program, see part 93 of this title; the exchange and partition of trust or restricted lands, see part 121 of this title; land acquisitions authorized by the Indian Self-Determination and Education Assistance Act, see parts 272 and 276 of this title; the acquisition of allotments on the public domain or in national forests, see 43 CFR Part

2530; the acquisition of Native allotments and Native townsite lots in Alaska, see 43 CFR 2561 and 2564; the acquisition of lands by Indians with funds borrowed from the Farmers Home Administration, see 7 CFR 1821.401, et seq., and 1890f; the acquisition of land by purchase or exchange for members of the Osage Tribe not having certificates of competency, see §§ 108.8 and 127.54 of this title.

**§ 120a.1 Purpose and scope.**

These regulations set forth the authorities, policy, and procedures governing the acquisition of land by the United States in trust status for individual Indians and tribes. Acquisition of land by individual Indians and tribes in fee simple status is not covered by these regulations even though such land may, by operation of law, be held in restricted status following acquisition. Acquisition of land in trust status by inheritance or escheat is not covered by these regulations.

These regulations do not cover the acquisition of land in trust status in the State of Alaska, except acquisitions for the Metlakatla Indian Community of the Annette Island Reserve or its members.

**§ 120a.2 Definitions.**

(a) "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) "Tribe" means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians, including the Metlakatla Indian Community of the Annette Island Reserve, which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs. For purposes of acquisitions made under the authority of 25 U.S.C. 488 and 489, or other statutory authority which specifically authorizes trust acquisitions for such corporations, "Tribe" also means a corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477) or section 3 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 503).

(c) "Individual Indian" means:

(1) Any person who is an enrolled member of a tribe;

(2) Any person who is a descendent of such a member and said descendant was, on June 1, 1934, physically residing on a federally recognized Indian reservation;

(3) Any other person possessing a total of one-half or more degree Indian blood of a tribe;

(4) For purposes of acquisitions outside of the State of Alaska, "Individual Indian" also means a person who meets the qualifications of

paragraphs (c)(1), (2), or (3) of this section where "Tribe" includes any Alaska Native Village or Alaska Native Group which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs.

(d) "Trust land" or "land in trust status" means land the title to which is held in trust by the United States for an individual Indian or a tribe.

(e) "Restricted land" or "land in restricted status" means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal law or because of a Federal law directly imposing such limitations.

(f) Unless another definition is required by the act of Congress authorizing a particular trust acquisition, "Indian reservation" means that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma or where there has been a final judicial determination that a reservation has been disestablished or diminished, "Indian reservation" means that area of land constituting the former reservation of the tribe as defined by the Secretary.

(g) "Land" means real property or any interest therein.

(h) "Tribal consolidation area" means a specific area of land with respect to which the tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust status for the tribe.

**§ 120a.3 Land acquisition policy.**

Land not held in trust or restricted status may only be acquired for an individual Indian or a tribe in trust status when such acquisition is authorized by an act of Congress. No acquisition of land in trust status, including a transfer of land already held in trust or restricted status, shall be valid unless the acquisition is approved by the Secretary.

(a) Subject to the provisions contained in the acts of Congress which authorize land acquisitions, land may be acquired for a tribe in trust status (1) when the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or, (2) when the tribe already owns an interest in the land or, (3) when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

(b) Subject to the provisions contained in the acts of Congress which authorize land acquisitions or holding land in trust or restricted status, land may be acquired for an individual Indian in trust status (1) when the land is located within the exterior boundaries of an Indian reservation, or adjacent thereto; or, (2) when the land is already in trust or restricted status.

**§ 120a.4 Acquisitions in trust of lands owned in fee by an Indian.**

Unrestricted land owned by an individual Indian or a tribe may be conveyed into trust status, including a conveyance to trust for the owner, subject to the provisions of this part.

**§ 120a.5 Trust acquisitions in Oklahoma under Section 5 of the I.R.A.**

In addition to acquisitions for tribes which did not reject the provisions of the Indian Reorganization Act and their members, land may be acquired in trust status for an individual Indian or a tribe in the State of Oklahoma under Section 5 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465), if such acquisition comes within the terms of this part. This authority is in addition to all other statutory authority for such an acquisition.

**§ 120a.6 Exchanges.**

An individual Indian or tribe may acquire land in trust status by exchange if the acquisition comes within the terms of this part. The disposal aspects of an exchange are governed by Part 121 of this title.

**§ 120a.7 Acquisition of fractional interests.**

Acquisition of a fractional land interest by an individual Indian or a tribe in trust status can be approved by the Secretary only if:

(a) The buyer already owns a fractional interest in the same parcel of land; or

(b) The interest being acquired by the buyer is in fee status; or

(c) The buyer offers to purchase the remaining undivided trust or restricted interests in the parcel at not less than their fair market value; or

(d) There is a specific law which grants to the particular buyer the right to purchase an undivided interest or interests in trust or restricted land without offering to purchase all of such interests; or

(e) The owner of a majority of the remaining trust or restricted interests in the parcel consent in writing to the acquisition by the buyer.

**§ 120a.8 Tribal consent for nonmember acquisitions.**

An individual Indian or tribe may acquire land in trust status on a reservation other than its own only when the governing body of the tribe having jurisdiction over such reservation consents in writing to the acquisition; provided, that such consent shall not be required if the individual Indian or the tribe already owns an undivided trust or restricted interest in the parcel of land to be acquired.

**§ 120a.9 Requests for approval of acquisitions.**

An individual Indian or tribe desiring to acquire land in trust status shall file a written request for approval of such acquisition with the Secretary. The request need not be in any special form but shall set out the identity of the parties, a description of the land to be acquired, and other information which would show that the acquisition comes within the terms of this part.

**§ 120a.10 Factors to be considered in evaluating requests.**

In evaluating requests for the acquisition of land in trust status, the Secretary shall consider the following factors:

(a) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(b) The need of the individual Indian or the tribe for additional land;

(c) The purposes for which the land will be used;

(d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;

(e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;

(f) Jurisdictional problems and potential conflicts of land use which may arise; and

(g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

**§ 120a.11 Action on requests.**

The Secretary shall review all requests and shall promptly notify the applicant in writing of his decision. The Secretary may request any additional information or justification he considers necessary to enable him to reach a decision. If the Secretary determines

that the request should be denied, he shall advise the applicant of that fact and the reasons therefor in writing and notify him of the right to appeal pursuant to Part 2 of this title.

**§ 120a.12 Title examination.**

If the Secretary determines that he will approve a request for the acquisition of land from unrestricted fee status to trust status, he shall acquire, or require the applicant to furnish, title evidence meeting the *Standards For The Preparation of Title Evidence In Land Acquisitions by the United States*, issued by the U.S. Department of Justice. After having the title evidence examined, the Secretary shall notify the applicant of any liens, encumbrances, or infirmities which may exist. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition and he shall require elimination prior to such approval if the liens, encumbrances, or infirmities make title to the land unmarketable.

**§ 120.13 Formalization of acceptance.**

Formal acceptance of land in trust status shall be accomplished by the issuance or approval of an instrument of conveyance by the Secretary as is appropriate in the circumstances.

Thomas W. Fredericks,

*Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 80-28640 Filed 9-17-80; 8:45 am]

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**DEPARTMENT OF JUSTICE**

**Office of Justice Assistance,  
Research, and Statistics**

**28 CFR Part 22**

**Confidentiality of Identifiable  
Research and Statistical Information**

**AGENCY:** Office of Justice Assistance, Research, and Statistics (OJARS), Law Enforcement Assistance Administration (LEAA), National Institute of Justice (NIJ), and Bureau of Justice Statistics (BJS)/Department of Justice (DOJ).

**ACTION:** Final rule.

**SUMMARY:** The Office of Justice Assistance, Research, and Statistics (OJARS), is amending its regulations governing research and statistical information to conform them to the statutory amendments made by the Justice Systems Improvement Act of 1979 (JSIA). The JSIA which amended the Crime Control Act of 1976 contains different provisions regarding the