

ORDER NO. 706NATIONAL FOREST SYSTEM ROADS AND TRAILS

OKANOGAN-WENATCHEE NATIONAL FOREST

Pursuant to 36 CFR 261.50 (a) and (b), the following acts are prohibited on the following National Forest System (NFS) roads and trails, when posted, within the Cle Elum Ranger District on the Okanogan-Wenatchee National Forest: Forest Road No. 5400, Forest Road No. 5400-403, Forest Road No. 5400-406, Forest Road No. 5400-314, and Forest Road No. 5480.

1. **Using any type of vehicle prohibited by order.**

For the purpose of this order, it is prohibited to possess or use any motorized vehicle except snowmobiles on any National Forest System road or route designated as part of a groomed trail system for snowmobiles, cross country skiing or dog sleds. (36 CFR 261.54(a)).

2. **Using any type of vehicle prohibited by order.**

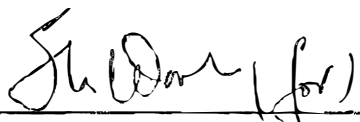
For the purpose of this order, it is prohibited to possess or use any motorized vehicle except snowmobiles on any National Forest System trail designated as part of a groomed trail system for snowmobiles, cross country skiing or dog sleds. (36 CFR 261.55(b)).

Pursuant to 36 CFR 261.50(e), the following persons are exempt from this order:

1. Persons with a permit specifically authorizing the prohibited act or omission.

This prohibition is in addition to the general prohibitions in 36 CFR Part 261, Subpart A.

Done at Wenatchee, Washington, this 21st day of January, 2010.


REBECCA LOCKETT HEATH
Forest Supervisor
Okanogan-Wenatchee National Forest

Violations of this prohibition are punishable by a fine of not more than \$5,000 for an individual or \$10,000 for an organization, or imprisonment for not more than six months, or both. (Title 16 U.S.C. 551 and 18 U.S.C. 3559 and 3571)

Assessment of Need and Enforcement Plan

A new closure order for Forest System Road No. 5400, Forest System Road No. 5400-403, Forest System Road No. 5400-406, Forest System Road No. 5400-314, and Forest System Road No. 5480 is necessary.

1. Background:

Forest System Road No. 5400 was first closed to wheeled vehicles in the winter of 1982 by Order No. 78. The Order was subsequently updated in 1987 by Order No. 153 and in 1994 by Order No. 257. Order No. 676 was posted in 2009 and specified that "Snow Removal operations (i.e. plowing) on any National Forest System roads or trails without authorization or approved operating plan is prohibited."

Fire District No. 8 continues to state both verbally and in writing that they have the right to plow snow under the exemption language from Order No. 257, dated 3/31/1994, which states: "Any Federal, State, or local officer or member of an organized rescue or fire fighting force in the performance of official duties."

A Mixed Use Safety Analysis that addressed the proposed snow plowing of Forest System Road (FSR) 54 by Fire District No. 8 along with the existing winter use was completed on 11/07/2008. The Analysis resulted in a rating of a "High Crash Probability" and a "Medium Crash Severity." Based on that Analysis, the Forest determined that it is **unsafe** to allow snow plowing and manage FSR 54 for winter recreation use.

A Forest Service authorization is required for plowing snow on FSR No. 5400, FSR No. 5400-403, FSR No. 5400-406, FSR No. 5400-314, and FSR No. 5480. Snow plowing is defined as a maintenance and operational activity under the jurisdiction of the Forest Service. The Forest Road Closure prohibits wheeled vehicles and provides discretion to the Forest Service to exempt the "use" of Forest System Roads in certain circumstances, one of which is for "any Federal, State or local office, or member of an organized rescue or fire fighting force in the performance of an official duty." This use does not include any right to snow plow the road.

2. Intent of Closure Order

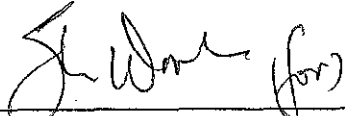
The Fire District No. 8 will not acknowledge that snow plowing is not included as part of the existing exemption under Closure Order 676. However, in the specific case of FSR No. 54 and the associated spur roads, the "use by wheeled vehicles" during a normal winter is not generally feasible without plowing snow. Previously, as discussed above for safety reasons, the Forest rejected Fire District No. 8's proposal to plow snow during the period of time that the closure order is in effect. As such, since plowing is not permitted and use "by wheeled vehicles" is not otherwise feasible, it has been determined that a new Forest Closure Order should be issued to regulate use on issues pertaining to Forest System Road No. 5400, Forest System Road No. 5400-403, Forest System Road No. 5400-406, Forest System Road No. 5400-314 and Forest System Road No. 5480 which will **not include the discretionary exemption in 36 CFR 261.50(e)(4) - "for any federal, state or local office, or member of an organized rescue or fire fighting force in the performance of an official duty."** To fully clarify this intent, language will be included in

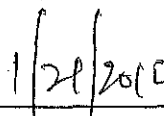
the new Order stating: "Pursuant to 36 CFR 261.50(e), the following persons are exempt from this order: Persons with a permit specifically authorizing the prohibited act or omission."

3. Enforcement Plan. The following activities need to occur to implement this special order in a manner that results in public acceptance and safety:

<u>Action</u>	<u>Responsible Official</u>	<u>Date</u>
Prepare proposed Order	Pam Novitzky, Resource Assistant	01/20/10
District review of proposed order	District Ranger Judy Hallisey, Steve Roberson LEO, Jocelyn Somers, OGC	01/21/10
LEI Review proposed order	Jeff Roundy, Patrol Commander	01/21/10
Approve proposed order	Rebecca Lockett Heath, Forest Supervisor	01/21/10
Post order in accordance with 36 CFR 261.51	Tim Foss, Winter Recreation Manager	01/22/10
Describe implementation/action taken for order, such as planned patrols, enforcement strategies, tolerance, contacts to local public agencies. Implement plan.	Pam Novitzky, after review by Cle Elum District Ranger	01/22/10
	Post road closed. Letter directed to Fire District 8 informing them of the new closure order. Discussion and review with Kittitas County Sheriff officials. Roads and Trails patrolled by FPOs/LEO to enforce prohibitions.	01/22/10

Enforcement Plan approved for implementation:


FOREST SUPERVISOR


DATE