Discussion of Findings Required by Government Code Section 12894

September 2, 2026

Pursuant to Government Code Section 12894, subdivision (f), the California Air Resources Board (CARB) has submitted a letter to Governor Newsom providing notice that CARB is proposing to link its greenhouse gas (GHG) emissions trading program (Cap-and-Invest Program, formerly Cap-and-Trade Program) with the Cap-and-Invest Program developed by the state of Washington. CARB is requesting that the Governor consider and make the findings necessary to support this linkage. This discussion document has been prepared to support the request and includes a brief background, a summary of Washington's Cap-and-Invest Program, and a comparison of that program with California's program organized around four findings required by statute as a prerequisite to linking the two programs. A similar discussion document was prepared and submitted prior to the linkages with Québec and Ontario.[1]

Background

The Global Warming Solutions Act of 2006 (Assembly Bill (AB) 32)[2] directed CARB to develop a strategy and a suite of regulations to address climate change by limiting 2020 GHG emissions to 1990 levels and to maintain and continue those reductions beyond 2020. AB 32 provides that CARB may adopt "market-based compliance mechanisms,"[3] and directed CARB to consult with other states and nations "to facilitate the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs."[4] In 2016, the Legislature and Governor Brown reaffirmed California's commitment to taking action to address climate change by passing and signing Senate Bill (SB) 32,[5] which further directs CARB to ensure that statewide GHG emissions are reduced to at least 40% below 1990 levels no later than December 31, 2030. In 2022, the Legislature passed, and Governor Newsom signed AB 1279,[6] which requires both a reduction of statewide

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[1] CARB, *Discussion of Findings Required by Government Code section 12894* (Jan. 2013); CARB, *Discussion of Findings Required by Government Code section 12894* (Jan. 2017).

[2] Health & Saf. Code § 38500 et seq.

[3] Health & Saf. Code §§ 38505, subd. (k) [definition of "market-based compliance mechanism"], 38561 subd. (b) [scoping plan], 38562 [authority to regulate], 38570 [provisions governing market-based regulations].

[4] Health & Saf. Code §§ 38501 and 38564.

[5] Health & Saf. Code § 38566 et seq.

[6] Health & Saf. Code § 38562.2.

anthropogenic GHG emissions to at least 85% below 1990 levels by 2045 and achieving carbon neutrality by 2045. In September 2025, the California Legislature passed, and the Governor signed, AB 1207,[7] which reaffirmed the role of the Cap-and-Invest Program (Program) in supporting progress toward achieving the 2030 and 2045 GHG emissions reduction targets.

The Program, originally authorized by AB 32, has been part of California's successful portfolio approach of incentives, regulations, and carbon pricing to achieving the State's GHG emissions reduction targets. The Program sets an aggregate cap on approximately 80% of total statewide GHG emissions, which declines annually in line with the State's GHG emissions reduction goals. Each metric ton of GHG emissions within the cap is represented by a GHG allowance that is distributed by CARB and used by covered entities to fulfill a compliance obligation for their GHG emissions. A portion of these allowances are sold at State-run auctions, which support the effective functioning of the program and generate proceeds for the State to invest in projects that facilitate the reduction of GHG emissions. The ability of regulated entities to buy and sell allowances among themselves, or to purchase offset credits issued for real, quantifiable, verifiable, permanent, additional, and enforceable emission reductions from offset projects, harnesses market efficiencies to facilitate the most cost-effective emission reductions. Altogether, the Program is a system of design elements that together steadily incentivize emissions reductions over time while minimizing economic impacts.

In 2012, the Legislature enacted and Governor Brown signed SB 1018.[8] That bill included provisions intended to ensure that any decision to link market-based compliance programs under AB 32 with a program in another jurisdiction would occur only after the Governor's consideration of four findings. Those provisions were codified in section 12894 of the Government Code. Under this law, prior to formally linking the Cap-and-Invest Program, CARB must notify the Governor, who then has up to 45 days in which to make (or decline to make) four specified findings, which are to be submitted to the Legislature.[9] The Governor shall also consider advice from the Attorney General within this 45-day timeframe.[10]

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[7] Health & Saf. Code §§ 38501, 38562, 38590.1, 38591.1, 38591.2, 38592.5, 38592.6, and 38594; Pub. Util. Code § 748.5.5.

[8] *See* Gov. Code §12894.

[9] Gov. Code §12894, subds. (f) and (g).

[10] *Id.*, at subd. (g).

Linking two or more such programs means that compliance instruments (i.e., emission allowances and limited offset credits) issued by one of the linked jurisdictions can be used interchangeably for compliance in another linked jurisdiction.[11] This expands the market, enhancing the flexibility such programs provide. Linking also allows for centralizing administrative functions, thereby improving efficiencies and offering the potential to reduce governmental costs. The success of any linkage depends on the responsible regulatory agencies employing equivalent rigor in designing and implementing their respective programs, including requiring accurate emissions reporting and maintaining effective controls on the issuance of compliance instruments. California and the Province of Québec have successfully operated a linked market since 2014. Additionally, in 2018, California linked with the Province of Ontario for the first half of 2018; California subsequently delinked with Ontario.

Over the last few years, the State of Washington has been working to harmonize its own program to support linkage with California and Québec. Washington launched its Cap-and-Invest Program on January 1, 2023. After sustained discussions, California, Québec, and Washington signed a linkage agreement on June 25, 2026, an initial step toward linking their carbon markets.[12]

Similar to the process CARB undertook to respond to the direction in SB 1018 when proposing linkage with Québec and Ontario,[13] CARB is formally requesting that the Governor make the required findings regarding Washington's Cap-and-Invest Program and provide those findings to the Legislature. This discussion document provides background and support for CARB's request that the Governor make certain findings as a predicate to linking the Cap-and-Invest Programs developed by California and Washington. As discussed below, California and Washington are in the process of instituting equally rigorous programs.

Washington's Program

In 2021, the Washington Legislature passed the Climate Commitment Act (CCA), which established a comprehensive, market-based program to reduce carbon pollution and achieve the GHG emissions limits set in state law.[14] The CCA directs the

[11] *Id.* at subd. (e).

[12] *Agreement on the Harmonization of Carbon Market Programs for Reducing Greenhouse Gas Emissions* (June 2026). *https://apps.ecology.wa.gov/publications/summarypages/2614018.html*.

[13] *See* CARB, *Cap-and-Invest Program Linkage Webpage*.

[14] Revised Code of Washington (RCW), ch. 70A.65.

Washington Department of Ecology (Ecology) to explore linkage with other markets.[15] Ecology adopted its regulation to implement its Cap-and-Invest Program on September 29, 2022.[16] Ecology has also adopted regulations related to the quantification, reporting, and verification of GHG emissions.[17] Assessing Washington's program requires a review of the CCA, the Climate Commitment Program Rule, and the Washington Reporting of Emissions of Greenhouse Gases Rule to gain a comprehensive view of the requirements of the Washington Cap-and-Invest Program.

As part of Ecology's work to pursue linking markets with California and Québec, during the 2024 Legislative Session, Ecology requested legislation to modify the CCA in ways that facilitate linkage.[18] The legislation, Washington Senate Bill 6058, went into effect on January 1, 2025. Ecology is currently finalizing its rulemaking process to make necessary changes to the Climate Commitment Act Program Rule and the Reporting of Emissions of Greenhouse Gases Rule to facilitate linkage.[19] Washington expects to adopt rule changes in September 2026, with an effective date in October 2026.

Government Code Section 12894 Findings Analysis

The findings analysis below is based on an assessment of Washington and California's most recent rulemakings updating their respective programs. For the reasons discussed below, CARB finds that linkage with Washington's program will satisfy the four findings required by Government Code section 12894 once Washington's current rulemaking is complete. The remainder of this discussion is organized according to those four findings.

A. Washington's Requirements are "Equivalent to or Stricter Than" California's

The first finding required by Government Code section 12894 subd. (f) focuses on the strength of the proposed linking partner's program:

(1) The jurisdiction with which the state agency proposes to link has adopted program requirements for greenhouse gas reductions, including, but not limited to, requirements for offsets, that are equivalent to or stricter than those required

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[15] Washington Department of Ecology, *Cap-and-Invest Linkage Criteria Findings* (June 2026); RCW § 70A.65.210.

[16] *See* Washington Administrative Code (WAC) § 173-446.

[17] WAC § 173-441.

[18] Washington Department of Ecology, *CCA Market Notice: Senate Bill 6058 implementation* (Nov. 18, 2024).

[19] *See* Washington Department of Ecology. *Chapters 173-441 and 173-446 WAC — Cap-and-Invest Program Updates and Linkage Webpage*.

> *by Division 25.5 (commencing with Section 38500) of the Health and Safety Code.*

The potential equivalence of California's and Washington's climate programs can be evaluated by reviewing several factors. For assessing equivalency of Washington's program, it is helpful to compare each jurisdiction's emission reduction goal, the role of the Cap-and-Invest Program in achieving each jurisdiction's reduction goal and the broader GHG reduction efforts in each jurisdiction, and the rules and requirements incorporated into each jurisdiction's Cap-and-Invest Program legislation. It is important to evaluate the stringency of other programs to ensure the GHG emissions reductions goals in the California program are not adversely impacted through linkage with another program.

Emissions Reduction Targets

Both California and Washington define their statewide GHG emissions reduction targets relative to their 1990 emissions level. California's 2030 target, defined in SB 32, is to reduce emissions by at least 40% below 1990 levels by 2030. Washington's 2030 target, defined in the CCA, is to reduce emissions to 45% below 1990 levels by 2030.[20] Therefore, the statutory target for emissions reductions by 2030 in Washington are at least as stringent as the 2030 target for California. Both the California and Washington reduction goals are codified in legislation.[21] In addition to its 2030 target, Washington has statutory targets to reduce statewide GHG emissions to 70% below 1990 levels by 2040, to reduce statewide GHG emissions to 95% below 1990 levels by 2050, and to achieve net-zero emissions by 2050.[22] Washington's 2040 and 2050 targets are well-aligned with the trajectory and ambition of California's mid-century targets to reduce statewide anthropogenic GHG emissions in 2045 to 85% below 1990 levels and to achieve statewide carbon neutrality by 2045. Thus, Washington has emissions reduction targets that are at least as stringent as California's targets.

In 1990, statewide GHG emissions in California were 431 million metric tons of CO2 equivalent (MMTCO2e),[23] or about 14.5 metric tons per capita. In 1990, Washington's emissions were 90.50 MMTCO2e,[24] or about 18.6 metric tons per capita. As of 2022 (the most recent year for which Washington data are available), Washington's emissions

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[20] RCW § 70A.45.020.

[21] Health & Saf. Code § 38566; RCW § 70A.45.020.

[22] Health & Saf. Code § 38566; RCW § 70A.45.020.

[23] *See* CARB, *GHG 1990 Emissions Level & 2020 Limit* for more information.

[24] *See* Washington Department of Ecology, *Washington State Greenhouse Gas Emissions Inventory: 1990-2018* (Jan. 2021).

were lowered to 12.2 metric tons per capita[25] and California's to 9.5 metric tons per capita.[26]

By the end of 2022, statewide GHG emissions in Washington had declined 12.4% compared to their peak in 2000.[27] During 2000-2022, GHG emissions in Washington decreased on a long-term downward trend, even as the state's economy and population grew.[28]

Based on these considerations, overall, the stringency of emissions reduction requirements in Washington are equivalent to or stricter than in California.

Role of the Cap-and-Invest Program as Part of Each Jurisdiction's Climate Plans

Both California and Washington have designed their respective Cap-and-Invest Programs to support attainment of their emission reduction targets in concert with other climate programs. For California, Division 25.5 of the Health and Safety Code directs CARB to prepare scoping plans laying out the suite of emission reductions measures, incentives, and other tools to achieve the state's GHG reduction targets; CARB released an initial plan in 2008 and updated that plan in 2014, 2017, and 2022. The plan identifies Cap-and-Invest as a key element of California's climate programs under Division 25.5 of the Health and Safety Code, which includes measures to reduce Short Lived Climate Pollutants, measures to reduce the carbon intensity of transportation fuel, and to provide a program for regulation of Carbon Capture, Removal, Utilization, and Storage technologies. The plan discusses how Cap-and-Invest complements these other California climate programs. For Washington, the Washington Legislature provided Ecology with the authority to develop rules and requirements to implement three major climate bills: the CCA, the Clean Fuel Standard,[29] and an expanded hydrofluorocarbon transition.[30] Together with existing policies advancing clean energy[31] and clean transportation, these laws put Washington on a path toward achieving the GHG limits set in state law.

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[25] *See* Washington Department of Ecology, *Washington State Greenhouse Gas Emissions Inventory: 1990-2022* (Apr. 2026).

[26] *See* CARB, *2000-2023 GHG Emissions Trends Report Data*.

[27] *See* Washington Department of Ecology, *Washington State Greenhouse Gas Emissions Inventory: 1990-2022* (Apr. 2026).

[28] *Ibid.*

[29] RCW § 70A.535.

[30] RCW § 70A.60.

[31] RCW § 19.405.

In both jurisdictions, the emissions permissible under the Cap-and-Invest Program plus the emissions that are not covered by the program sum to their respective 2030 emissions reduction targets. The Washington program requires more aggressive reductions now through 2030 to support meeting its legislatively mandated 2030 emissions reduction target.[32] Thus, the Cap-and-Invest programs in California and Washington have equivalent roles in each jurisdiction's overall emissions reduction program.

Cap-and-Invest Program Rules and Requirements

California, Québec, and Washington started as early partner jurisdictions in what would become the Western Climate Initiative Incorporated (WCI, Inc.),[33] a collaboration of Western U.S. states and Canadian provinces that had worked together in the past going back almost two decades to identify, evaluate, and implement policies to address climate change.[34] More recently, due to sustained discussions among California and Washington, the two Cap-and-Invest Programs share many identical features. Both jurisdictions are committed to collaborating to ensure effective harmonization, while each retains authority over its own regulations. Similarly, Washington adopted a GHG emissions reporting program — essential for an effective Cap-and-Invest Program — that is closely modeled on California's Mandatory GHG Emissions Reporting Regulation requirements and customized for Washington's particular industrial sector makeup.

The California and Washington regulations include identical features to ensure the efficacy of the emissions cap and to facilitate fair and equitable access to an efficient market for compliance instruments. California and Washington's programs will have largely harmonized relevant requirements, as reflected in the regulatory amendments expected to be adopted by Washington in September 2026 (with final amendments expected to take effect in October 2026). The following are several highlights of the program requirements, with references to the corresponding portions of the California and Washington regulations.

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[32] WAC § 173-446-210.

[33] The Western Climate Initiative began in 2007, when seven U.S. states and four Canadian provinces partnered to support regional GHG emissions reductions through the development of a common design framework for emissions trading systems and GHG monitoring, reporting and verification. The WCI, Inc. described later in this document is a non-profit corporation formed in 2011 to provide administrative and technical services to support the implementation of state and provincial GHG emission trading systems.

[34] See WCI, Inc., Program Design and Implementation, *https://wci-inc.org/our-work/program-design-and-implementation* (as of Aug. 24, 2026).

Allowance Budgets

In CARB's 2016 amendments to the Cap-and-Invest Regulation, annual 2021-2030 allowance budgets were set to decline linearly from the established 2020 allowance budget to a 2030 allowance budget. In the 2026 amendments to the Cap-and-Invest Regulation, CARB revised 2027-2045 annual allowance budgets to support achieving the legislative GHG emissions reduction targets for 2030 and 2045.

The Washington Cap-and-Invest Program has annual allowance budgets established only through 2026. Ecology has proposed amendments to the Climate Commitment Act Program Rule to establish the annual allowance budgets for 2027-2050 and to adjust 2023-2026 annual allowance budgets consistent with statutory direction, ensuring that the annual allowance budgets align with Washington's statutory targets for 2030, 2040, and 2050.[35]

The CCA requires that the annual allowance budgets for the Washington Cap-and-Invest Program must be set to achieve the share of reductions by covered entities necessary to achieve the 2030, 2040, and 2050 statewide emissions reduction targets.[36] By establishing the initial annual allowance budgets based on actual reported GHG emissions data, the Washington Cap-and-Invest Program aligned the annual allowance budgets with the actual emissions expected from covered sectors. This approach to establishing allowance budgets is consistent with the California approach and helps ensure the GHG reductions needed to meet the 2030, 2040, and 2050 targets will continue to happen. As a result of the similar approaches by California and Washington to establish annual allowance budgets, the Washington program will be at least as stringent as the California Cap-and-Invest Program once its rulemaking is finalized.

Verified Emissions Reporting

California's and Washington's GHG emissions reporting regulations are consistent with each other. Both programs require reporting at a 10,000 $MTCO_2e$ threshold and include more rigorous requirements at a 25,000 $MTCO_2e$ threshold, which is the threshold at which an entity becomes mandatorily subject to the Cap-and-Invest Program under both California's and Washington's regulations.[37]

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[35] See Washington Department of Ecology, *Chapters 173-441 and 173-446 WAC — Cap-and-Invest Program Updates and Linkage*.

[36] RCW § 70A.65.070.

[37] See Mandatory Reporting Regulation, Cal. Code Regs., tit. 17 § 95100 et seq.; and WAC §173-441.

The programs similarly define the boundaries for reporting entities as facilities at a common location and affiliated with the same company.[38] Washington and California both require instrument calibration to ensure accuracy.[39] California and Washington reporting regulations require a ±5% accuracy standard for sampling, analysis, and measurement instruments.[40]

Both programs prescribe methods for estimating data that is missing, for example due to a malfunctioning meter. Both programs require that the substituted data are conservatively chosen based on operating conditions in the periods immediately before and after the missing period, albeit using slightly different strategies. California uses a more graduated approach that varies depending on how much data is missing. Because both approaches are consistent with the U.S. Environmental Protection Agency's reporting requirements, they are considered to be equivalent.

Once an entity prepares its annual emissions report, both jurisdictions require the report to be verified by an accredited third-party verifier to ensure data quality. Both verification programs are based on International Standards Organization (ISO) standards.

Program Coverage of GHGs

The California and Washington programs both apply to the same core GHGs.[41] Washington's program additionally covers other GHGs. Like Québec's Cap-and-Trade System, the Washington Cap-and-Invest Program is broader than California's, including SF6 and perfluorocarbons from the electricity sector, process and fugitive emissions from magnesium production, and high global warming potential (high-GWP) gas emissions from electronics manufacturing. California opted to regulate those high-GWP gases by separate direct regulations, outside of the Cap-and-Invest Program. These regulations are the Regulation for Reducing Sulfur Hexafluoride Emissions from Gas Insulated Switchgear (2010), the Regulation for Small Containers of Automotive Refrigerant (2009), the Regulation to Reduce Greenhouse Gas Emissions from Semiconductor Operations (2009), and the Regulation for Management of High Global Warming Potential Refrigerants for Stationary Sources (2009). As such, both California and Washington require the reporting and reduction of emissions from these sources, even though the regulatory programs employ different strategies.

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[38] WAC § 173-441-020; Cal. Code Regs., tit. 17 § 95102 subd. (a).
[39] WAC § 173-441-050; Cal. Code Regs., tit. 17 § 95103, subd. (k).
[40] *Ibid.*
[41] WAC § 173-441-040; Cal. Code Regs., tit. 17 § 95810.

Government Control Over Emissions Allowances

Both California and Washington tightly control the number of allowances issued each year, resulting in declining annual allowance budgets.[42] Each instrument is given a unique serial number, and is tracked in a system common to both jurisdictions. California and Washington both distribute allowances through free allocation and quarterly auctions.[43] California's Program encompasses approximately 80% of total statewide GHG emissions, including emissions from about 400 California facilities. Washington's Program encompasses approximately 70% of total statewide GHG emissions from about 136 Washington facilities.

Compliance Instrument Surrender

Based on the verified emissions, both California and Washington entities need to surrender a corresponding number of compliance instruments.[44] Each program provides that failure to surrender on schedule will result in a three-to-one obligation for each un-surrendered compliance instrument in addition to the original compliance obligation.[45]

Mechanisms to Contain Prices

Both Programs have a two-tier Allowances Price Containment Reserve (APCR) and a price ceiling as cost containment mechanisms. The APCR is a reserve of allowances that are made available at quarterly reserve sales at set prices.[46] California and Washington fill their reserves with allowances from within their annual allowance budgets, using about 3.3% and 1.0% of the total allowances in the program, respectively.[47] The respective reserve sales are available only to covered entities from the jurisdiction conducting the sales. If no allowances remain in a reserve, California and Washington will offer respective price ceiling sales only to covered entities within the respective jurisdiction that do not have sufficient eligible compliance instruments in their accounts to meet their compliance obligations for the next compliance surrender deadline.[48] Both jurisdictions have the same price escalation method for the APCR tiers and price ceiling, where the prices increase by 5% plus the rate of inflation

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[42] WAC § 173-446-080; Cal. Code Regs., tit. 17 § 95820.
[43] WAC § 173-446-200 et seq.; Cal. Code Regs., tit. 17 § 95840 et seq.
[44] WAC §§ 173-446-040, 173-446-600; Cal. Code Regs., tit. 17 §§ 95850, 95856.
[45] WAC § 173-446-610; Cal. Code Regs., tit. 17 § 95857.
[46] WAC § 173-446-370; Cal. Code Regs., tit. 17 § 95913.
[47] WAC § 173-446-370; Cal. Code Regs., tit. 17 § 95871.
[48] WAC §§ 173-446-380, 173-446-385; Cal. Code Regs., tit. 17 § 95915.

annually.[49] Allowance prices in a linked market will align as supply and demand equalize across the market.

Anti-Fraud Provisions

Both Washington and California require the buyer and seller to take affirmative steps in the registry to confirm transfers of compliance instruments, to foil unauthorized transactions and any market malfeasance.[50] Both programs also have provisions forbidding providing false information to, or withholding material information from, any party in connection with a transaction.[51] California and Washington both have a prohibition on beneficial holding whereby a registered entity is prohibited from acquiring and holding allowances in its account on behalf of a second entity, outside of specific exceptions.[52]

Holding Limits

Both programs incorporate the same limitations on the number of compliance instruments one entity or affiliated group of entities can hold, to prevent any party from accumulating holdings that would enable the exercise of market power.[53]

Limited Offsets Subject to Detailed Protocols

California and Washington both allow entities to use offset credits for compliance, and both limit the use of offset credits for compliance under current regulations.[54] For 2023-2026, Washington allows an entity to meet up to 8% of its compliance obligation with offset credits from projects that meet Washington offset regulatory requirements.[55] Beginning with emissions in 2027, Washington allows an entity to meet up to 6% of its compliance obligation with offset credits from projects.[56]

Beginning with emissions in 2026, California has a 6% offset usage limit where offsets must meet stringent regulatory criteria laid out in AB 32. By January 2027, the two programs are expected to retain equivalent overall offset usage limits.

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[49] WAC §§ 173-446-335, 173-446-370; Cal. Code Regs., tit. 17 §§ 95913, 95915.
[50] WAC § 173-446-410; Cal. Code Regs., tit. 17 § 95921.
[51] WAC § 173-446-440; Cal. Code Regs., tit. 17 § 95921.
[52] WAC § 173-446-400; Cal. Code Regs., tit. 17 § 95921 subd. (f).
[53] WAC § 173-446-150; Cal. Code Regs., tit. 17 § 95920.
[54] WAC §§ 173-446-500, 173-446-600.
[55] WAC § 173-446-600(7)(a).
[56] WAC § 173-446-600(7)(b).

Offset credits are developed and verified by third-party entities for Washington, with credit issuance managed by Washington Department of Ecology staff.[57] In Washington, like in California, the offsets themselves must be approved and issued by the government and are based on standards that ensure the emissions reductions or removals are real, quantifiable, verifiable, permanent, enforceable, and additional. In the event of offset credit invalidation or reversal, both programs require the replacement of offset credits to preserve environmental integrity, resulting in equivalent outcomes. Each jurisdiction's offset credits are fully fungible and, once issued, are recognized as a valid compliance instrument for any linked program.

Washington has adopted four offset protocols, each of which is based upon a protocol originally adopted by CARB for the California's Cap-and-Invest Program: the U.S. Forest Protocol, the Ozone Depleting Substances (ODS) Destruction Protocol, the Urban Forest Protocol, and the Livestock Protocol. Based on CARB staff's assessment of the compliance offset program for Washington's Cap-and-Invest Program, including modifications made to California's offset protocols and approaches, the Washington offset program meets AB 32 offset requirements for being real, permanent, quantifiable, verifiable, and additional.

For example, both the California and Washington forest offset protocols address leakage, maintain a risk-based buffer account to ensure environmental integrity and permanence, and establish regionalized common practice estimates from forest inventory and analysis data to set Improved Forest Management baselines. Permanence requirements are likewise aligned for the forest offset protocols in each jurisdiction: each defines permanence as 100 years, applies significant penalties for early termination, and uses comparable approaches for compensating reversals. Similarly, the ODS offset protocols in each jurisdiction recognize the destruction of only refrigerants that are being phased out and cannot be produced or imported into the United States. All offset protocols require robust annual reporting and onsite verification.

Overall, the harmonization of the program regulations results in equivalent stringency of each respective program with respect to environmental integrity, compliance requirements, and market rules. California, Québec, and Washington will collaborate on the development of any additional protocols or updates to existing protocols, in an effort to ensure continued harmonization.

[57] WAC §§ 173-446-555, 173-446-560.

B. Linkage with Washington Will Not Impede California's Ability to Enforce its Laws

The second finding required by Government Code section 12894 subd. (f) concerns California's continued ability to enforce its Global Warming Solutions Act:

> *(2) Under the proposed linkage, the State of California is able to enforce Division 25.5 (commencing with Section 38500) of the Health and Safety Code and related statutes, against any entity subject to regulation under those statutes, and against any entity located within the linking jurisdiction to the maximum extent permitted under the United States and California Constitutions.*

Under the proposed linkage, California will retain full authority to enforce Division 25.5 to the maximum extent permitted under the United States and California Constitutions. Under well-established interpretations of due process, persons who participate in California's program are subject to California's jurisdiction.[58] Persons who only participate to buy and sell compliance instruments are included; the regulation provides that "[a]ny party that participates in the Cap-and-Invest Program is subject to the jurisdiction of the State of California."[59]

California registrants expressly submit to California's jurisdiction[60] and must provide a California address and designated representative to allow for prompt service of process.[61] Before bidding in California's auction, any bidder must pre-qualify by both registering and tendering a guarantee, such as a letter of credit or bond.[62]

Additionally, for the Governor to make this finding, California must be able to enforce Division 25.5 against entities in Washington to "the maximum extent permitted under the United States and California Constitutions." Participation in a Cap-and-Invest Program requires registration in one of the jurisdictions that is linked or proposed for linkage (California, Québec, or Washington). Persons who register and participate in Washington's trading program come under Washington's jurisdiction, just as persons who participate in California's program are subject to California's jurisdiction. If a Washington entity were to register directly with California, that entity would agree to

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[58] *See International Shoe Co., Inc. v. Washington*, (1945) 326 U.S. 310 (requiring minimum contacts such that exercise of jurisdiction does not offend traditional notions of fair play and substantial justice).

[59] Cal. Code Regs., tit. 17 §§ 96010, 96022.

[60] Cal. Code Regs., tit. 17 § 95832 subd. (d) ("I consent to the jurisdiction of California and its courts for purposes of enforcement of the laws, rules and regulations pertaining to title 17, article 5, sections 95800 et seq.[.]").

[61] Cal. Code Regs., tit. 17 § 95830 subd. (c)(6).

[62] Cal. Code Regs., tit. 17 § 95912 subds. (d), (h).

be subject to California's jurisdiction, waiving any constitutional limitations. Persons registered in Washington will provide information to Washington that is equivalent to that collected by California, which will allow Washington to take legal action if appropriate.

Even some Washington-based entities that do not have to register with California may still be subject to jurisdiction in California if they have the Constitutionally-required "minimum contacts" with California.[63] Any limits on California's enforcement authority over Washington entities will result not from linkage, but from preexisting Constitutional limitations on California jurisdiction.

In order to support one another's enforcement efforts, California and Washington will continue to cooperate and to share information, to the extent permitted by law. The linkage agreement signed by California, Québec, and Washington on June 25, 2026, is designed to facilitate the sharing of information to support effective administration and enforcement of their respective programs.[64] The Governments agreed, for example, to work cooperatively to maintain market integrity and inform each other of relevant investigations and enforcement decisions each may make.[65]

Finally, like its counterparts in California and Québec, Washington has an established relationship with the Commodity Futures Trading Commission, which has jurisdiction over certain derivative instruments, trading of which could affect the market for compliance instruments.

C. Washington Provides for Enforcement of its Requirements

The third finding required by Government Code section 12894 subdivision (f) is that:

> *(3) The proposed linkage provides for enforcement of applicable laws by the state agency or by the linking jurisdiction of program requirements that are equivalent to or stricter than those required by Division 25.5 (commencing with Section 38500) of the Health and Safety Code.*

Washington has a range of enforcement tools available to enforce its program requirements. These tools are equivalent to or stricter than those available under California law. These tools include administrative civil penalties that can be enforced in court, as well as other administrative tools and other forms of enforcement including

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[63] *See International Shoe Co., Inc. v. Washington*, (1945) 326 U.S. 310.

[64] *Agreement on the Harmonization of Carbon Market Programs for Reducing Greenhouse Gas Emissions* (June 2026), §1(g) *https://apps.ecology.wa.gov/publications/documents/2614018.pdf*.

[65] *Id.* at § 10.

criminal penalties. Several tools are authorized by Washington's CCA, which governs Washington's Cap-and-Invest Program and empowers Ecology to take specific enforcement actions.[66] In addition, the Washington Clean Air Act includes enforcement provisions related to GHG reporting requirements.[67] In addition to the CCA and Washington Clean Air Act, Washington has other options for pursuing enforcement under state and federal law.

Regulatory Mechanisms and Administrative Civil Penalties

The CCA authorizes Ecology to issue civil financial penalties in order to ensure compliance with the Cap-and-Invest Program and to prevent persons or entities from deriving an economic benefit as a result of a violation of the CCA.[68] Ecology may impose such penalties directly through an administrative process that is then enforceable in court. CARB, by contrast, must seek penalties through mutual administrative settlement, the judicial process, or an administrative law judge.[69]

As under California's regulation, entities that fail to surrender the number of required allowances in Washington's program must make up for the shortfall and submit an additional three allowances for every one missed.[70] The CCA then authorizes Ecology to issue administrative civil penalties of up to $10,000 per violation per day of noncompliance for an entity's failure to submit the required penalties allowances with six months.[71] Moreover, Ecology's rules specify that each metric ton of carbon dioxide equivalent that is not covered by a compliance instrument constitutes a separate violation.[72] Ecology can also issue a penalty of up to $10,000 per violation per day for other violations of the CCA.[73]

The CCA also directs Ecology to issue penalties of up to $50,000 per day if an entity violates the program's rules related to market behavior, auctions, and registration requirements.[74] These penalties are in addition to sanctions available under

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[66] RCW § 70A.65. Enforcement and penalty provisions are specified in RCW § 70A.65.200.

[67] RCW § 70A.15. Enforcement provisions for the reporting of GHG emissions are specified in RCW § 70A.15.2200.

[68] RCW § 70A.65.200.

[69] *See* Cal. Code Regs., tit. 17 § 96013; Health & Saf. Code §§ 38580, 42401 (civil penalty process); 42402 (same); 42402.1 (same); 42402.2 (same); 42402.3 (same); 42410 (administrative law judge process).

[70] Compare Cal. Code Regs., tit. 17 § 95857 subd. (b)(2) with RCW § 70A.65.200 subd. (2).

[71] The CCA directs Ecology to issue penalties of up to $10,000 per day if an entity fails to submit penalty allowances by the deadline (RCW § 70A.65.200 subd. (3)).

[72] WAC § 173-446-610.

[73] RCW § 70A.65.200 subd. (5).

[74] RCW § 70A.65.200 subd. (4) (authorizing $50,000 per day per violation penalties for violations of the rules listed in RCW § 70A.65.100 subds. (8)(a)-(e)).

Washington's Consumer Protection Act[75] or under any other applicable state or federal laws.[76]

In addition, GHG reporting violations are subject to administrative civil penalties of up to $10,000 per day per violation issued by Ecology under the Washington Clean Air Act.[77] Washington's GHG emissions reporting rule also specifies that each metric ton of misreported emissions is a separate violation.[78] There is no overall cap on the amount of a penalty that can be assessed for multiple or continuing violations.

Other Administrative Enforcement Tools

The CCA also authorizes Ecology to issue civil enforcement orders to require compliance with the Act and its implementation regulations.[79] Washington may also impose restrictions on entities that are out of compliance through its broad authority to protect the integrity of the Cap-and-Invest Program, including the power to suspend or revoke accounts of registered participants.[80] This includes the authority to take such actions against entities that make false or materially misleading statements regarding their participation in the program.[81]

These administrative tools are at least equivalent to those available to CARB under California law, such as CARB's powers to place restrictions on covered entities, and CARB's authority to suspend, revoke, or modify accounts in the program.[82]

Criminal Penalties

Washington's CCA does not directly authorize criminal penalties itself. However, a number of other Washington laws do create criminal penalties that could be used to enforce violations of Washington's Cap-and-Invest program rules. These include:

- RCW § 9A.72.040 – false swearing is a gross misdemeanor.
- RCW § 9A.75.175 – knowingly making a false or misleading statement to a public servant is a gross misdemeanor.
- RCW § 40.16.030 – offering a false instrument for filing is a class C felony with a

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[75] *See* RCW ch. 19.86 (Washington Consumer Protection Act).

[76] *See* RCW § 70A.65.100 subd. (10).

[77] RCW § 70A.15.3160 subd. (1).

[78] WAC § 173-441-090 subd. (1).

[79] RCW § 70A.65.200.

[80] Ecology shall adopt rules to guard against bidder collusion and market manipulation (RCW § 70A.65.100 subd. (8)). Proposed rule changes to be adopted in September 2026 expand Ecology's authority to suspend and revoke registrations (WAC § 173-446-320 subds. (2), (3)).

[81] See WAC § 173-446-320 subd. (2)(e).

[82] See Cal. Code Regs., tit. 17 § 95921 subd. (g) (authority to place restrictions on covered entities); § 96011 (authority to suspend, revoke, or modify).

penalty of up to $5,000 and up to 5 years in prison.

- RCW § 10.01.100 – corporate criminal fines - apply to business associations formed in Washington if no other fine is specified:
    - Gross misdemeanor – fine of up to $250,000.
    - Class C felony – fine of up to $500,000.
- RCW § 9A.28.040 – criminal conspiracy - the degree of the crime of conspiracy is one lower than the degree of the crime one conspired to commit.

By comparison, CARB may seek to impose penalties of $75,000 per day (or up to one year of imprisonment) for intentional violations and less if based on negligence (maximum $25,000 per day or up to nine months of imprisonment) or strict liability (maximum $10,000 per day or up to six months of imprisonment).[83]

In addition, for violations of GHG reporting rules, the Washington Clean Air Act also authorizes criminal sanctions for knowing or negligent violations of the Act or of the regulations adopted to implement that Act. Washington law provides that these violations constitute gross misdemeanors and can be punished by fines of up to $10,000 and up to 364 days in county jail for each separate violation.[84]

Lastly, both California's and Washington's legal frameworks include provisions to facilitate enforcement of their respective laws. California's regulation requires that entities who desire to register with the Program to submit information at the time of registration including their corporate structure and source of funds.[85] Additionally, Program participants that desire to participate in auctions must submit additional information to California to confirm that they maintain eligibility to participate and have funds to complete the purchase of allowances.[86] Finally, participants must disclose certain details regarding trades of compliance instruments when completing the transaction in the registry and must submit to CARB upon request the underlying contract between the parties.[87] As in California, Washington has provisions that allow it to gather information from the natural persons required to register to participate in their trading programs and provide bid guarantees.[88] Washington's rules provide various mechanisms to request a broad amount of information from entities in a timely manner.[89]

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[83] Health & Saf. Code § 42402 et seq.; California's laws increase the penalty amount annually based on the consumer price index. See Health & Saf. Code § 42411.

[84] RCW § 70A.15.3150.

[85] Cal. Code Regs., tit. 17 § 95830 subds. (c)(1)(A)-(N).

[86] Cal. Code Regs., tit. 17 § 95912 subds. (d), (h).

[87] Cal. Code Regs., tit. 17 § 95920 subds. (b), (c).

[88] RCW §§ 70A.65.090 subds. (1), (2), 70A.65.100 subds. (4), (5).

[89] WAC § 173-446-120 subd. (4)(b), WAC § 173-446-410 subd. (1)(d), § WAC 173-446-600.

D. Linkage Does Not Impose Liability on California

The fourth finding required by Government Code section 12894 subd. (f) is that:

> *(4) The proposed linkage and any related participation of the State of California in Western Climate Initiative, Incorporated, shall not impose any significant liability on the state or any state agency for any failure associated with the linkage.*

Government Code section 12894 subdivision (e) defines "linkage" as "an action taken by the State Air Resource Board or any other state agency that will result in" California accepting "compliance instruments issued by any other governmental agency . . ."

If the Governor makes the requested findings, CARB plans to adopt Cap-and-Invest regulation amendments that would allow California to accept compliance instruments issued by Washington.[90] With regard to adopting its recent rulemaking updating the Cap-and-Invest program, or any future rulemaking to accept compliance instruments issued by Washington, California is not liable for "adopting or failing to adopt an enactment or by failing to enforce any law," or for actions related to the emissions market such as suspending or revoking privileges.[91] Nothing in the proposed linkage would require California to waive or alter these existing immunities.

California's "related participation" in WCI, Inc. does not impose any significant liability. WCI, Inc. was formed in 2011 as a non-profit corporation to provide administrative and technical support to state and provincial GHG emissions trading programs.[92] Any jurisdiction that wishes to link with California's program, including Washington, needs to be a member of WCI, Inc. and use its single-market infrastructure. California's participation in WCI, Inc. allows CARB access to administrative support, including:

a) developing, implementing, and maintaining a system for tracking compliance instruments for allowance trading programs;
b) developing, implementing, and maintaining capability to execute allowance auction and reserve sales; and
c) developing, implementing, and maintaining capability to conduct analysis in support of each jurisdiction's market monitoring.[93]

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[90] *See* Cal. Code Regs., tit. 17 § 95943 et seq. ("Subarticle 12: Linkage to External Greenhouse Gas Emissions Trading Systems").

[91] Gov. Code §§ 818.2, 818.4.

[92] See WCI, Inc., Program Design and Implementation, *https://wci-inc.org/our-work/program-design-and-implementation* (as of Aug. 24, 2026).

[93] WCI, Inc., By-Laws of Western Climate Initiative, Inc. 4 (Sept. 2024), *https://wci-inc.org/documents/incorporation-documents* (as of Aug. 24, 2026).

The benefits of participating in WCI, Inc. and utilizing its single-market platform have included reduced administrative costs through cost sharing with other jurisdictions and enhanced security and effectiveness of program infrastructure across programs, including the tracking system, auction operation, and market monitoring. Additionally, California's Secretary for Environmental Protection and CARB's Chair sit on WCI, Inc.'s Board of Directors. California has enjoyed the benefits of participating in WCI, Inc., and the proposed linkage with Washington will enhance those benefits by creating a larger market for WCI, Inc. services.

To the extent participation in WCI, Inc. includes the appointment of directors, governing corporate law and WCI, Inc.'s corporate articles provide extensive protection for directors. WCI, Inc. has purchased insurance covering its directors. The law allows corporations to indemnify directors, officers, employees and agents for any good faith actions taken on the corporation's behalf.[94] WCI, Inc.'s articles of incorporation, sections 12 and 13, implement these provisions to exonerate directors "to the fullest extent permitted" by law, and to indemnify directors "and any other person whom it shall have power to indemnify."[95]

Conclusion

The foregoing comparison of California and Washington's emissions trading programs provides support for making the four findings. Because of the collaborative manner in which both programs were developed and updated over recent years, California and Washington have designed their programs to operate with equal rigor. CARB recommends that the Governor finds that linkage with Washington's program satisfies the four findings required by Government Code section 12894.

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[94] Del. Code Ann. Title 8, § 145. *See also* Del. Code Ann. Title 8, § 102 subd. (b)(7) (corporate articles can eliminate director liability for breach of fiduciary duty, unless in bad faith).

[95] WCI, Inc., WCI, Inc. Certificate of Incorporation 4 (2011), <*https://wci-inc.org/documents/incorporation-documents*> (as of Aug. 24, 2026); *See also* WCI, Inc., By-Laws of Western Climate Initiative, Inc. § 10.2 ("Indemnification") (Sept. 2024), <*https://wci-inc.org/documents/incorporation-documents*> (as of Aug. 24, 2026).