

CHAPTER 62-332

WATER QUALITY ENHANCEMENT AREA CREDIT TRANSACTIONS

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12 **62-332.100 Scope and Intent.**

13 (1) This chapter establishes the requirements for the permitting of water quality enhancement areas,
14 and the generation, valuation, award, release, and use of water quality enhancement credits providing
15 offsite compensatory treatment under Section 373.4134, Florida Statutes (F.S.) This chapter establishes
16 additional requirements for a water quality enhancement permit under Chapter 62-330, F.A.C.,
17 Environmental Resource Permitting.

18 (2) The enhancement credit transactions authorized in this chapter are intended to provide flexibility
19 to governmental entities to satisfy the environmental resource permit (ERP) net improvement or
20 performance standard under Section 373.4131(3)(a), F.S. The requirements for credit trading to meet the
21 allocations of an adopted Basin Management Action Plan (BMAP) or adopted Reasonable Assurance Plan
22 (RAP) are set forth in Chapter 62-306, F.A.C.

23 (3) This chapter is supplemental to and does not supersede any other requirements in rules promulgated
24 under Part IV of Chapter 373, F.S., and Chapter 62-330, F.A.C.

25 (4) Nothing in this rule is intended to limit any actions by federal, state, or local agencies, affected
26 persons, or citizens pursuant to other rules or regulations.

27

28 Rulemaking Authority 373.4134, 403.805 FS. Law Implemented 373.4134, 403.067 FS. History—

29 New_____.

30

31 **62-332.200 Definitions.**

32 (1) “Best management practice for stormwater treatment” or “BMP” means a practice or combination
33 of practices, based on research, field-testing, and expert review, to be the most effective and practicable,
34 including economic and technological considerations, of improving water quality by reducing excess
35 nutrient and other pollutant loads in water.

36 (2) “Department” means the Florida Department of Environmental Protection.

37 (3) “Enhancement credit” or “credit” means the standard unit of measure that represents a quantity of
38 pollutant removed annually and which is greater than any reductions otherwise required under any state
39 regulatory program. Enhancement credits are generated by water quality enhancement areas pursuant to
40 this chapter. The initial enhancement credit valuations may be estimated using a numerical model or other
41 analytical tool approved by the Department, taking into account the projected pollutant reductions under
42 any uncertainties between the numerical models or other analytical tools used to estimate the expected
43 ability of the water quality enhancement area to remove pollutants. When used as part of a transaction
44 pursuant to this chapter, enhancement credits shall be adjusted using appropriate valuation factors.

45 (4) “Governmental entity” means any political subdivision of the state, including any state agency,
46 department, county, municipality, special district, school district, utility authority, or other authority or
47 instrumentality, agency, unit, or department thereof.

48 (5) “Natural system” means a man-made or altered ecological system supporting aquatic and wetland-
49 dependent natural resources, including fish, aquatic and wetland-dependent wildlife habitats.

50 (6) “Owner” means the entity that constructs, operates, maintains, and is responsible for the long-term
51 management of a water quality enhancement area, having the real property interest described in 4.2.3(d)
52 of Applicant’s Handbook Volume I.

53 (7) “Purchaser” means the governmental entity proposing to utilize purchased enhancement credits to
54 meet net improvement or performance standards associated with the entity’s ERP.

55 (8) “Water quality enhancement area” or WQEA means a natural system constructed, operated,
56 managed, and maintained for the purpose of providing offsite regional treatment for which enhancement
57 credits may be generated pursuant to a water quality enhancement area permit.

58 (9) “Water quality enhancement area permit” means an environmental resource permit issued under
59 part IV of Chapter 373, F.S., and this rule chapter for a water quality enhancement area, which authorizes

60 the construction, operation, management, and maintenance of a water quality enhancement area and the
61 generation and sale of enhancement credits from the permitted WQEA in accordance with this chapter.

62 (10) “Water quality enhancement service area” means the limited geographic area of hydrologically
63 connected downstream waters within which the water quality enhancement area could reasonably be
64 expected to reduce impacts, which are causing the waterbody or water segment not to meet applicable
65 state water quality criteria as determined by the Department.

66
67 Rulemaking Authority 373.4134 FS. Law Implemented 373.4134 FS. History—New_____.
68

69 **62-332.300 General Requirements.**

70 (1) An applicant for a water quality enhancement permit may use water quality improvement projects
71 only if approved by the Department utilizing natural systems, including, but not limited to, constructed
72 wetlands or waterbodies that reduce pollutants to a receiving waterbody or water segment, to generate
73 enhancement credits.

74 (2) Waterbodies should include a variety of emergent habitats and should not be designed to prevent
75 fluctuating water levels.

76 (a) At least 25 percent of the highwater surface area of each waterbody shall consist of a zone of
77 fluctuation. In the event the waterbody cannot be designed to accommodate the required zone of
78 fluctuation, this requirement shall be met by constructing additional wetlands adjacent to and
79 hydrologically connected with the waterbody.

80 (b) Waterbodies shall have a shallow water zone inside and adjacent to the zone of fluctuation.

81 (3) Enhancement credits may only be sold to, and purchased by, a governmental entity in accordance
82 with this chapter and as authorized in an environmental resource permit.

83 (4) The Purchaser’s project must meet department rules for design and construction of all onsite
84 stormwater management and provide a level of treatment necessary to meet the predevelopment condition
85 pollutant loading on its site. Any additional treatment required by the purchaser’s ERP under Chapter 62-
86 330, F.A.C., may then be achieved through WQEA credits.

87 (5) The construction, operation, management, and maintenance of a WQEA will be approved through
88 the environmental resource permit process pursuant to Chapter 62-330, F.A.C.

89 (6) Enhancement credits may be generated and sold by an owner of a WQEA only in accordance with
90 this chapter and the conditions of the owner’s permit. The Department will determine the value and

91 number of enhancement credits necessary for all credit transactions.

92 (7) Governmental entities may purchase enhancement credits to meet net improvement or
93 performance standard permit requirements only after the governmental entity has provided reasonable
94 assurance of meeting department rules for design and construction of all onsite stormwater management.
95 Enhancement credits may not solely be used to meet design and construction requirements for onsite
96 stormwater management.

97 (8) The WQEA that generates enhancement credits and the purchaser's project using those credits
98 must be located within the same water quality enhancement service area.

99 (9) An enhancement credit transaction must ensure that the WQEA's credited pollutant load reduction
100 will be achieved annually, and that no localized water quality violations will occur at the location of the
101 purchaser's permitted discharge as a result of the trade. The credited pollutant load reduction must result
102 in at least an equivalent water quality improvement at the purchaser's point of discharge.

103 (10) Enhancement credits are not available for use by a purchaser until the Department has authorized
104 their use in the purchaser's environmental resource permit. Enhancement credits are expressed as an
105 annual reduction in pollutant loading by the WQEA and cannot be rolled over or aggregated from year to
106 year. An enhancement credit retains its environmental value only if the activities resulting in its creation
107 continue to provide at least the same level of pollutant load reduction authorized by the Department. An
108 enhancement credit included in an ongoing credit transaction is not available for another transaction. The
109 Department will account for enhancement credits and transactions in a ledger.

110 (11) WQEAs may not be located within areas established for mitigation, restoration, or reclamation
111 by state law or permit, or within areas purchased for conservation pursuant to the Florida Forever Act or
112 the Florida Preservation 2000 Act.

113 (12) A governmental entity may use WQEAs for its own water quality needs. However, a
114 governmental entity may not sponsor, fund, or otherwise construct, operate, manage, or maintain a WQEA
115 for the purpose of selling enhancement credits to third parties.

116 (13) Reductions in pollutant loading required under any state regulatory program or required by a
117 BMAP, adopted reasonable assurance plan, or accepted pollutant reduction plan, including agricultural
118 and non-agricultural best management practices, are not eligible to generate enhancement credits.

119 (14) The issuance of a WQEA permit does not eliminate the owner's obligation to comply with all
120 requirements of Chapter 62-330, F.A.C., pertaining to adverse impacts to water quality and adjacent lands
121 or wetlands.

122 (15) The issuance of a WQEA permit does not preclude the responsibility of the owner to obtain other
123 applicable federal, state, and local permits for construction activities associated with the WQEA.

124
125 Rulemaking Authority 373.4134, 403.805 FS. Law Implemented 373.4134, 403.067 FS. History—
126 New_____.

127
128 **62-332.400 Enhancement Credit Generation and Valuation**

129 (1) The department will assign a number of enhancement credits to the proposed WQEA, or phases
130 thereof, based upon the information submitted by the applicant, and an assessment of the proposed WQEA
131 under the criteria of Section 373.4134, F.S., and the following criteria:

132 (a) The initial valuation of enhancement credits generated by a WQEA shall be based on standard
133 numerical models or analytical tools that establish the ability of the WQEA to remove pollutants or their
134 constituents.

135 (b) The initial valuation of enhancement credits shall be based on conservative estimates including,
136 but not limited to, expected hydrologic or performance variations. The initial valuation of credits shall
137 consider the uncertainty between the numerical models or other analytical tools used to estimate the
138 expected removal of pollutants, and the actual pollutant removal from the WQEA.

139 (c) Credits must be based on standard unit of measure of the specific pollutants removed.

140 (d) Credits are based on pollutants removed after the applicant performs all required pollution control
141 activities, beyond which enhancement credits may be generated.

142 (e) The initial valuation of enhancement credits will be stated in the WQEA permit.

143 (f) The number of enhancement credits necessary for a given credit transaction may be adjusted based
144 on appropriate location adjustment factors as described in Rule 62-332.500, F.A.C.

145 (2) If the WQEA is located within a BMAP or adopted reasonable assurance plan, the applicant must
146 use the most recent numerical models or analytical tools used for that BMAP or adopted reasonable
147 assurance plan in the WQEA permit application, except as provided in subsection (3).

148 (3) If the WQEA is not located within a BMAP or adopted reasonable assurance plan, or the
149 Department determines that the numerical model or analytical tool used for the applicable BMAP or
150 adopted reasonable assurance plan is not appropriate for use in determining the pollutant loading for the
151 proposed WQEA, the applicant must use another standard numerical model or analytical tool that has been
152 approved by the Department for the proposed WQEA.

153 (4) A WQEA permit application must identify and document the numerical model or analytical tool,
154 inputs, and results, used to establish the efficacy of the WQEA, including all information to support the
155 permit application required by Rule 62-330.054, F.A.C., and any other information required by this Rule
156 relevant to support credit value. At a minimum, the application must contain:

157 (a) Rainfall data over the longest period of record available, either from the National Centers for
158 Environmental Information or collected from the closest site to the proposed WQEA, preferably within
159 the same drainage basin.

160 (b) Anticipated water quality and quantity inflows over a wide range of climatic conditions that
161 captures interannual variation to the proposed WQEA, based on published local data collected over a
162 period of record that most closely matches the rainfall data collected under paragraph (a) above.

163 (c) Site-specific conditions affecting the anticipated performance of the proposed WQEA, including
164 the proposed BMP for stormwater treatment and the anticipated associated reduction rates, as
165 demonstrated by the performance of other areas where the same BMP treatment type has been established
166 and operating over a minimum of two consecutive wet and dry seasons.

167 (d) Data provided under this subsection must be from monitoring stations the Department deems
168 sufficient to determine flows and local water quality conditions.

169 (e) Any other supporting information deemed necessary by the Department.

170

171 Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS.

172 History—New .

173

174 **62-332.500 Service Area and Enhancement Credit Locational Valuation Factor Adjustments**

175 (1) The WQEA that generates enhancement credits and the purchaser's project using those credits
176 must be located within the same water quality enhancement service area.

177 (2) The extent of the water quality enhancement service area will be determined by modeling provided
178 by the owner outlining the area within which the WQEA could reasonably be expected to reduce the
179 impacts causing the waterbody or water segment not to meet applicable state water quality criteria,
180 including the impacts associated with credit transactions.

181 (a) Numerical models or other analytical tools shall be reviewed and approved by the department at
182 the time of application.

183 (b) Water Quality Enhancement Service Areas may overlap, and more than one water quality

184 enhancement service area may be approved within a regional watershed.

185 (3) The purchaser's project must be hydrologically connected and downstream of the WQEA from
186 which the enhancement credits are purchased. If the requirements in rule 62-332.300, F.A.C., are met, the
187 following projects or activities shall be eligible to use a WQEA, notwithstanding the fact that they are not
188 completely located within the Water Quality Enhancement Service Area, provided a demonstration is
189 provided to the Department that the purchaser's project will not contribute to a localized exceedance of
190 water quality standards within the watershed or downstream waterbody of concern:

191 (a) Projects with impacts partially located within the Water Quality Enhancement Service Area;

192 (b) Linear projects, such as roadways, transmission lines, distribution lines, pipelines, or railways;

193 (c) Projects with total impacts of less than one-half acre in size; or

194 (d) Projects that are hydrologically upstream of a WQEA that is servicing an OFW designated as an
195 aquatic preserve.

196 (4) The Department will adjust the amount of credits needed for the transaction by the applicable
197 locational valuation factor (LVF) to provide reasonable assurance that the WQEA's credited pollutant
198 load reduction will be achieved annually and that no localized water quality violations will occur at the
199 location of the purchaser's permitted discharge as a result of the transaction. This credited pollutant load
200 reduction must result in at least an equivalent water quality improvement at the purchaser's point of
201 discharge.

202 (a) The location factor will be based on numerical models or other analytical tools done by the WQEA
203 at the time of the WQEA's permit that account for uptake of the pollutants over a distance.

204 (b) The number of credits needed for a proposed transaction must be calculated as follows: Number
205 of Credits Needed = (Number of standard units of measure for pollutant removed annually required for
206 treatment) x LVF.

207 (c) This formula may not be used to reduce the number of credits needed below the quantity of
208 pollutant removed annually required for treatment.

209 (d) The Department will apply LVFs at the time of permitting a governmental entity project seeking
210 enhancement credits from a WQEA owner to establish the final value of those credits and the number of
211 credits needed for the credit transaction for use in achieving net improvement. Final credit values will be
212 reflected in the governmental entity's environmental resource permit(s), and the enhancement credit
213 tracking ledger.

214

215 Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS.
216 History–New_____.

217

218 **62-332.600 Enhancement Credit Transactions and Credit Use.**

219 (1) Purchase by a governmental entity of enhancement credits is voluntary.

220 (2) Enhancement credits may be used only to satisfy the environmental resource permit net
221 improvement or performance standard under Section 373.4131(3)(a), F.S, or BMAP, or adopted
222 reasonable assurance plan allocations within the water quality enhancement service area.

223 (3) Credits shall be withdrawn from the WQEA as a minor modification of the WQEA permit.

224 (4) The Department will verify whether the WQEA owner has credits available in accordance with
225 this chapter.

226 (5) The Department will deny an enhancement credit transaction unless the WQEA owner and
227 purchaser have provided reasonable assurance that the transaction will not cause or contribute to a
228 violation of state water quality standards, even if the project is within the water quality enhancement
229 service area.

230 (6) The Department may authorize use of enhancement credits by a purchaser only after the
231 Department verifies the number of enhancement credits, that the use of credits is appropriate for the
232 proposed project.

233 (7) The Department will verify the final value of the enhancement credits for the purchaser’s use as
234 described in Rule 62-332.500, F.A.C.

235 (a) The purchaser’s project, discharge point(s), and discharge characterization (including, but not
236 limited to, pollutant concentration and flow) must be provided to the Department before the credit
237 transaction will be approved.

238 (b) Credit transactions must be reflected in the environmental resource permit(s) of the purchaser.

239 (c) Modification of the purchaser’s project, discharge point(s), or discharge characterization may result
240 in the Department’s revaluation of the credit transaction and modification of the purchaser’s permit(s).

241 (8) The WQEA owner must submit to the Department, as part of its permit application or any
242 modification or renewal application, information on the terms of credit transactions as described in Rule
243 62-332.800, F.A.C.

244 (9) An enhancement credit transaction will become effective only after the transaction is authorized
245 by permit in accordance with this chapter.

246 (10) If the purchaser proposes to change the source of credits, it must immediately notify the
247 Department of its intention in writing, including a letter of commitment from the new credit source for the
248 number of enhancement credits necessary, and that the new credit source has those credits available in
249 accordance with a WQEA permit. The purchaser must also include documentation that it no longer has
250 any outstanding contractual or other binding obligations to the original credit seller. The new credit
251 transaction is not final until the Department authorizes it in accordance with this chapter and Chapter 62-
252 330, F.A.C.

253 (11) A governmental entity may use WQEA for its own water quality needs. However, a governmental
254 entity may not sponsor, fund, or otherwise construct, operate, manage, or maintain a WQEA for the
255 purpose of selling enhancement credits to third parties.

256 (12) Enhancement credits may not be used by point source dischargers to satisfy regulatory
257 requirements other than those necessary to obtain an environmental resource permit for construction and
258 operation of a surface water management system.

259 (13) Some Enhancement Credits may be released for use prior to meeting all of the performance
260 criteria specified in the WQEA Permit. The initial withdrawal of a credit, or any portion thereof, begins
261 the timeframe to reach final success as assessed using Rule 62-332.700, F.A.C. The complete release of
262 all enhancement credits awarded will only occur after the WQEA meets all of the success criteria specified
263 in the permit. The number of credits and schedule for release shall be determined based upon the
264 performance criteria for the WQEA, the success criteria for each activity, and consideration of the factors
265 listed in Section 373.4136(5), F.S. However, no credits shall be released until the requirements of Rules
266 62-342.650 and 62.342.700, F.A.C., are met.

267
268 Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS.

269 History—New_____.

270
271 **62-332.700 Enhancement Credit Monitoring and Continuing Credit Verification.**

272 (1) Enhancement credits shall be directly measured by the WQEA owner in accordance with a
273 Department-approved monitoring plan. An applicant for a WQEA permit must propose a performance
274 and success criteria monitoring and verification plan in its application, including protocols to be
275 implemented once the WQEA is permitted and operational. The plan must be sufficient to demonstrate
276 that the WQEA meets defined performance or success criteria for the pollutant reductions on which

277 enhancement credits are based.

278 (2) The monitoring and verification protocols must be able to measure the difference in water quality
279 and flows before water enters the WQEA and is discharged from the WQEA in order to accurately
280 demonstrate the WQEA's pollutant reductions and ensure that all credited pollutant reductions have been
281 achieved. At a minimum, monitoring must include flow and concentration data into and out of the WQEA
282 measured every two weeks.

283 (3) The WQEA owner must implement the approved monitoring and verification plan in perpetuity.

284

285 Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS.

286 History–New_____.

287

288 **62-332.800 Enhancement Credit Tracking.**

289 (1) The Department will track all credit transactions in a ledger.

290 (2) The withdrawal of WQEA credits from a WQEA shall be accomplished as a minor modification
291 of the WQEA permit. A processing fee shall not be required by the department or water management
292 district for this minor modification.

293 (3) Information tracked related to credit transactions must include at a minimum:

294 (a) The names and street addresses of all parties, locations of permitted activities and discharges,
295 receiving water, receiving water body identification units, and pollutants involved.

296 (b) The amount and type of credits generated.

297 (c) A description of the actions that generated credits.

298 (d) The date credits become available for purchase.

299 (e) The amount of credits sold.

300 (f) Permit number of purchaser(s).

301 (g) Number of credits still available.

302 (h) The date of the most recent inspection by the Department or a water management district to verify
303 proper implementation of the activities generating credits.

304

305 Rulemaking Authority 373.4134,, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS.

306 History–New_____.

307

308 **62-332.900 Compliance and Enforcement.**

309 (1) Annually, the WQEA owner must demonstrate the achievement of pollutant reductions at least
310 equal to the value of the credits sold through effective operation and maintenance in perpetuity.

311 (a) The owner must designate a responsible long-term maintenance entity supported by an endowment
312 or other long-term financial assurance mechanism sufficient for perpetual operation and maintenance as
313 described in Rule 62-342.700, F.A.C., mitigation bank financial responsibility, and any subsequent
314 amendments, wherein the term “banker” or “mitigation bank” will refer to the “owner” or “Water Quality
315 Enhancement Area” respectively. The WQEA owner must provide documentation of the financial
316 assurance instrument to the Department.

317 (b) The WQEA owner must also demonstrate to the Department sufficient legal or equitable interest
318 in property to ensure access and perpetual protection and management of the land within or associated
319 with the WQEA including, as necessary, permanent preservation of the WQEA pursuant to the
320 requirements of Section 704.06, F.S.

321 (2) The WQEA owner must certify and document quarterly to the Department that the control devices
322 and systems, technologies, best management practices, or other activities on which the enhancement
323 credits are based continue to be fully implemented and properly operated and maintained, and that
324 pollutant load reductions continue to be achieved at the authorized level.

325 (3) The owner must report annually to the Department the pollutant loads of their targeted pollutant
326 in the standard units of measure, as indicated within Rule 62-302.530, F.A.C., flowing into and out of the
327 WQEA on a monthly basis to demonstrate fulfillment of the pollutant load reduction resulting in credits.

328 (4) The WQEA owner must maintain records demonstrating that the control devices and systems,
329 technologies, best management practices, land use changes, or other management actions upon which
330 credits are based continue to be fully implemented and properly operated and maintained in perpetuity.
331 The owner must immediately notify the Department in writing of any changes to the size, nature, function,
332 or treatment capabilities of the WQEA. Any such changes may result in reopening and revising the WQEA
333 permit and the permits of any governmental entity credit purchasers to ensure credit transactions maintain
334 at least their original approved value. The WQEA owner must allow the Department, water management
335 district, or Department’s agent, to inspect the records and the control devices and systems, technologies,
336 best management practices, land use changes, or other management actions during regular business hours.

337 (5) The WQEA owner is responsible for achieving the pollutant load reductions on which the credits
338 are based, and complying with the terms of its permit, including any associated financial assurance

339 instruments, in perpetuity. In the event the Department determines the purchased credits are invalid
340 because the WQEA owner has failed to comply with its monitoring and verification plan, has failed to
341 demonstrate that the enhancement area is meeting defined performance or success criteria for the reduction
342 of pollutants on which credits are based, or otherwise has failed to meet the conditions of its permit,
343 including financial assurances, the Department may revoke the authorization to sell enhancement credits
344 until such time as the WQEA owner returns to compliance and credits have been reevaluated.

345 (6) The purchaser of enhancement credits is responsible for complying with all terms of the
346 enhancement credit transaction and the environmental resource permit associated with its project. If the
347 purchaser otherwise is meeting applicable regulatory requirements, the revocation of authorization of sale
348 of enhancement credits in accordance with subsection (5) does not itself constitute a permit violation.

349
350 Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS.
351 History—New_____.
352

353 **62-332.920 Surrender, Transfer, or Modification of Water Quality Enhancement Area Permits.**

354 (1) If no credits have been used or sold, an owner may apply to surrender a WQEA permit, or permitted
355 phase thereof, by submitting a written request to the Department. The written request must identify which
356 phase will be surrendered, indicate the extent of work performed in that phase, and describe the
357 conservation property interest encumbering that phase. The Department shall authorize release from a
358 permit when no credits have been used, and relinquishment of the phase would not compromise the
359 ecological value of the remaining portions of the permitted area. A surrender and release of a geographic
360 phase shall be made by modification of the permit.

361 (2) If a property interest has been conveyed as provided in Rule 62-342.650, F.A.C., as provided
362 above, the Department shall convey the property interest back to the grantor of that interest upon surrender.

363 (3) If a surface water management system has been constructed or altered within the permitted area,
364 the owner shall obtain any permits required under Part IV of Chapter 373, F.S., and Chapter 62-330,
365 F.A.C., to operate or abandon the surface water management system. Abandonment performed in
366 accordance with this section is subject to the provisions of Section 373.426, F.S.

367 (4) To transfer a permit, the owner shall meet the requirements of Chapter 62-330, F.A.C., and the
368 entity to whom the permit will be transferred must provide reasonable assurances that it can meet the
369 requirements of the permit. If the transfer to the Department is proposed, the current owner shall provide

370 an updated cost estimate and adjust the final responsibility mechanism, as appropriate, prior to transfer of
371 the permit.

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