2015 WISCONSIN ACT 358

Act 358 makes changes to Wisconsin's Managed Forest Law (MFL) and Forest Crop Law (FCL). The Division of Forestry formed an internal Legislation Team to develop interim guidance for operationalizing the new statutory language. Below is the information and interim guidance developed. This interim guidance was created using current information and legal interpretations. Not all aspects of Act 358 are covered in this interim guidance. This document is not the complete or the final guidance and it will be adjusted during the program guidance and rule making processes which will begin shortly. The program guidance and rule making processes do include the opportunity for public review and comment.

Please contact Pam Freeman-Gillen at Pam.Freemangillen@wisconsin.gov if you have any questions or comments on the information contained in this interim guidance.

2017 MFL applications affected by Act 358:

For approved 2017 applications, DNR Foresters are responsible to contact the landowner, discuss options and update all the information in WisFIRS, as needed. For 2017 applications in the status of draft, submitted or returned, the CPW is responsible to contact the landowner, discuss options and update all the information in WisFIRS, as needed, before resubmitting. All changes to 2017 applications will require the landowner to initial and date the application to indicate they are in agreement with the changes to their application. The updated application must be uploaded into WisFIRS.

Severance/Yield taxes:

Act 358 removes DNR authority to assess (invoice) and collect 10% severance tax on FCL land and 5% yield tax on MFL land for timber and forest products harvested.

No invoices for yield or severance tax will be sent starting April 16, 2016 for MFL and FCL lands. For MFL or FCL lands with outstanding yield or severance tax due, the invoice will be voided and any payments received from those invoices on or after April 16, 2016 will be refunded.

Cutting Notices and Reports are still required to be submitted for both MFL and FCL lands since the statutes requiring them were not affected by this Act (MFL ss. 77.86(1) and (4), FCL ss. 77.06(1) and (4), Wis. Stats.).

Cutting Notices:

Act 358 has added additional people who are eligible to submit a cutting notice that does not require DNR approval (listed as the last three bullets in the list below).

DNR approval is not required prior to cutting if the cutting notice is submitted by any of the following **and** the cutting is under the terms of the management plan:

- a Cooperating Forester
- a forester accredited by:
  - the Society of American Foresters (SAF) (SAF accredited means SAF Certified Forester)
  - Wisconsin Consulting Foresters (WCF)
  - the Association of Consulting Foresters (ACF)
- a person who holds at least a bachelor's degree from a forestry program provided by an accredited institution and who has 5 years full-time experience engaged in managing forests (includes timber harvesting, wildlife management, water quality and recreation to maintain a healthy and productive forest)

- a person who holds a degree or diploma from a 2-year forestry program provided by an accredited technical or vocational school and who has 5 years full-time experience engaged in managing forests (includes timber harvesting, wildlife management, water quality and recreation to maintain a healthy and productive forest)
- a person who has 5 years full-time experience engaged in managing forests (includes timber harvesting, wildlife management, water quality and recreation to maintain a healthy and productive forest)

Note: this is the same for FCL enrollments as well.

The DNR will be adding the new people eligible (who do not need DNR approval for cutting notices) to the current accredited forester list that is available. For more information on this process or how to get your name added to the list, please contact Ron Gropp at Ron.Gropp@wisconsin.gov.

The person submitting the cutting notice must list their accreditation / qualifications on the cutting notice along with their name in the "Forester/Accreditation" box on the Cutting Notice and Report form.

Act 358 requires the DNR to notify the person who filed the cutting notice by certified letter or email no later than the end of the next business day (after the department's decision has been made) if the department is denying the cutting notice. The reason(s) for the denial must be specified in the letter and/or email. This would apply to any cutting notices submitted by a person that is required to have DNR approval or in cases where the landowner has requested DNR approval on the cutting notice form.

Act 358 states that the department shall not restrict an approved cutting notice based on NHI (Natural Heritage Inventory). Restrictions for NHI cannot be added to an approved cutting notice.

For more information on cutting notice procedures, please refer to the current guidance.

Buildings and Improvements:

Act 358 prohibits the enrollment of a parcel in MFL if there is a building or improvement associated with a building located on that parcel. This change applies to all 2017 and future entries. An improvement is defined as any accessory building, structure, or fixture that is built or placed on the parcel for its benefit or landscaping done on the parcel. This means buildings or improvements of any kind (with or without living space) and structures associated with them are prohibited. Improvement does not include any of the following:

- Public or private road
- Railroad or utility right-of-way
- Fence, unless the fence prevents the free and open movement of wild animals
- Culverts
- Bridges
- Hunting blinds
- Structures and fixtures needed for sound forestry practices

Examples of structures and fixtures needed for sound forestry practices may include such things as roads, skid trails, landings, deer exclosures, clear-span bridges; it does not include buildings such as storage facilities for tools, equipment, ATVs, etc.

Lands being considered for entry into the program beginning January 1, 2017 (applications due June 1, 2016) on which a building or an improvement associated with a building is located are not eligible for enrollment; the building(s) and/or improvement(s) must be excluded. DNR Foresters and CPWs must review all 2017 applications and work with the landowner to determine if buildings and improvements exist on the land and exclude them from the application.

If the exclusion of the building and/or improvement causes the land being considered for entry for 2017 to fall below the 20 acre requirement, DNR Foresters and CPWs should work with the landowner to determine if there are additional acres that can be included or determine if the land can be added to an existing MFL entry. If there are acres available that can be included to meet the 20 acre minimum, the application, plan, maps, etc. will have to be revised and resubmitted for review and approval.

Minimum Acres:

Act 358 increases the required minimum acreage to 20 acres per MFL parcel for all 2017 and future entries. Parcels that do not meet the 20 acre requirement are not eligible for enrollment*.

For 2017 entries only, DNR Foresters and CPWs should review all submitted 2017 applications and work with the landowner to determine if the landowner has any land currently on the regular property tax tolls that could be included as part of the 2017 application so that the parcel(s) meet the 20 acre requirement. If there are acres available that can be added to meet the 20 acre requirement, the application, plan, maps, etc., will have to be revised and resubmitted for review and approval.

Another option for 2017 entries that are less than 20 acres is for DNR Foresters and CPWs to work with landowners to consider adding the parcel (if < 20 acres) to an existing MFL entry as long as the entry is under the same ownership, the parcel is contiguous to the existing entry, has no buildings or improvements, the parcel is at least 3 acres in size, and meets the productivity requirements.

*Landowners seeking to renew their land in the program may be eligible for a one-time opportunity to do so without having to satisfy the 20 acre requirement; reference the **"**Renewals**"** section for additional information and guidance.

Access:

Act 358 requires land designated as MFL open (to public recreation) to be accessible to the public on foot by public road or from other land open to public access. Other lands open to the public may include: public land (state, county, federal), open MFL, FCL land and/or land accessible by easement. This applies to all current and future entries. Land designated as MFL closed is not subject to the access requirement.

Land surrounded entirely by MFL closed or non-MFL lands owned by the same owner are eligible to be designated as MFL open because s. NR 46.20(2), Wis. Adm. Code. indicates that the public has the right to cross those lands to access the open land.

MFL Lands surrounded by land not owned by that owner but which are accessible to the public by an easement or by other means may be eligible to be designated as MFL open.

The access to the open land must be signed according to s. NR 46.21(c), Wis. Adm. Code if the access is through MFL-closed land, non-MFL land and/or by easement.

Leasing MFL lands:

Act 358 repeals the prohibition of leasing MFL lands that had been enacted in 2007. An owner of managed forest land that is designated as closed may enter into a lease or other agreement for consideration that permits persons to engage in recreational activities on the land. All current and future MFL closed acres may be leased for recreational activities.

Closed acreage limit:

Act 358 raises the closed acreage limit on MFL lands. The new statutory language states that an owner may designate not more than 320 acres of MFL land as closed to public access in each municipality. This means no more than 320 closed acres per owner, per municipality.

The current rules as listed in s. NR 46.19(3), Wis. Adm. Code, will still be used to designate closed acreage. A land owner can:

- Designate as closed all of the acreage in a Managed Forest Law parcel or multiple parcels *(MFL parcel, not tax parcel)*.
- Designate as closed all of the owner's MFL land in a quarter-quarter section, government lot, or fractional lot.
- If necessary, designate an additional block of acreage within a legal description, not exceeding a length to width ratio of 4:1, to complete the total closed area.

In summary, unless an owner is closing an entire MFL parcel, they must close all the acres in one legal description before closing acres in another legal description.

Additions to MFL entries:

Rules on additions now apply to all orders, regardless of entry year. Previously, lands enrolled in 2004 or earlier could add lands through a "withdrawal and re-designation". That type of application no longer exists and an addition can be made to all MFL orders. Lands added to the original entry will be taxed at the same rate as the land currently entered. 2017 withdrawal and re-designations will be converted to additions and will have to meet the addition requirements.

Additions must be at least 3 acres in size, have no buildings or improvements, and be contiguous to the existing MFL entry. All the owners of the addition must be identical to the owners of the existing order, and after the addition the MFL parcel(s) must meet the productivity requirements.

Voluntary Withdrawals – General:

The current rules for voluntary withdrawal continue to be the same under Act 358. Landowners may file a Declaration of Withdrawal (form 2450-140) for an entire parcel of MFL land, all of the MFL land in a quarter-quarter section, or all of the MFL land in a government/fractional lot.

Voluntary Withdrawals – Construction or Small Land Sales:

Act 358 allows landowners to voluntarily withdraw one to five acres for the purposes of construction or small land sales. Landowners should indicate on any open space of the Declaration of Withdrawal form that they are requesting the withdrawal for the purpose of construction or a land sale. Landowners wishing to withdraw more than 5 acres must provide documentation from the city, village, township or county zoning ordinance that establishes a minimum acreage for ownership of land or construction sites. A withdrawal tax and fee will be assessed for the withdrawn land.

For this provision, Act 358 specifically states that "partial" acreages cannot be withdrawn. In other words, only whole number acreages can be withdrawn; no "decimal" acreages (e.g. 1.5 acres cannot be withdrawn). It also specifically states that the withdrawn land must be at least one acre in size, so a withdrawal request for lands less than one acre cannot be processed.

This type of voluntary withdrawal may only occur once per MFL parcel for a 25 year order or twice per MFL parcel for a 50 year order.

Voluntary Withdrawals – Natural Disasters:

The landowner may notify the DNR Forester that their lands have been damaged by a natural disaster (defined as fire, ice, snow, wind, flooding, drought or disease). The DNR Forester will then confirm how the productivity of the land could be restored and establish a time period that the landowner will have to restore the site's productivity.

If the restoration is implemented but unsuccessful, the landowner would be able to voluntarily withdraw the minimum number of acres that would bring the parcel back up to being at least 80% productive (under the productivity/ sustainability withdrawal rules described below). No withdrawal tax or fee will be assessed for these types of voluntary withdrawals.

If the landowner does not sufficiently attempt the restoration, then the lands would be subject an involuntary withdrawal with a withdrawal tax and fee.

Voluntary Withdrawals – Productivity/Sustainability:

Act 358 allows a landowner to file a request to voluntarily withdraw lands from their MFL order if the MFL parcel has become:

- less than 80% productive, or
- more than 20% unsuitable for producing merchantable timber due to environmental, ecological, or economic factors.

The DNR Forester will evaluate the request to confirm that the parcel is either less than 80% productive or more than 20% unsuitable. If confirmed, the DNR Forester will determine the minimum number of acres that must be withdrawn in order for the parcel to again meet the productivity requirements. No withdrawal tax or fee will be assessed for these types of voluntary withdrawals.

Land Remaining after a Withdrawal (whether voluntary or involuntary):

Land remaining after a withdrawal must meet the following requirements in order to continue to be enrolled in the MFL program.

For 2016 and earlier MFL orders, each parcel of land remaining after a withdrawal will be considered eligible if:

- it is at least 10 acres
- it contains an improvement or structure (as long as it is not a domicile, not a building with more than 4 or the 8 building characteristics, not a building/structure used for commercial recreation, industry, or any other use determined to be incompatible with the practice of forestry)
- it is at least 80% productive*
- it meets all of the other eligibility requirements in s. 77.82(1), Wis. Stats.

For 2017 and later MFL orders, each parcel of land remaining after a withdrawal will be considered eligible if:

- it is at least 20 acres
- it has no improvements or structures except those needed for sound forestry practices
- it is at least 80% productive*
- it meets all of the other eligibility requirements in s. 77.82(1), Wis. Stats.

*If the land remaining after the withdrawal does not meet the productivity requirements (at least 80% productive; no more than 20% unsuitable), the landowner may be able to apply for one of the new voluntary withdrawal provisions described above (productivity/sustainability).

Withdrawal taxes:

The withdrawal tax during the order for designated small (account) properties will be:

- The total net property tax rate for the acreage under the law in the year prior to the withdrawal multiplied by 10 or by the number of years the land was under the law, whichever number is fewer. In other words, the withdrawal tax is capped at a maximum of 10 years.

The withdrawal tax during the order for designated large (account) properties will be the HIGHER of:

- The total net property tax for the acreage under the law in the year prior to withdrawal multiplied by the number of years the land was under the law. All acreage share tax payments made during the order period are subtracted.

- 5% of the established stumpage value of merchantable timber present less any acreage share payment made during the order period.

The $300 withdrawal fee will continue to be included in all withdrawal tax invoices.

MFL transfers of ownership:

Act 358 changes transfer eligibility to be based strictly on whether or not the MFL land involved in a transfer of ownership meets the eligibility requirements (s. 77.82(1)a. and (1)b., Wis. Stats). Transferred lands and lands remaining after a partial transfer will now be evaluated for MFL eligibility as follows:

For land being transferred that is part of a 2016 or earlier order:

- If the land applied for transfer meets the pre-2017 eligibility requirements (minimum of 10 contiguous acres, at least 80% productive, not developed for a use that is incompatible with the practice of forestry) then the Department will issue a transfer order and allow the MFL lands to remain under MFL designation.

- If the land applied for transfer does not meet the pre-2017 eligibility requirements, then the Department will issue a withdrawal order and assess the withdrawal tax and fee.

- If the transfer is a partial transfer of a 2016 and earlier MFL order, the remaining MFL land will be allowed to stay under MFL designation only if the land meets the pre-2017 eligibility requirements (minimum of 10 contiguous acres, at least 80% productive, not developed for a use that is incompatible with the practice of forestry).

- If the remaining land does not meet the pre-2017 eligibility requirements, then the Department will issue a withdrawal order and assess the withdrawal tax and fee.

Also, be aware of the following details pertaining to transfers and eligibility associated with 2016 and earlier MFL orders:

- The pre-2017 exception that allowed some MFL parcels less than 10 acres in size to remain under MFL designation has been repealed. Under Act 358 any remaining MFL land less than 10

acres in size created as the result of a transfer involving a 2016 or earlier order must be withdrawn from MFL and be assessed the withdrawal tax and fee.

For land being transferred that is part of a 2017 and future order:

- If the land applied for transfer meets the new eligibility requirements (minimum of 20 contiguous acres, at least 80% productive, not developed for a use that is incompatible with the practice of forestry, no buildings or structures) then the Department will issue a transfer order and allow the lands to remain under MFL designation.

- If the land applied for transfer does not meet the new eligibility requirements, then the Department will issue a withdrawal order and assess the withdrawal tax and fee.

- If the transfer is a partial transfer of a 2017 or future MFL order the remaining MFL land will be allowed to stay under MFL designation only if the land meets the new eligibility requirements (minimum of 20 contiguous acres, at least 80% productive, not developed for a use that is incompatible with the practice of forestry, no buildings or structures).

- If the remaining MFL land does not meet the new eligibility requirements, then the Department will issue a withdrawal order and assess the withdrawal tax and fee.

Contracts:

Act 358 specifies that MFL orders are now considered contracts. If a statute is enacted or a rule is promulgated in the future that materially changes the terms of the order, a landowner must accept the modifications to their contract or voluntarily withdraw the land without penalty. More guidance on this provision will be shared in the future.

Renewals:

Act 358 now defines a renewal application (i.e. when lands are re-enrolled into MFL immediately upon expiration) **very specifically**. If a landowner meets several criteria, they are eligible for a renewal and the renewal application is not required to include a MFL management plan. Prior to Act 358, if any of the land from the existing order was being renewed, the application was considered a renewal. For 2017 and all future applications, the land must be identical (see "*What does it mean to be "identical"?* below) in order to be considered a renewal, so no changes in shape, size, or acreage. This provision requiring lands to be identical in order to qualify as a renewal (and therefore not require a management plan) is a significant change.

The criteria that the application must meet in order to be eligible as a renewal and not need a management plan are:

- the land in the renewal application must meet the eligibility requirements under s. 77.82(1), Wis. Stats.*
- the land in the renewal application must be identical to the land under the existing order the landowner must be in compliance with their current management plan
- the management plan must contain mandatory practices during the term of the renewed order (i.e. the next 25 or 50 years) if the department determines such practices are required
- the mandatory practices in the management plan must have been reviewed within the 5 years prior to the application date of the renewal
- the management plan must have been updated within the 5 years prior to the application date of the renewal to reflect the completion of mandatory practices
- there are no delinquent taxes on the land

*Act 358 allows for a MFL order with an effective date of 2016 or earlier that is between 10 and 20 acres to apply one time for a renewal without meeting the new 20 acre requirement. If an application for 2017 enrollment is between 10

and 20 acres, but DOES NOT meet the criteria above, it will not be eligible for enrollment by any other means; lands less than 20 acres must be considered a renewal in order to qualify for continued enrollment.

There are two main benefits that a landowner can take advantage of through the renewal process:

(1) no longer needing to submit a management plan with the renewal application, and
(2) one-time renewal at less than 20 acres.

If these are not a concern for the landowner, the application can be for a "new entry" and the land does not need to be identical (but a new management plan would be required and the land must be at least 20 acres).

The land being renewed must also meet the new eligibility requirement which indicates that no buildings or improvements are allowed. Excluding acreage due to a building or an improvement, or for any other reason, would cause the land applied for renewal to not be identical to the land in the current order and therefore not qualify as a renewal.

Original entry:	**After excluding building/improvement, acreage is:**	**Result:**
Contains building/improvement	< 20 acres	• Not identical therefore not a renewal • Must be a renewal to qualify for one-time renewal at <20 acres • Since <20 acres, not eligible as "new entry"
Contains building/improvement	≥ 20 acres	• Not identical therefore not a renewal • Because ≥ 20 acres can enroll as a "new entry" • New management plan needed with application

What does it mean to be "identical"?

The land in a renewal application must be "identical" to the land under the existing order. Merriam-Webster defines "identical" as "exactly the same; exactly alike or equal".

There are some scenarios where upon renewal, it is determined that the existing order should have been previously corrected due to erroneous information. Here are some examples:

- *Acreage change due to county re-surveying*
  This occurs when a county determines that what was once thought to be a "true" forty (40.000 acres) is determined to actually be, for example, 39.980 acres or 40.010 acres. In this scenario, the land would still be considered "identical" because the boundaries of the land and the land itself are not changing; the area of land is just being described with a more accurate acreage.
- *Type or extent of legal description was incorrect at the time of enrollment.*
  Examples of this are:
  - Land was enrolled as "NWSW" and should have been enrolled as "FR N ½ W ½ SW ¼" according to the original land survey of Wisconsin. This is not a change in the boundaries of the land; the area of land is just being correctly described as a fractional legal description. The same would be true if land was enrolled as a standard legal description and should actually be a government lot according to the original land survey of Wisconsin.
  - Land was enrolled as "NWSW" and should have been enrolled as "NWSW, PART OF" or "NWSW, EX ROW".

  NOTE: These types of "corrections" assume the type/extent is all that was incorrect and the acreage was correct and is not changing.

- *Other types of acreage corrections.*
  If at the time of renewal it is determined that an acreage correction is needed due to the acreage being

erroneous upon enrollment, these may be considered identical, but only upon review by the DNR. One example of this is a closer look at the deeds reveals that the MFL landowner never owned all of the land in the legal description; a small sliver was actually owned by the neighbor according to the deeds that existed at the time of original enrollment. The acreage therefore needs to be corrected to remove the acreage never owned by the original enrollee. After review, the DNR may be able to consider the lands applied for renewal as identical.

If it is determined that one of these "correction" scenarios applies to the renewal application, the CPW will be responsible for providing documentation to support the correction with the application. DNR will have the final discretion in determining whether the lands are identical or not, based upon the documentation provided.

How the new renewal language affects applications for 2017 enrollment:

Criteria	**How Applies to 2017 applications:**
Land meets eligibility requirements	Land must meet all eligibility requirements. If the land meets all eligibility requirements but is less than 20 acres, it will still need to meet the remaining criteria to be considered a renewal. If it is not considered a renewal, then it will not be eligible at all because the new statutory language indicates they can only be enrolled at less than 20 acres if the application is a renewal.
Land is identical to land under existing order	If the land in the application is not identical to the land in the existing MFL order, the application is not eligible as a renewal without a management plan, but the application could move forward as a standard new entry with a management plan.
Owner must be in compliance with current management plan	If the landowner has not completed mandatory practices required in their current management plan that are past due, the application will be subject to denial.
Management plan has mandatory practices for next 25/50 years if determined to be needed by DNR	For 2017 applications that have been already submitted with a management plan, this criterion will be considered to be met because the new plan will have practices scheduled for the 25 or 50 year term of the new order. For landowners looking to qualify as a renewal without a management plan, WisFIRS now allows practices to be scheduled beyond the term of the current order.
Mandatory practices must be reviewed within the 5 years prior to renewal	For 2017 applications that have been already submitted with a management plan, this criterion will be considered to be met. For landowners looking to qualify as a renewal without a management plan, the landowner/CPW will have to work with the DNR Forester to determine whether the current management plan has been reviewed within the last 5 years.
Management plan must have been updated within the 5 years prior to renewal to reflect completion of mandatory practices	For 2017 applications that have been already submitted with a management plan, this criterion will be considered to be met. For landowners looking to qualify as a renewal without a management plan, the landowner/CPW will have to work with the DNR Forester to determine whether the current management plan has been updated within the last 5 years.
No delinquent taxes	The Forest Tax Program will determine whether there are any delinquent taxes on lands applied for enrollment in August.