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**HOUSE BILL 1682**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Representatives Fitzgibbon, Ramel, Duerr, Berry, Macri, Ormsby, and Hackney; by request of Department of Ecology

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1 AN ACT Relating to a compliance pathway specific to emissions-  
2 intensive, trade-exposed businesses for achieving their proportionate  
3 share of the state's emissions reduction limits through 2050; and  
4 amending RCW 70A.65.110, 70A.65.230, and 70A.65.260.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 70A.65.110 and 2021 c 316 s 13 are each amended to  
7 read as follows:

8 (1) Facilities owned or operated by a covered entity must receive  
9 an allocation of allowances for the covered emissions at those  
10 facilities under this subsection at no cost if the operations of the  
11 facility are classified as emissions-intensive and trade-exposed, as  
12 determined by being engaged in one or more of the processes described  
13 by the following industry descriptions and codes in the North  
14 American industry classification system:

15 (a) Metals manufacturing, including iron and steel making,  
16 ferroalloy and primary metals manufacturing, secondary aluminum  
17 smelting and alloying, aluminum sheet, plate, and foil manufacturing,  
18 and smelting, refining, and alloying of other nonferrous metals,  
19 North American industry classification system codes beginning with  
20 331;

1 (b) Paper manufacturing, including pulp mills, paper mills, and  
2 paperboard milling, North American industry classification system  
3 codes beginning with 322;

4 (c) Aerospace product and parts manufacturing, North American  
5 industry classification system codes beginning with 3364;

6 (d) Wood products manufacturing, North American industry  
7 classification system codes beginning with 321;

8 (e) Nonmetallic mineral manufacturing, including glass container  
9 manufacturing, North American industry classification system codes  
10 beginning with 327;

11 (f) Chemical manufacturing, North American industry  
12 classification system codes beginning with 325;

13 (g) Computer and electronic product manufacturing, including  
14 semiconductor and related device manufacturing, North American  
15 industry classification system codes beginning with 334;

16 (h) Food manufacturing, North American industry classification  
17 system codes beginning with 311;

18 (i) Cement manufacturing, North American industry classification  
19 system code 327310;

20 (j) Petroleum refining, North American industry classification  
21 system code 324110;

22 (k) Asphalt paving mixtures and block manufacturing from refined  
23 petroleum, North American industry classification system code 324121;

24 (l) Asphalt shingle and coating manufacturing from refined  
25 petroleum, North American industry classification system code 324122;  
26 and

27 (m) All other petroleum and coal products manufacturing from  
28 refined petroleum, North American industry classification system code  
29 324199.

30 (2) By July 1, 2022, the department must adopt by rule objective  
31 criteria for both emissions' intensity and trade exposure for the  
32 purpose of identifying emissions-intensive, trade-exposed  
33 manufacturing businesses during the second compliance period of the  
34 program and subsequent compliance periods. A facility covered by  
35 subsection (1)(a) through (m) of this section is considered an  
36 emissions-intensive, trade-exposed facility and is eligible for  
37 allocation of no cost allowances as described in this section. In  
38 addition, any covered party that is a manufacturing business that can  
39 demonstrate to the department that it meets the objective criteria  
40 adopted by rule is also eligible for treatment as emissions-

1 intensive, trade-exposed and is eligible for allocation of no cost  
2 allowances as described in this section. In developing the objective  
3 criteria under this subsection, the department must consider the  
4 locations of facilities potentially identified as emissions-  
5 intensive, trade-exposed manufacturing businesses relative to  
6 overburdened communities.

7 (3) (a) For the first compliance period beginning in January 1,  
8 2023, the annual allocation of no cost allowances for direct  
9 distribution to a facility identified as emissions-intensive and  
10 trade-exposed must be equal to the facility's baseline carbon  
11 intensity established using data from 2015 through 2019, or other  
12 data as allowed under this section, multiplied by the facility's  
13 actual production for each calendar year during the compliance  
14 period. For facilities using the mass-based approach, the allocation  
15 of no cost allowances shall be equal to the facility's mass-based  
16 baseline using data from 2015 through 2019, or other data as allowed  
17 under this section.

18 (b) For the second compliance period, beginning in January, 2027,  
19 and in each subsequent compliance period, the annual allocation of no  
20 cost allowances established in (a) of this subsection shall be  
21 adjusted according to the benchmark reduction schedules established  
22 in (b) (ii) and (iii) and (e) of this subsection multiplied by the  
23 facility's actual production during the period. The department shall  
24 adjust the no cost allocation of allowances and credits to an  
25 emissions-intensive and trade-exposed facility to avoid duplication  
26 with any no cost allowances transferred pursuant to RCW 70A.65.120  
27 and 70A.65.130, if applicable.

28 (i) For the purpose of this section, "carbon intensity" means the  
29 amount of carbon dioxide equivalent emissions from a facility in  
30 metric tons divided by the facility specific measure of production  
31 including, but not limited to, units of product manufactured or sold,  
32 over the same time interval.

33 (ii) If an emissions-intensive and trade-exposed facility is not  
34 able to feasibly determine a carbon intensity benchmark based on its  
35 unique circumstances, the entity may elect to use a mass-based  
36 baseline that does not vary based on changes in production volumes.  
37 The mass-based baseline must be based upon data from 2015 through  
38 2019, unless the emissions-intensive, trade-exposed facility can  
39 demonstrate that there have been abnormal periods of operation that  
40 materially impacted the facility and the baseline period should be

1 expanded to include years prior to 2015. For each year during the  
2 first four-year compliance period that begins January 1, 2023, these  
3 facilities must be awarded no cost allowances equal to 100 percent of  
4 the facility's mass-based baseline. For each year during the second  
5 four-year compliance period that begins January 1, 2027, these  
6 facilities must be awarded no cost allowances equal to 97 percent of  
7 the facility's mass-based baseline. For each year during the third  
8 compliance period that begins January 1, 2031, these facilities must  
9 be awarded no cost allowances equal to 94 percent of the facility's  
10 mass-based baseline. For the year beginning January 1, 2035, these  
11 facilities must be awarded no cost allowances equal to 88 percent of  
12 the facility's mass-based baseline. For each year beginning January  
13 1, 2036, until January 1, 2050, these facilities must be awarded no  
14 cost allowances that must be six percent below the percentage of no  
15 cost allowances awarded during the preceding year. Except as provided  
16 in (b)(iii) of this subsection, if a facility elects to use a mass-  
17 based baseline, it may not later convert to a carbon intensity  
18 benchmark during the first three compliance periods.

19 (iii) A facility with a North American industry classification  
20 system code beginning with 3364 that is utilizing a mass-based  
21 baseline in (b)(ii) of this subsection must receive an additional no  
22 cost allowance allocation under this section in order to accommodate  
23 an increase in production that increases its emissions above the  
24 baseline on a basis equivalent in principle to those awarded to  
25 entities utilizing a carbon intensity benchmark pursuant to this  
26 subsection (3)(b). The department shall establish methods to award,  
27 for any annual period, additional no cost allowance allocations under  
28 this section and, if appropriate based on projected production, to  
29 achieve a similar ongoing result through the adjustment of the  
30 facility's mass-based baseline. An eligible facility under this  
31 subsection that has elected to use a mass-based baseline may not  
32 convert to a carbon intensity benchmark until the next compliance  
33 period.

34 (c)(i) By September 15, 2022, each emissions-intensive, trade-  
35 exposed facility shall submit its carbon intensity baseline for the  
36 first compliance period to the department. The carbon intensity  
37 baseline for the first compliance period must use data from  
38 2015-2019, unless the emissions-intensive, trade-exposed facility can  
39 demonstrate that there have been abnormal periods of operation that

1 materially impacted the facility and the baseline period should be  
2 expanded to include years prior to 2015.

3 (ii) By November 15, 2022, the department shall review and  
4 approve each emissions-intensive, trade-exposed facility's baseline  
5 carbon intensity for the first compliance period.

6 (d) During the first four-year compliance period that begins  
7 January 1, 2023, each emissions-intensive, trade-exposed facility  
8 must record its facility-specific carbon intensity baseline based on  
9 its actual production.

10 (e)(i) For the second four-year compliance period that begins  
11 January 1, 2027, the second period benchmark for each emissions-  
12 intensive, trade-exposed facility is three percent below the first  
13 period baseline specified in (a), (b), and (c) of this subsection.

14 (ii) For the third four-year compliance period that begins  
15 January 1, 2031, the third period benchmark for each emissions-  
16 intensive, trade-exposed facility is three percent lower than the  
17 second period benchmark.

18 (iii) For the year beginning January 1, 2035, the benchmark for  
19 each emissions-intensive, trade-exposed facility is 88 percent of the  
20 facility's carbon intensity baseline. For each year beginning January  
21 1, 2036, until January 1, 2050, the benchmark for each emissions-  
22 intensive, trade-exposed facility is six percent below the percentage  
23 of no cost allowances awarded during the preceding year.

24 ~~(f) ((Prior to the beginning of either the second, third, or~~  
25 ~~subsequent compliance periods, the department may make an upward~~  
26 ~~adjustment in the next compliance period's benchmark for an~~  
27 ~~emissions-intensive, trade-exposed facility based on the facility's~~  
28 ~~demonstration to the department that additional reductions in carbon~~  
29 ~~intensity or mass emissions are not technically or economically~~  
30 ~~feasible. The department may base the upward adjustment applicable to~~  
31 ~~an emissions-intensive, trade-exposed facility in the next compliance~~  
32 ~~period on the facility's best available technology analysis.))~~ The  
33 department shall by rule provide a process for an emissions-  
34 intensive, trade-exposed ~~((facilities))~~ facility to apply to the  
35 department for an upward adjustment to the allocation for direct  
36 distribution of no cost allowances based on ~~((its facility-specific~~  
37 ~~carbon intensity benchmark or mass emissions baseline. The department~~  
38 ~~shall make adjustments based on))~~ a demonstration that additional  
39 reductions in carbon intensity or mass emissions are not technically  
40 or economically feasible. The department may apply such an upward

1 adjustment to the third or subsequent compliance periods only. The  
2 department may grant an application to make an upward adjustment  
3 based on a determination that the facility already employs best  
4 available technology and other factors including, but not limited to:

5 (i) A significant change in the emissions use or emissions  
6 attributable to the manufacture of an individual good or goods in  
7 this state by an emissions-intensive, trade-exposed facility based on  
8 a finding by the department that an adjustment is necessary to  
9 accommodate for changes in the manufacturing process that have a  
10 material impact on emissions;

11 (ii) Significant changes to an emissions-intensive, trade-exposed  
12 facility's external competitive environment that result in a  
13 significant increase in leakage risk; or

14 (iii) Abnormal operating periods when an emissions-intensive,  
15 trade-exposed facility's carbon intensity has been materially  
16 affected so that these abnormal operating periods are either excluded  
17 or otherwise considered in the establishment of the compliance period  
18 carbon intensity benchmarks.

19 (g) Any adjustment granted pursuant to (f) of this subsection may  
20 not:

21 (i) Increase the annual allowance budget for the program under  
22 RCW 70A.65.070 for any calendar year in the compliance period for  
23 which the adjustment was granted or for any future calendar year;

24 (ii) Reduce the progressively equivalent reductions year over  
25 year in the annual allowance budgets under RCW 70A.65.070; or

26 (iii) Prevent the achievement of the emissions limits established  
27 in RCW 70A.45.020, as those limits apply to this chapter.

28 ~~(4) ((a) By December 1, 2026, the department shall provide a~~  
29 ~~report to the appropriate committees of the senate and house of~~  
30 ~~representatives that describes alternative methods for determining~~  
31 ~~the amount and a schedule of allowances to be provided to facilities~~  
32 ~~owned or operated by each covered entity designated as an emissions-~~  
33 ~~intensive, trade-exposed facility from January 1, 2035, through~~  
34 ~~January 1, 2050. The report must include a review of global best~~  
35 ~~practices in ensuring against emissions leakage and economic harm to~~  
36 ~~businesses in carbon pricing programs and describe alternative~~  
37 ~~methods of emissions performance benchmarking and mass-based~~  
38 ~~allocation of no cost allowances. At a minimum, the department must~~  
39 ~~evaluate benchmarks based on both carbon intensity and mass, as well~~  
40 ~~as the use of best available technology as a method for compliance.~~

1 ~~In developing the report, the department shall form an advisory group~~  
2 ~~that includes representatives of the manufacturers listed in~~  
3 ~~subsection (1) of this section.~~

4 ~~(b) If the legislature does not adopt a compliance obligation for~~  
5 ~~emissions-intensive, trade-exposed facilities by December 1, 2027,~~  
6 ~~those facilities must continue to receive allowances as provided in~~  
7 ~~the third four-year compliance period that begins January 1, 2031.~~

8 ~~(5))~~ If the actual emissions of an emissions-intensive, trade-  
9 exposed facility exceed the facility's no cost allowances assigned  
10 for that compliance period, it must acquire additional compliance  
11 instruments such that the total compliance instruments transferred to  
12 its compliance account consistent with chapter 316, Laws of 2021  
13 equals emissions during the compliance period. An emissions-  
14 intensive, trade-exposed facility must be allowed to bank unused  
15 allowances, including for future sale and investment in best  
16 available technology when economically feasible. The department shall  
17 limit the use of offset credits for compliance by an emissions-  
18 intensive, trade-exposed facility, such that the quantity of no cost  
19 allowances plus the provision of offset credits does not exceed 100  
20 percent of the facility's total compliance obligation over a  
21 compliance period.

22 ~~((+6))~~ (5) The department must withhold or withdraw the relevant  
23 share of allowances allocated to a covered entity under this section  
24 in the event that the covered entity ceases production in the state  
25 and becomes a closed facility. In the event an entity curtails all  
26 production and becomes a curtailed facility, the allowances are  
27 retained but cannot be traded, sold, or transferred and are still  
28 subject to the emission reduction requirements specified in this  
29 section. An owner or operator of a curtailed facility may transfer  
30 the allowances to a new operator of the facility that will be  
31 operated under the same North American industry classification system  
32 codes. If the curtailed facility becomes a closed facility, then all  
33 unused allowances will be transferred to the emissions containment  
34 reserve. A curtailed facility is not eligible to receive free  
35 allowances during a period of curtailment. Any allowances withheld or  
36 withdrawn under this subsection must be transferred to the emissions  
37 containment reserve.

38 ~~((+7))~~ (6) An owner or operator of more than one facility  
39 receiving no cost allowances under this section may transfer  
40 allowances among the eligible facilities.

1        ~~((8))~~ (7) Rules adopted by the department under this section  
2 must include protocols for allocating allowances at no cost to an  
3 eligible facility built after July 25, 2021. The protocols must  
4 include consideration of the products and criteria pollutants being  
5 produced by the facility, as well as the local environmental and  
6 health impacts associated with the facility. For a facility that is  
7 built on tribal lands or is determined by the department to impact  
8 tribal lands and resources, the protocols must be developed in  
9 consultation with the affected tribal nations.

10        (8) The no cost allowance amounts in subsection (3)(b)(ii) of  
11 this section concerning each year beginning January 1, 2035, until  
12 January 1, 2050, and in subsection (3)(e)(iii) of this section, may  
13 be modified by rule as adopted by the department if necessary to  
14 ensure achievement of the proportionate share of statewide emissions  
15 limits established in RCW 70A.45.020 or to provide for alignment with  
16 other jurisdictions to which the state has linked.

17        **Sec. 2.** RCW 70A.65.230 and 2021 c 316 s 26 are each amended to  
18 read as follows:

19        (1) It is the intent of the legislature that each year the total  
20 investments made through the carbon emissions reduction account  
21 created in RCW 70A.65.240, the climate commitment account created in  
22 RCW 70A.65.260, the natural climate solutions account created in RCW  
23 70A.65.270, and the air quality and health disparities improvement  
24 account created in RCW 70A.65.280, achieve the following:

25        (a) A minimum of not less than 35 percent and a goal of 40  
26 percent of total investments that provide direct and meaningful  
27 benefits to vulnerable populations within the boundaries of  
28 overburdened communities identified under chapter 314, Laws of 2021;  
29 and

30        (b) In addition to the requirements of (a) of this subsection, a  
31 minimum of not less than 10 percent of total investments that are  
32 used for programs, activities, or projects formally supported by a  
33 resolution of an Indian tribe, with priority given to otherwise  
34 qualifying projects directly administered or proposed by an Indian  
35 tribe. An investment that meets the requirements of both this  
36 subsection (1)(b) and (a) of this subsection may count toward the  
37 minimum percentage targets for both subsections.

38        (2) The expenditure of moneys under this chapter must be  
39 consistent with applicable federal, state, and local laws, and treaty



1 rights including, but not limited to, prohibitions on uses of funds  
2 imposed by the state Constitution.

3 (3) For the purposes of this section, "benefits" means  
4 investments or activities that:

5 (a) Reduce vulnerable population characteristics, environmental  
6 burdens, or associated risks that contribute significantly to the  
7 cumulative impact designation of highly impacted communities;

8 (b) Meaningfully protect an overburdened community from, or  
9 support community response to, the impacts of air pollution or  
10 climate change; or

11 (c) Meet a community need identified by vulnerable members of the  
12 community that is consistent with the intent of this chapter.

13 (4) The state must develop a process by which to evaluate the  
14 impacts of the investments made under this chapter, work across state  
15 agencies to develop and track priorities across the different  
16 eligible funding categories, and work with the environmental justice  
17 council pursuant to RCW 70A.65.040.

18 ~~((5) No expenditures may be made from the carbon emissions  
19 reduction account created in RCW 70A.65.240, the climate investment  
20 account created in RCW 70A.65.250, or the air quality and health  
21 disparities improvement account created in RCW 70A.65.280 if, by  
22 April 1, 2023, the legislature has not considered and enacted request  
23 legislation brought forth by the department under RCW 70A.65.060 that  
24 outlines a compliance pathway specific to emissions-intensive, trade-  
25 exposed businesses for achieving their proportionate share of the  
26 state's emissions reduction limits through 2050.))~~

27 **Sec. 3.** RCW 70A.65.260 and 2021 c 316 s 29 are each amended to  
28 read as follows:

29 (1) The climate commitment account is created in the state  
30 treasury. The account must receive moneys distributed to the account  
31 from the climate investment account created in RCW 70A.65.250. Moneys  
32 in the account may be spent only after appropriation. Projects,  
33 activities, and programs eligible for funding from the account must  
34 be physically located in Washington state and include, but are not  
35 limited to, the following:

36 (a) Implementing the working families tax rebate in RCW  
37 82.08.0206;

38 (b) Supplementing the growth management planning and  
39 environmental review fund established in RCW 36.70A.490 for the

1 purpose of making grants or loans to local governments for the  
2 purposes set forth in RCW 43.21C.240, 43.21C.031, 36.70A.500, and  
3 36.70A.600, for costs associated with RCW 36.70A.610, and to cover  
4 costs associated with the adoption of optional elements of  
5 comprehensive plans consistent with RCW 43.21C.420;

6 (c) Programs, activities, or projects that reduce and mitigate  
7 impacts from greenhouse gases and copollutants in overburdened  
8 communities, including strengthening the air quality monitoring  
9 network to measure, track, and better understand air pollution levels  
10 and trends and to inform the analysis, monitoring, and pollution  
11 reduction measures required in RCW 70A.65.020;

12 (d) Programs, activities, or projects that deploy renewable  
13 energy resources, such as solar and wind power, and projects to  
14 deploy distributed generation, energy storage, demand-side  
15 technologies and strategies, and other grid modernization projects;

16 (e) Programs, activities, or projects that increase the energy  
17 efficiency or reduce greenhouse gas emissions of industrial  
18 facilities including, but not limited to, proposals to implement  
19 combined heat and power, district energy, or on-site renewables, such  
20 as solar and wind power, to upgrade the energy efficiency of existing  
21 equipment, to reduce process emissions, and to switch to less  
22 emissions intensive fuel sources;

23 (f) Programs, activities, or projects that achieve energy  
24 efficiency or emissions reductions in the agricultural sector  
25 including:

26 (i) Fertilizer management;

27 (ii) Soil management;

28 (iii) Bioenergy;

29 (iv) Biofuels;

30 (v) Grants, rebates, and other financial incentives for  
31 agricultural harvesting equipment, heavy-duty trucks, agricultural  
32 pump engines, tractors, and other equipment used in agricultural  
33 operations;

34 (vi) Grants, loans, or any financial incentives to food  
35 processors to implement projects that reduce greenhouse gas  
36 emissions;

37 (vii) Renewable energy projects;

38 (viii) Farmworker housing weatherization programs;

39 (ix) Dairy digester research and development;

40 (x) Alternative manure management; and

- 1 (xi) Eligible fund uses under RCW 89.08.615;
- 2 (g) Programs, activities, or projects that increase energy  
3 efficiency in new and existing buildings, or that promote low carbon  
4 architecture, including use of newly emerging alternative building  
5 materials that result in a lower carbon footprint in the built  
6 environment over the life cycle of the building and component  
7 building materials;
- 8 (h) Programs, activities, or projects that promote the  
9 electrification and decarbonization of new and existing buildings,  
10 including residential, commercial, and industrial buildings;
- 11 (i) Programs, activities, or projects that improve energy  
12 efficiency, including district energy, and investments in market  
13 transformation of high efficiency electric appliances and equipment  
14 for space and water heating;
- 15 (j) Clean energy transition and assistance programs, activities,  
16 or projects that assist affected workers or people with lower incomes  
17 during the transition to a clean energy economy, or grow and expand  
18 clean manufacturing capacity in communities across Washington state  
19 including, but not limited to:
- 20 (i) Programs, activities, or projects that directly improve  
21 energy affordability and reduce the energy burden of people with  
22 lower incomes, as well as the higher transportation fuel burden of  
23 rural residents, such as bill assistance, energy efficiency, and  
24 weatherization programs;
- 25 (ii) Community renewable energy projects that allow qualifying  
26 participants to own or receive the benefits of those projects at  
27 reduced or no cost;
- 28 (iii) Programs, activities, or other worker-support projects for  
29 bargaining unit and nonsupervisory fossil fuel workers who are  
30 affected by the transition away from fossil fuels to a clean energy  
31 economy. Worker support may include, but is not limited to: (A) Full  
32 wage replacement, health benefits, and pension contributions for  
33 every worker within five years of retirement; (B) full wage  
34 replacement, health benefits, and pension contributions for every  
35 worker with at least one year of service for each year of service up  
36 to five years of service; (C) wage insurance for up to five years for  
37 workers reemployed who have more than five years of service; (D) up  
38 to two years of retraining costs, including tuition and related  
39 costs, based on in-state community and technical college costs; (E)  
40 peer counseling services during transition; (F) employment placement

1 services, prioritizing employment in the clean energy sector; and (G)  
2 relocation expenses;

3 (iv) Direct investment in workforce development, via technical  
4 education, community college, institutions of higher education,  
5 apprenticeships, and other programs including, but not limited to:

6 (A) Initiatives to develop a forest health workforce established  
7 under RCW 76.04.521; and

8 (B) Initiatives to develop new education programs, emerging  
9 fields, or jobs pertaining to the clean energy economy;

10 (v) Transportation, municipal service delivery, and technology  
11 investments that increase a community's capacity for clean  
12 manufacturing, with an emphasis on communities in greatest need of  
13 job creation and economic development and potential for commute  
14 reduction;

15 (k) Programs, activities, or projects that reduce emissions from  
16 landfills and waste-to-energy facilities through diversion of organic  
17 materials, methane capture or conversion strategies, or other means;

18 (l) Carbon dioxide removal projects, programs, and activities;  
19 (~~and~~)

20 (m) Activities to support efforts to mitigate and adapt to the  
21 effects of climate change affecting Indian tribes, including capital  
22 investments in support of the relocation of Indian tribes located in  
23 areas at heightened risk due to anticipated sea level rise, flooding,  
24 or other disturbances caused by climate change. The legislature  
25 intends to dedicate at least \$50,000,000 per biennium from the  
26 account for purposes of this subsection; and

27 (n) Programs, activities, or projects that reduce covered  
28 emissions of facilities identified as emissions-intensive, trade-  
29 exposed industries pursuant to RCW 70A.65.110.

30 (2) Moneys in the account may not be used for projects or  
31 activities that would violate tribal treaty rights or result in  
32 significant long-term damage to critical habitat or ecological  
33 functions. Investments from this account must result in long-term  
34 environmental benefits and increased resilience to the impacts of  
35 climate change.

--- END ---