

# Chapter 286-26 WAC

## NONHIGHWAY ROAD AND OFF-ROAD VEHICLE FUNDS

### WAC

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12/8/82. Statutory Authority: Chapter 43.99 RCW. WSR 78-03-032 (Order 78-1), § 286-26-070, filed 2/17/78; Order 3, § 286-26-070, filed 7/31/73.] Repealed by WSR 94-17-095, filed 8/17/94, effective 9/17/94. Statutory Authority: RCW 43.98A.060(1), [43.98A].070(5), 43.99.080, 46.09.240 and 77.12.720.

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

286-26-030	Eligibility. [Statutory Authority: RCW 43.98A.060(1), [43.98A].070(5), 43.99.080, 46.09.240 and 77.12.720. WSR 94-17-095, § 286-26-030, filed 8/17/94, effective 9/17/94. Statutory Authority: Chapter 43.99 RCW. WSR 86-23-038 (Order 86-2), § 286-26-030, filed 11/17/86; WSR 78-03-032 (Order 78-1), § 286-26-030, filed 2/17/78; Order 3, § 286-26-030, filed 7/31/73.] Repealed by WSR 96-08-044, filed 3/29/96, effective 4/29/96. Statutory Authority: RCW 43.98A.060(1), 43.98A.070(5), 43.99.080(2), 46.09.240(1) and 77.12-720(4).
286-26-040	Qualification. [Statutory Authority: Chapter 43.99 RCW. WSR 86-23-038 (Order 86-2), § 286-26-040, filed 11/17/86. Statutory Authority: RCW 43.99.010, 43.99.110, 43.99.080, 43.99.120, 43.99.060, 42.17.370, 46.09.020, 46.09.170 and 46.09.240. WSR 83-01-030 (Order IAC 82-1), § 286-26-040, filed 12/8/82. Statutory Authority: Chapter 43.99 RCW. WSR 78-03-032 (Order 78-1), § 286-26-040, filed 2/17/78; Order 3, § 286-26-040, filed 7/31/73.] Repealed by WSR 94-17-095, filed 8/17/94, effective 9/17/94. Statutory Authority: RCW 43.98A.060(1), [43.98A].070(5), 43.99.080, 46.09.240 and 77.12.720.
286-26-050	Apportionment of funds. [Order 3, § 286-26-050, filed 7/31/73.] Repealed by WSR 78-03-032 (Order 78-1), filed 2/17/78. Statutory Authority: Chapter 43.99 RCW.
286-26-055	Funded projects. [Statutory Authority: Chapter 43.99 RCW. WSR 86-23-038 (Order 86-2), § 286-26-055, filed 11/17/86; WSR 84-17-029 (Order 84-2), § 286-26-055, filed 8/8/84. Statutory Authority: RCW 43.99.010, 43.99.110, 43.99.080, 43.99.120, 43.99.060, 42.17.370, 46.09.020, 46.09.170 and 46.09.240. WSR 83-01-030 (Order IAC 82-1), § 286-26-055, filed 12/8/82.] Repealed by WSR 94-17-095, filed 8/17/94, effective 9/17/94. Statutory Authority: RCW 43.98A.060(1), [43.98A].070(5), 43.99.080, 46.09.240 and 77.12.720.
286-26-060	Disbursement of funds. [Statutory Authority: Chapter 43.99 RCW. WSR 86-23-038 (Order 86-2), § 286-26-060, filed 11/17/86. Statutory Authority: RCW 43.99-010, 43.99.110, 43.99.080, 43.99.120, 43.99.060, 42.17.370, 46.09.020, 46.09.170 and 46.09.240. WSR 83-01-030 (Order IAC 82-1), § 286-26-060, filed 12/8/82. Statutory Authority: Chapter 43.99 RCW. WSR 79-09-124 (Order 79-1), § 286-26-060, filed 9/5/79; WSR 78-03-032 (Order 78-1), § 286-26-060, filed 2/17/78; Order 3, § 286-26-060, filed 7/31/73.] Repealed by WSR 94-17-095, filed 8/17/94, effective 9/17/94. Statutory Authority: RCW 43.98A.060(1), [43.98A].070(5), 43.99.080, 46.09.240 and 77.12.720.
286-26-070	Fund accountability. [Statutory Authority: Chapter 43.99 RCW. WSR 86-23-038 (Order 86-2), § 286-26-070, filed 11/17/86. Statutory Authority: RCW 43.99-010, 43.99.110, 43.99.080, 43.99.120, 43.99.060, 42.17.370, 46.09.020, 46.09.170 and 46.09.240. WSR 83-01-030 (Order IAC 82-1), § 286-26-070, filed

**WAC 286-26-010 Scope of chapter.** This chapter contains rules affecting the nonhighway and off-road vehicle activities grant program administered by the board under chapter 46.09 RCW. Additional provisions are contained in "What definitions apply to this chapter?" WAC 286-04-010 and "General grant assistance rules" chapter 286-13 WAC.

[Statutory Authority: 2007 c 241 § 39, RCW 34.05.220, 34.05.230, 42.56.040, and 46.09.530. WSR 14-09-074, § 286-26-010, filed 4/18/14, effective 5/19/14. Statutory Authority: RCW 43.98A.060(1), 43.98A.070(5), 43.99.080(2), 46.09.240(1) and 77.12.720(4). WSR 96-08-044, § 286-26-010, filed 3/29/96, effective 4/29/96. Statutory Authority: RCW 43.98A.060(1), [43.98A].070(5), 43.99.080, 46.09.240 and 77.12.720. WSR 94-17-095, § 286-26-010, filed 8/17/94, effective 9/17/94. Statutory Authority: Chapter 43.99 RCW. WSR 86-23-038 (Order 86-2), § 286-26-010, filed 11/17/86. Statutory Authority: RCW 43.99.010, 43.99.110, 43.99.080, 43.99.120, 43.99.060, 42.17.370, 46.09.020, 46.09.170 and 46.09.240. WSR 83-01-030 (Order IAC 82-1), § 286-26-010, filed 12/8/82. Statutory Authority: Chapter 43.99 RCW. WSR 78-03-032 (Order 78-1), § 286-26-010, filed 2/17/78; Order 3, § 286-26-010, filed 7/31/73.]

**WAC 286-26-020 What definitions apply to this chapter?** For purposes of this chapter, the following definitions shall apply:

"Management" means the action taken in exercising control over, regulating the use of, and operation and maintenance of ORV trails and ORV areas.

"NOVA" means the board's nonhighway and off-road vehicle activities program described in chapter 46.09 RCW.

"NOVA advisory committee" as provided in RCW 46.09.340, means the panel of representatives chosen to advise the director in the development of the statewide NOVA plan, the development of a project priority rating system, the suitability and evaluation of NOVA projects submitted to the board for funding, and other aspects of NOVA recreation as the need may arise, in accordance with chapter 46.09 RCW.

"Off-road vehicle" as provided in RCW 46.04.365.

"ORV sport park" as provided in RCW 46.09.310. Race courses which are paved and designed primarily for other vehicles, such as go-karts and formula cars, are not eligible for funds from the NOVA program account.

[Statutory Authority: 2007 c 241 § 39, RCW 34.05.220, 34.05.230, 42.56.040, and 46.09.530. WSR 14-09-074, § 286-26-020, filed 4/18/14, effective 5/19/14. Statutory Authority: RCW 79.90.245, 2004 c 276 and RCW 46.09.240. WSR 05-01-030, § 286-26-020, filed 12/3/04, effective 1/3/05. Statutory Authority: RCW 46.09.240(1). WSR 98-08-014, § 286-26-020, filed 3/18/98, effective 4/18/98. Statutory Authority: RCW 43.98A.-060(1), 43.98A.070(5), 43.99.080(2), 46.09.240(1) and 77.12.720(4). WSR 96-08-044, § 286-26-020, filed 3/29/96, effective 4/29/96. Statutory Authority: RCW 43.98A.060(1), [43.98A].070(5), 43.99.080, 46.09.240 and 77.12.720. WSR 94-17-095, § 286-26-020, filed 8/17/94, effective 9/17/94. Statutory Authority: Chapter 43.99 RCW. WSR 86-23-038 (Order 86-2), §

286-26-020, filed 11/17/86; WSR 84-17-029 (Order 84-2), § 286-26-020, filed 8/8/84. Statutory Authority: RCW 43.99.010, 43.99.110, 43.99.080, 43.99.120, 43.99.060, 42.17.370, 46.09.020, 46.09.170 and 46.09.240. WSR 83-01-030 (Order IAC 82-1), § 286-26-020, filed 12/8/82. Statutory Authority: Chapter 43.99 RCW. WSR 78-03-032 (Order 78-1), § 286-26-020, filed 2/17/78; Order 3, § 286-26-020, filed 7/31/73.]

**WAC 286-26-080 Does this program have planning eligibility requirements?** Yes. To be eligible for grant consideration under this chapter, applicants must complete a plan in accordance with WAC 286-13-040(2), except that such a plan is not required to support a funding request for education and enforcement or maintenance and operation projects. At minimum the plan must include:

- (1) A statement of the applicant's long-range goals and objectives;
- (2) An inventory;
- (3) An analysis of demand and need, that is, why actions are required;
- (4) A description of how the planning process gave the public ample opportunity to be involved in development of the plan;
- (5) A current capital improvement program of at least six years; and
- (6) Evidence that this plan has been approved by the applicant's governing entity most appropriate to the plan's scope. For example, a city or county-wide plan must be approved at the council or commission level. Plans with a different scope will be approved by department heads, district rangers, regional managers/supervisors, etc.

[Statutory Authority: 2007 c 241 § 39, RCW 34.05.220, 34.05.230, 42.56.040, and 46.09.530. WSR 14-09-074, § 286-26-080, filed 4/18/14, effective 5/19/14. Statutory Authority: RCW 79.90.245, 2004 c 276 and RCW 46.09.240. WSR 05-01-030, § 286-26-080, filed 12/3/04, effective 1/3/05. Statutory Authority: RCW 43.98A.060(1), 43.98A.070(5), 43.99.080(2), 46.09.240(1) and 77.12.720. WSR 97-08-003, § 286-26-080, filed 3/20/97, effective 4/20/97. Statutory Authority: RCW 43.98A.060(1), 43.98A.070(5), 43.99.080(2), 46.09.240(1) and 77.12.720(4). WSR 96-08-044, § 286-26-080, filed 3/29/96, effective 4/29/96. Statutory Authority: RCW 46.09.240(1). WSR 94-24-044, § 286-26-080, filed 12/2/94, effective 1/2/95. Statutory Authority: RCW 43.98A.060(1), [43.98A].070(5), 43.99.080, 46.09.240 and 77.12.720. WSR 94-17-095, § 286-26-080, filed 8/17/94, effective 9/17/94.]

**WAC 286-26-083 What long term rules apply?** (1) Without prior approval of the board, land, natural resources and/or facilities purchased and/or developed with board administered NOVA funds shall not be converted to uses other than those for which the funds were originally approved.

(2) The board is entitled to pursue and obtain remedies that assure the substitution or replacement of natural resources or facilities in accordance with this chapter.

[Statutory Authority: 2007 c 241 § 39, RCW 34.05.220, 34.05.230, 42.56.040, and 46.09.530. WSR 14-09-074, § 286-26-083, filed 4/18/14, effective 5/19/14. Statutory Authority: RCW 79.90.245, 2004 c 276 and RCW 46.09.240. WSR 05-01-030, § 286-26-083, filed 12/3/04, effective 1/3/05.]

**WAC 286-26-085 When considering approval of a conversion, what rules apply?** The board shall only approve conversions when:

- (1) All practical alternatives to the conversion have been evaluated and rejected on a sound basis; and

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(2) Another resource(s) will serve as a replacement. The replacement resource(s) must:

- (a) If a land acquisition, be real property of at least equal fair market value and public benefit at the time of conversion;
- (b) If a development, provide a facility of at least equal fair market value and public benefit as that which existed at the time of the original investment;
- (c) Be of reasonably equivalent or greater recreation usefulness and location;
- (d) Be administered by the same political jurisdiction as the converted property or development;
- (e) Satisfy needs identified in the board's or sponsor's plan; and
- (f) Include only elements eligible under the board's program from which funds were originally allocated.

[Statutory Authority: 2007 c 241 § 39, RCW 34.05.220, 34.05.230, 42.56.040, and 46.09.530. WSR 14-09-074, § 286-26-085, filed 4/18/14, effective 5/19/14. Statutory Authority: RCW 79.90.245, 2004 c 276 and RCW 46.09.240. WSR 05-01-030, § 286-26-085, filed 12/3/04, effective 1/3/05.]

**WAC 286-26-090 For land acquisition projects, are there long term obligations?** Yes. Sponsors must execute an instrument(s) containing:

- (1) For fee or perpetual property rights acquisition projects:
  - (a) A legal description of the property acquired;
  - (b) A conveyance to the state of Washington for the right to use the described real property for outdoor recreation purposes forever unless a term is specified in the project agreement; and
  - (c) A prohibition on conversion of use of the land to a principal use other than that for which funds were originally approved without prior approval of the board.
- (2) For lease, less than fee, or nonperpetual property rights, a binding agreement which:
  - (a) Contains a legal description of the property and rights acquired;
  - (b) Contains a conveyance to the state of Washington for the right to use the described real property for outdoor recreation purposes for the period of the lease;
  - (c) Contains a prohibition on conversion of use of the land/natural resource to a principal use other than that for which funds were originally approved without prior approval of the board;
  - (d) Is for at least twenty-five years unless precluded by state law;
  - (e) Is not revocable at will;
  - (f) Has a value supported through appraisal requirements approved by the board; and
  - (g) Is paid for in lump sum at initiation.

[Statutory Authority: 2007 c 241 § 39, RCW 34.05.220, 34.05.230, 42.56.040, and 46.09.530. WSR 14-09-074, § 286-26-090, filed 4/18/14, effective 5/19/14. Statutory Authority: RCW 79.90.245, 2004 c 276 and RCW 46.09.240. WSR 05-01-030, § 286-26-090, filed 12/3/04, effective 1/3/05. Statutory Authority: RCW 43.98A.060(1), [43.98A].070(5), 43.99.080, 46.09.240 and 77.12.720. WSR 94-17-095, § 286-26-090, filed 8/17/94, effective 9/17/94.]

**WAC 286-26-100 For development projects, are there long term obligations? Yes.**

(1) Properties and facilities assisted with money granted by the board shall not be converted (WAC 286-26-083(1)).

(2) Properties and facilities assisted with money granted by the board shall be:

(a) Built, operated, used, and maintained according to federal, state, and local laws and regulations, including public health standards and building codes;

(b) Built, operated, used, and maintained in a reasonably safe condition for the project's intended use;

(c) Operated and maintained throughout its estimated life so as to prevent undue deterioration; and

(d) Built and operated in compliance with all federal and state nondiscrimination laws, regulations, and policies.

(3) Facilities open to the public must:

(a) Be built, operated, and maintained according to state and federal accessibility guidelines;

(b) Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods; and

(c) Be available for use at reasonable hours and times of the year, according to the type of area or facility.

[Statutory Authority: 2007 c 241 § 39, RCW 34.05.220, 34.05.230, 42.56.040, and 46.09.530. WSR 14-09-074, § 286-26-100, filed 4/18/14, effective 5/19/14. Statutory Authority: RCW 79.90.245, 2004 c 276 and RCW 46.09.240. WSR 05-01-030, § 286-26-100, filed 12/3/04, effective 1/3/05. Statutory Authority: RCW 46.09.240. WSR 99-16-009, § 286-26-100, filed 7/22/99, effective 8/22/99. Statutory Authority: RCW 43.98A-.060(1), 43.98A.070(5), 43.99.080(2), 46.09.240(1) and 77.12.720(4). WSR 96-08-044, § 286-26-100, filed 3/29/96, effective 4/29/96. Statutory Authority: RCW 43.98A.060(1), [43.98A].070(5), 43.99.080, 46.09.240 and 77.12.720. WSR 94-17-095, § 286-26-100, filed 8/17/94, effective 9/17/94.]

**WAC 286-26-105 What provisions apply to federal agencies?** A board-federal agency agreement signed by the parties shall control the provision of funds granted by the board for facility developments to federal agency sponsored projects. Absent this agreement, the standard terms and conditions of board's project agreement shall control.

[Statutory Authority: 2007 c 241 § 39, RCW 34.05.220, 34.05.230, 42.56.040, and 46.09.530. WSR 14-09-074, § 286-26-105, filed 4/18/14, effective 5/19/14. Statutory Authority: RCW 79.90.245, 2004 c 276 and RCW 46.09.240. WSR 05-01-030, § 286-26-105, filed 12/3/04, effective 1/3/05.]

**WAC 286-26-110 Matching amounts and caps determined.** The board will establish sponsor matching share requirements and fund request limits. Any changes will normally be done at a board meeting six months before program funding consideration.

[Statutory Authority: 2007 c 241 § 39, RCW 34.05.220, 34.05.230, 42.56.-040, and 46.09.530. WSR 14-09-074, § 286-26-110, filed 4/18/14, effective 5/19/14. Statutory Authority: RCW 46.09.240(1). WSR 98-08-014, § 286-26-110, filed 3/18/98, effective 4/18/98. Statutory Authority: RCW 43.98A.060(1), 43.98A.070(5), 43.99.080(2), 46.09.240(1) and 77.12.-720(4). WSR 96-08-044, § 286-26-110, filed 3/29/96, effective 4/29/96.]