



# Summary of Cap-and-Invest Agency Request Legislation

On November 2, the Director of Ecology announced a preliminary decision to pursue linkage of Washington's carbon market with California and Québec. Ecology is advancing agency request legislation to amend the Climate Commitment Act (CCA) to facilitate linkage. That legislation also contains other administrative changes that would improve the program but are not required for linkage.

We are distributing this information to inform stakeholders and market participants of the topics that are included in the draft [agency request legislation](#).

Washington Department of Ecology initially shared information on the Cap-and-Invest Agency Request Legislation via [email](#) on October 23, 2023. We have added additional information below to clarify the policy proposals we have proposed to the Governor and remove proposals we did not include in the current draft of the agency request legislation. Proposals may be added, changed, or removed, as potential legislation is refined.

## Potential statutory amendments relevant to linkage

### Electricity

- **Reporting of electricity (RCW 70A.15.2200(5)(a)):** Under current statute, greenhouse gas (GHG) emissions associated with electricity must be reported if they reach 10,000 metric tons of carbon dioxide-equivalent (MT CO<sub>2</sub>e) per year. California has no threshold for reporting unspecified electricity. For greater consistency with California's program, Ecology proposes removing the existing 10,000 MT CO<sub>2</sub>e per year threshold for reporting GHG emissions for electricity in Washington. This change would require a change to the state Clean Air Act (not the CCA).
- **Electricity imports (RCW 70A.65.080(1)(c)):** Under current law, electricity importers importing electricity with GHG emissions greater than 25,000 MT CO<sub>2</sub>e per year are covered entities in the cap-and-invest program. For consistency with California, Ecology is seeking authorization to require by rule that all importers of unspecified electricity shall be covered entities, regardless of the amount of unspecified electricity they import.
- **Electricity imports (RCW 70A.65.010(27)):** The current statute defines an "electricity importer" by listing eight different scenarios. However, a group of Electric Power Entities (EPEs) provided a white paper to Ecology explaining that these scenarios are not exhaustive. Ecology agrees that the current definition of "electricity importer" omits some imported electricity that should otherwise be covered by the cap-and-invest program. We suggest amending that definition to add several of these omitted scenarios, as well as a catch-all provision allowing Ecology to identify specific electricity importers not defined in the current statute or by rule.
- **Removing requirement that "netting" be reported (RCW 70A.65.010(42)(d)):** One of the provisions in the current definition of "imported electricity" excludes "electricity imports of unspecified electricity that are netted by exports of unspecified electricity" under certain circumstances. EPEs have raised concerns about their ability to track and report such netting, and California no longer requires this. To harmonize with California, and address EPE concerns, Ecology requests to remove or change this requirement through rulemaking.

### Allowance purchase limits for covered entities (RCW 70A.65.100(6)(a))

Under current law, a covered entity or an opt-in entity may not buy more than 10% of the allowances offered during a single auction. In California and Québec, these entities may not buy more than 25% of the allowances offered during a single auction. For linkage to occur, this purchase limit needs to be consistent across linked jurisdictions. As a result, Ecology proposes amending the CCA to increase Washington's purchase limit to 25%.

### Ecology discretion as to certain enforcement (RCW 70A.65.200(7))

If a covered entity or opt-in entity does not submit the required number of compliance instruments to meet a compliance obligation, that entity must submit four allowances for every missing instrument within six months. If an entity fails to submit these "penalty allowances", Ecology must issue a monetary penalty of up to \$10,000 per day per violation, and/or an order with a plan and schedule for coming into compliance. During the first compliance period, Ecology "may reduce the amount of the penalty by adjusting the monetary amount or the number of penalty allowances" (RCW 70A.65.200(7)). This discretion to reduce the penalty may be a barrier to linkage and, as a result, Ecology proposes that this subsection (7) be removed from the statute.

### Authority to modify certain provisions via rule

California and Québec are both reassessing their cap-and-trade programs and may not finalize changes until after Washington's 2024 legislative session has concluded. At that point, we may need to make additional changes to the cap-and-invest program. Ecology may seek authority to resolve certain issues and/or modify certain sections of the CCA via rule, as necessary, to implement linkage. Those sections include:

- RCW 70A.65.100 Auctions of allowances
- RCW 70A.65.140 Emissions containment reserve withholding
- RCW 70A.65.150 Allowance price containment
- RCW 70A.65.160 Price ceiling
- RCW 70A.65.170 Offsets

## Potential statutory amendments that are not relevant to linkage

### Offsets credits from projects on Tribal lands (RCW 70A.65.170(3))

The CCA states that in the first 4-year compliance period (2023-2026), a covered entity may fulfill up to 8% of its compliance obligation using offset credits. Within that 8% limit on the use of offset credits, 5% may be met by offset credits from non-Tribal projects and an additional "3% of a covered or opt-in entity's compliance obligation may be met by transferring offset credits from projects on federally recognized tribal land" (RCW 70A.65.170(3)(e)(i)). Ecology proposes adding flexibility to allow a covered entity to fulfill up to 5% of its compliance obligation using offset credits from any eligible offset project, whether on Tribal lands or not, with an additional 3% that must come from projects on Tribal lands. We are proposing similar changes to the requirements for offset credits during the second compliance period. This change would allow a higher percentage of offset credits from projects on Tribal lands. The program rule already builds this flexibility into the offset limits for the third and subsequent compliance periods (WAC 173-446-600(7)(c)). Ecology is not proposing changes to the existing requirement that restricts the total amount of offset credits that a covered entity can use for compliance.

## Due date of the CCA Spending Report (RCW 70A.65.300)

Under current law, Ecology is required to submit a report to the Legislature outlining the uses of “all distributions of money” from CCA funds by September 30 of each year. However, agencies that have received funding from CCA auction revenue have notified Ecology that they will not have their actual expenditures documented or be able to provide the necessary information to Ecology in time for its inclusion in a September 30 report. To ensure these reports are appropriately comprehensive, Ecology suggests changing the annual due date to November 30.

## Auction application timelines for reserve auctions (RCW 70A.65.150(5))

The CCA requires Ecology to maintain two allowance reserves: The Allowance Price Containment Reserve (APCR) and the Emissions Containment Reserve (ECR). Ecology is authorized to hold auctions of allowances from both reserves under specific circumstances. Under current statute, APCR and ECR auctions must follow the same procedures as quarterly auctions (RCW 70A.65.150(5)). For quarterly auctions, the law requires Ecology to notify the Environmental Justice Council (EJC) 60 days in advance of each quarterly auction (RCW 70A.65.100(2)(a)), and to provide an application window of at least 30 days for entities to register to participate (RCW 70A.65.100(4)(a)). The 60-day EJC notice requirement and the 30-day registration requirement create scheduling difficulties when APCR auctions are triggered. As a result, Ecology suggests amending RCW 70A.65.150 to allow for a 30-day advance notification to the EJC for APCR or ECR auctions, and to authorize Ecology to determine the registration deadline for reserve auctions by rule.

## Washington Greenhouse Gas emissions reporting requirements (RCW 70A.15.2200)

Washington’s GHG emissions reporting is currently required to mirror the U.S. Environmental Protection Agency (EPA) GHG emissions reporting requirements and to use the EPA reporting platform, called e-GGRT (RCW 70A.15.2200(5)(c)). The cap-and-invest program requires that emissions or carbon intensity baselines for emissions-intensive, trade-exposed industries (EITEs) be determined using emissions reports, including emission factors and global warming potentials, as reported to Ecology and the EPA between 2015 and 2019. The EPA is currently updating its GHG reporting requirements, revising reporting protocols and changing emission factors and global warming potentials – a process it undergoes periodically. The updated EPA rule would go into effect in 2025 to cover 2025 emissions reported in March 2026.

With these changes, the EPA reporting requirements will diverge from the reporting parameters used for the CCA program’s 2015-2019 baseline. The result is that comparing future emissions reports under the new EPA requirements to the 2015-2019 baseline data (as mandated by the CCA EITE requirements) will become less useful, as the two data sets reflect increasingly different information. To resolve this problem, California developed its own reporting platform called “California e-GGRT.” Ecology is considering following California’s lead and developing our own GHG reporting platform. To do this, the GHG reporting statute (RCW 70A.15.2200) would need to be amended, authorizing Ecology to deviate from EPA reporting requirements.

## More information

- [2024 Cap-and-Invest Agency Request Legislation webpage](#)
- [Cap-and-Invest linkage webpage](#)
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