climate action of southwest WA (Don Steinke)

Develop a Cap-and-trade program for the sale of cars that pollute:
Washington already has two Cap-and-Trade programs, one for emissions and one called the clean fuels program.

I asked Chat GPT how Washington's cap-and-trade programs got around the Commerce Clause of the Constitution.
Chat GPT said:
Great question — the Commerce Clause of the U.S. Constitution (and its "Dormant Commerce Clause" doctrine) is one of the biggest hurdles for state climate laws. Washington's Cap-and-Invest program (part of the 2021 Climate Commitment Act) was written very carefully with those challenges in mind.
Here's how it avoids running afoul of the Commerce Clause:

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1. No explicit discrimination against interstate commerce
• The program covers all fossil fuels sold or consumed in Washington, regardless of where they originate.
• It doesn't say "in-state producers must do X" while exempting out-of-state competitors. Both in-state refineries and imported fuels have to obtain allowances.
• This neutral treatment makes it harder to argue the program "discriminates" against out-of-state commerce.
• [I believe that every mass market automaker either has an EV in production or development, or its parent company does. E.g. Buick has no EV but GM-Chevrolet-Silverado has several.]

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2. Regulating in-state emissions, not out-of-state activity
• Courts strike down laws that regulate conduct outside the state's borders.
• Washington structured its program so that the obligation arises only when fuels are sold for consumption in Washington or when emissions occur within Washington's borders.
• That's similar to how California designed its cap-and-trade program, which has survived multiple Commerce Clause challenges.

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3. Allowance auctions open to everyone
• Any qualified participant (even out-of-state entities) can buy allowances at auction.
• There isn't a protectionist scheme where in-state firms get cheaper or easier access.
• This undercuts arguments that Washington is favoring its own businesses.

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4. Legal precedent: California's program survived
• California's cap-and-trade system was challenged under the Dormant Commerce Clause, particularly for including cross-border electricity imports.
• In Rocky Mountain Farmers Union v. Corey (9th Cir. 2013) and later cases, courts upheld California's approach because it regulated fuels consumed in-state, not activity beyond its borders.
• Washington modeled its program heavily on California's framework to insulate itself from the same arguments.
• [In Washington, we ban the sale of electricity produced from coal]

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5. State authority over environmental protection

• States are allowed to regulate pollution and fuels within their borders, as long as they don't directly conflict with federal law or discriminate against interstate commerce.
• Washington argues its cap-and-invest system is just an environmental regulation with incidental economic impacts — not an attempt to wall off its economy.

In short: Washington's Cap-and-Invest program gets around Commerce Clause problems by applying evenhandedly to in-state emissions and fuel consumption, avoiding protectionist rules, and following the California legal playbook that's already been upheld in federal courts.