

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: FR-23-16

Relating to: Revision of NR 46 relating to the forest tax programs (MFL and FCL)

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

The rules will be proposed as permanent rules.

2. Detailed description of the objective of the proposed rule:

The Bureau of Forest Management recommends amending ch. NR 46, Wis. Adm. Code, to become consistent with statutory changes in ch. 77, Wis. Stats. 2015 Wisconsin Act 358 was signed into law on April 14, 2016. This act made a number of changes to the administration of the Forest Tax Programs. Chapter NR 46, Wis. Adm. Code, needs to be amended as a result of Act 358 to reflect current statutory language. Additional changes to ch. NR 46, Wis. Adm. Code, may also be pursued in this proposed rule to incorporate longstanding policy into rule as well as to streamline and clarify administration of the MFL and FCL programs.

A narrative description of many of the statutory changes to the Forest Tax programs that will need to be accounted for in the proposed rule can be found in the Act 358 Final Program guidance (document attached).

(See PDF)

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The proposed rule will amend a number of existing policies to conform with the new statutory requirements enacted with the passage of Act 358. The Department did not prepare an analysis of policy alternatives since the proposed rule making is intended to update the rule to align with statutory modifications, incorporate longstanding policy and will otherwise be aimed at providing clarification and clean-up where appropriate.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The Department is granted general authority to interpret statutory authority by s. 227.11(2)(a), Wis. Stats. Additional authority is granted to implement and administer the Forest Tax programs in ch. 77, Wis. Stats.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The Department anticipates that approximately 1500 hours of state employee time will be required to complete the proposed rule.

6. List with description of all entities that may be affected by the proposed rule:

- Landowners who have lands enrolled in the MFL or FCL programs, or who will purchase or enroll lands in the MFL and FCL programs in the future.
- Certified plan writers who implement the MFL and FCL programs by writing management plans, and helping landowners follow management plans.
- Private forest industry and private foresters who conduct mandatory practices on lands enrolled in tax law programs.
- Department foresters who implement and administer the provisions of the MFL and FCL program.
- Towns and municipalities that collect taxes from MFL and FCL landowners.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

There are no existing or proposed federal regulations to compare with Wisconsin's Managed Forest Law or Forest Crop Law programs.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

There are significant economic impacts associated with the passage of Act 358 in April 2016; the proposed changes to ch. NR 46, Wis. Adm. Code, will not discuss these impacts. Here, only the economic impacts resulting from the DNR's implementation discretion to add requirements through the rule process or clarify statutory provisions is evaluated. It is anticipated that the proposed changes to ch. NR 46, Wis. Adm. Code, will have minimal to moderate economic impacts and will not have an impact on small businesses. A more detailed economic impact analysis will be performed as part of the proposed rulemaking process.

9. Anticipated number, month and locations of public hearings:

Because the statutory changes to the Forest Tax Programs were substantial, a significant amount of time and effort will be needed to complete this process. During this process, the Department will be working collaboratively with a team comprised of internal experts and external partners in order to elicit as much input as possible on the proposed changes. As this process unfolds, the Department will be better able to evaluate the extent of the changes and the potential impact. In response to this evaluation the Department will schedule the number and locations of public hearings recognizing the locations throughout the state of those most impacted by the proposed rule changes. Public hearings will tentatively be scheduled in early 2018.

Contact Person:

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Attachment below: (see PDF)

WISCONSIN ACT 358

Act 358 makes changes to Wisconsin's Managed Forest Law (MFL) and Forest Crop Law (FCL). The Department of Natural Resources' (DNR) Division of Forestry formed an internal Legislation Team to develop program guidance for implementing the new law. This final program guidance was created using current information, legal interpretations and public input. Not all aspects of Act 358 are covered in this guidance, and changes to this guidance may be made during the rule making process (writing of Administrative Code), which does include the opportunity for public input.

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 have been sent since April 16, 2016 for MFL and FCL lands. For MFL or FCL lands with outstanding yield or severance tax due, the invoice has been 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 notice and report forms still need to be submitted to Forest Tax Program after final volumes are received and approved by the DNR Forester.

FCL Termination taxes:

Termination taxes are assessed against a landowner if their land expires from FCL and is not immediately enrolled into the Managed Forest Law. Act 358 removes DNR authority to assess, collect and distribute FCL termination taxes. This removal of authority does not impact termination taxing authority for those FCL lands that expired on 12/31/2015 or earlier. DNR has and will continue to collect those termination taxes due. Beginning for lands that expire after Act 358 took effect (i.e. lands that expire on 12/31/2016 or later) the DNR will no longer be requiring the payment of termination taxes.

Cutting Notices (MFL & FCL):

Act 358 has added additional groups of people who are eligible to submit a cutting notice not requiring 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 required 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)

The process for individuals interested in being placed on the Cutting Notice Register involves the following steps:

Step 1: Contact Ron Gropp, DNR Private Forestry Staff Specialist; contact information:

Phone: (608) 267-7659

Email: ron.gropp@wisconsin.gov

Step 2: Individuals requesting to be placed on the DNR Cutting Notice Register must include the following information in their request:

- Are you a Cooperating Forester?
- Are you a Forester accredited by the Society of American Foresters (SAF), Wisconsin Consulting Foresters (WCF) or the Association of Consulting Foresters (ACF)?
- Do you have a Bachelor's degree or a two-year degree or diploma from an accredited Forestry Program, and at least 5 years of experience? Please describe your experience.
- Do you have at least 5 years of experience? Please describe your experience.

Note: Experience means having been engaged in the full-time profession of managing forests; including timber harvesting, wildlife management, water quality and recreation to maintain a healthy and productive forest.

Step 3: Once submitted, DNR will evaluate the request and notify the individual if their name will be added to the DNR Cutting Notice Register. The Cutting Notice Register will be placed on the DNR website soon.

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 DNR's decision has been made) if the DNR is denying the cutting notice. The reason(s) for the denial must be specified in the letter and/or email. The denial notification requirement applies 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 DNR shall not restrict an approved cutting notice based on NHI (Natural Heritage Inventory). Restrictions for NHI cannot be added to an approved cutting notice (a cutting notice signed by the DNR) or a cutting notice not requiring DNR approval.

Note: The Cutting Notice portion of the Forest Tax Law Handbook is currently being updated and has gone through a public comment period. That new Cutting Notice portion will be completed this fall and will contain more information on cutting notice procedures and NHI.

Buildings and Improvements (MFL):

Act 358 prohibits the enrollment or renewal 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 and renewals. An improvement is defined in statute 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**. According to statute, an 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 skid trails, landings, deer enclosures and clear-span bridges. Buildings such as storage facilities for tools, equipment, ATVs, etc., are not allowed on MFL land for 2017 and future entries and renewals.

Hunting blinds are defined by this guidance as a structure that is used exclusively for active hunting. During the rule making process, hunting blinds may be more clearly defined and certain structures may no longer be considered a hunting blind. Landowners wishing to enroll or subject to renewal in the future should be made aware of this possibility so they can decide if they would like to exclude acreage around their hunting blinds or withdraw acres to construct a more elaborate hunting blind.

Existing buildings can continue to be present on and be built on pre-2017 MFL entries as long as the building is not a residence or domicile / does not have 5 or more of the 8 characteristics listed in s. NR 46.15(9), Wis. Adm. Code., and the Forest Tax Law Handbook. Any lands enrolled or renewed in the future will need to exclude buildings and improvements.

Minimum Acres (MFL):

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*.

*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 (MFL):

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.

CPWs should be confirming that this access requirement is met prior to submitting an MFL application. DNR Foresters must review that access is provided before approving the application for lands that are to be enrolled as open to public recreation.

Land surrounded entirely by MFL closed or non-MFL lands under the same ownership are eligible to be designated as MFL open because s. NR 46.20(2), Wis. Adm. Code indicates that the landowner may not restrict public access through or across those lands to access the MFL open land. The landowner may limit the public access to a reasonable corridor or location which must be signed according to s. NR 46.21(3)(c), Wis. Adm. Code.

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(3)(c), Wis. Adm. Code, if the access is limited to a reasonable corridor or location 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. "Recreational activities" means outdoor activities that are compatible with the practice of forestry, as determined by the DNR. "Recreational activities" includes hunting, fishing, hiking, sight-seeing, cross-country skiing, horse-back riding, and staying in cabins (s. 77.81(6), Wis. Stats.).

Closed Acreage Limit (MFL):

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 landowner 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 entries, regardless of the year the land was enrolled. 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 may be made to all MFL entries. Lands added to the original entry/order will be taxed at the same rate as the land currently entered.

Additions must be at least 3 acres in size, have no buildings or improvements, and at least part of the lands being added must be contiguous to the existing MFL entry (non-contiguous added parcels must be at least 20 acres). All the owners of the addition must be identical to the owners of the existing entry/order, and after the addition each MFL parcel(s) must meet the productivity requirements. There is no limit on the number of acres that may be added to an existing MFL entry.

MFL Withdrawal Taxes and Fee:

Withdrawal tax is calculated by multiplying (net property tax rate in year prior to withdrawal order being issued) by (assessed value in the year prior to withdrawal order being issued) and multiplying that number by 10 or by the number of years the land was designated as MFL, whichever number is lower, for all MFL lands that do not meet the definition of "large property"*. The 5% timber valuation is no longer used, and acreage share and yield tax credits are no longer applied.

For "large property"* MFLs, the withdrawal tax during the order period will be the higher of the following:

- The (net property tax rate in year prior to withdrawal order being issued) x (assessed value in the year prior to withdrawal order being issued) multiplied by the number of years the land was designated as MFL less any acreage share tax payment made during the order period.
- OR
- 5% of the established stumpage value of merchantable timber present less any acreage share payment made during the order period.

For FCL lands that were converted to MFL and the land is withdrawn within 10 years after the date on which the MFL Conversion and Designation Order was issued, the withdrawal tax will be the higher of the following:

- The MFL withdrawal calculation above that applies based on if the landowner is a large property owner or not.
- OR
- The amount that the FCL withdrawal tax would have been at the time the MFL order was issued.

If converted lands are withdrawn after the first 10 years the withdrawal tax is calculated as a regular MFL withdrawal; without any comparison to the FCL withdrawal tax.

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

*Large property is defined in s. 77.81(2r), Wis. Stats., as "one or more separate parcels of land that are under the same ownership, that collectively are greater than 1,000 acres in size, and that are managed forest land or forest croplands or a combination thereof."

Note: "Large property" should not be confused with large account or "large ownership" landowners that are referenced in s. NR 46.18(4), Wis. Adm. Code. All large accounts/ownerships are large properties, but not all large properties are large accounts/ownerships.

MFL Voluntary Withdrawals – General:

The current rules for general voluntary MFL withdrawals continue to be the same under Act 358. Landowners may file a Declaration of Withdrawal (form 2450-140) for an entire MFL entry, 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. A withdrawal tax and fee will be assessed following the new calculations listed above for the withdrawn land.

MFL Voluntary Withdrawals – Construction or Small Land Sales:

Act 358 allows MFL landowners to voluntarily withdraw for the purposes of construction or small land sales. Landowners should check for zoning ordinance(s) from the city, village, township or county that establishes a minimum acreage for ownership of land/small land sales or construction sites. Where ordinances exist, the landowner must request not less than that minimum acreage be withdrawn. If no ordinances exist, one to five acres can be withdrawn 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 until the withdrawal form can be updated. A withdrawal tax and fee will be assessed following the new calculations listed above 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 and no more than five acres, so a withdrawal request for land less than one acre or more than five acres cannot be processed.

Landowners may request this type of voluntary withdrawal once per MFL parcel for a 25 year entry/order or twice per MFL parcel for a 50 year entry/order.

For landowners that have built an ineligible building or structure on their MFL land, the landowner may request a voluntary withdrawal of 1 to 5 acres. If there is a violation and the landowner chooses not to voluntarily withdraw 1 to 5 acres, the land will be involuntarily withdrawn and the lands will need to be withdrawn following either an entire parcel of MFL lands, all of the MFL land in a legal description, or the entire MFL entry.

Natural Disasters / Damage to Land (MFL):

The MFL landowner may notify the DNR Forester that their lands have been damaged by a natural disaster (defined as fire, ice, snow, wind, flooding, insects, drought or disease, per s. 77.81(4m), Wis. Stats.). The DNR Forester will then conduct a site visit to 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. Approximately 3 to 5 years will be allowed for restoration (bringing the entry/parcel back into eligibility); the exact length of time will be determined on a case by case basis.

If the landowner fails to complete the restoration, the landowner may 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) with no withdrawal tax and fee or the land may be subject an involuntary withdrawal with a withdrawal tax and fee.

MFL Voluntary Withdrawals – Productivity & Sustainability:

Act 358 allows a MFL landowner to file a request to voluntarily withdraw lands from their MFL entry 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 (see Voluntary MFL Withdrawal Processes section). No withdrawal tax or fee will be assessed for these types of voluntary withdrawals.

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

All land remaining after a withdrawal must meet the following requirements (based on entry/order year – which is the last four digits of the MFL order number) in order to continue to be enrolled in the MFL program.

For pre-2017 MFL entries, each parcel of land remaining after a withdrawal will be considered eligible for continued MFL enrollment if:

- it is at least 10 acres
- it contains an improvement or structure (as long as it is not a domicile, a building that does not have 5 or more of 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 entries, each parcel of land remaining after a withdrawal will be considered eligible for continued MFL enrollment if:

- it is at least 20 acres**
- it has no buildings or improvements (see “Buildings and Improvements” section)
- 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 the new voluntary withdrawal provision described in the Voluntary Withdrawals – Productivity & Sustainability section.

** If a landowner has renewed an MFL entry of less than 20 acres under the one time renewal provision in s. 77.82(1)(a)1., Wis. Stats., then the remaining land must be at least 10 acres in size for continued MFL enrollment.

Voluntary MFL Withdrawal Processes:

One withdrawal form per order number per withdrawal type, and until the form is updated the reason for the withdrawal must be written on the form.

Note: Updated MFL map(s) are required to be submitted by the DNR Forester with the withdrawal form when withdrawing anything less than entire entry/order; the new MFL map will be recorded by the county.

Landowner (LO) contacts and/or sends withdrawal form to DNR Forester (DNR FR) requesting withdrawal of an entire MFL entry, 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

- DNR FR reviews remaining land, if any, for productivity, eligibility, etc., per s. 77.88(3)(b)2., Wis. Stats.
- DNR FR sends LO signed, completed withdrawal form to the Forest Tax Program (until WisFIRS can be updated to accept withdrawal forms) and uploads updated map into WisFIRS, if needed (i.e. if it is not a withdrawal of an entire entry/order)
- Forest Tax Program processes withdrawal and assesses withdrawal tax & fee for withdrawn acres
- After withdrawal order issued, DNR FR updates WisFIRS if there is any remaining land

LO contacts and/or sends withdrawal form to DNR FR requesting withdrawal for construction or small land sale

- DNR FR reviews remaining land for productivity, eligibility, etc., per s. 77.88(3)(b)2., Wis. Stats.
- DNR FR updates MFL map
- LO signs letter or document that map is correct (like when amending a plan, until withdrawal form is updated)
- DNR FR sends LO signed, completed withdrawal form & any other info (e.g. survey) to the Forest Tax Program (until WisFIRS can be updated to accept withdrawal forms) and uploads updated map into WisFIRS
- Forest Tax Program processes withdrawal and assesses withdrawal tax & fee for withdrawn acres
- After withdrawal order issued, DNR FR updates WisFIRS

LO contacts DNR FR and requests withdrawal for productivity or sustainability issues

- DNR FR starts documentation and conducts site visit
- DNR FR, team leader and Forest Tax Law Specialist determines whether the landowner is eligible to withdraw their land under this provision

If determined that the landowner is eligible for withdrawal under this provision

- DNR FR determines minimum number of acres to withdraw (confirms with team leader) to bring entry/parcel back up to 80% productivity and verify remaining land is eligible per s. 77.82(1), Wis. Stats.
- DNR FR updates map
- DNR FR sends LO signed, completed withdrawal form to the Forest Tax Program (until WisFIRS can be updated to accept withdrawal forms) and uploads updated map into WisFIRS
- Forest Tax Program processes withdrawal with no withdrawal tax & fee
- After withdrawal order issued, DNR FR updates WisFIRS

If determined that the landowner is not eligible for withdrawal under this provision, DNR FR presents options to LO, like restoration (i.e. planting, natural regeneration, etc., if applicable) or voluntary withdrawal of an entire MFL entry, 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 or other voluntary withdrawal options, if appropriate (with a withdrawal tax and fee).

Some examples of items that may have caused the property to fall below productivity due to natural disasters or other environmental, ecological, or economic factors are:

- Emerald ash borer (EAB)
- Deer browsing
- Hail
- Tornado
- Invasive plants

The landowner may need to demonstrate the attempt(s) made to address or correct the problem before a final determination will be made by the DNR. Reasonable attempts may include, but are not limited to the following:

- The use of deer damage tags and DMAP to decrease the deer herd.
- Seedling protection
- Tree planting
- Invasive species control

The DNR may determine if an attempt is reasonable by comparing the difference between the closed land tax rate and the state average ad valorem taxes for forested land for a 10 year period and the quote or established practice cost rates used by the DNR.

In certain situations, there may be no reasonable efforts that would bring the MFL parcel up to 80% productivity and the entire MFL parcel may be eligible to be withdrawn without a withdrawal tax and fee.

An example of a situation that has caused a property to fall below productivity for reasons not due to environmental, ecological, or economic factors are actions like cutting contrary to the landowner's management plan or sound forestry.

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 (based on entry/order year – which is the last four digits of the MFL order number) as follows:

For land being transferred that is part of a pre-2017 entry/order:

- If the land applied for transfer meets the pre-Act 358 eligibility requirements for acreage and buildings (minimum of 10 contiguous acres, not a residence or domicile / does not have 5 or more of the 8 characteristics listed in s. NR 46.15(9), Wis. Adm. Code.) and the rest of the eligibility requirements listed in s. 77.82(1) Wis. Stats., then the DNR shall 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-Act 358 eligibility requirements for acreage and buildings (minimum of 10 contiguous acres, not a residence or domicile / does not have 5 or more of the 8 characteristics listed in s. NR 46.15(9), Wis. Adm. Code.) and /or does not meet the rest of the eligibility requirements listed in s. 77.82(1) Wis. Stats., then the DNR may issue a withdrawal order and assess the withdrawal tax and fee.
- If the transfer is a partial transfer of a pre-2017 MFL entry/order, the remaining MFL land will be allowed to stay under MFL designation only if the land meets the pre-Act 358 eligibility requirements for acreage and buildings (minimum of 10 contiguous acres, not a residence or domicile / does not have 5 or more of the 8 characteristics listed in s. NR 46.15(9), Wis. Adm. Code.) and the rest of the eligibility requirements listed in s. 77.82(1) Wis. Stats.
- If the remaining land does not meet the pre-Act 358 eligibility requirements for acreage and buildings (minimum of 10 contiguous acres, not a residence or domicile / does not have 5 or more of the 8 characteristics listed in s. NR 46.15(9), Wis. Adm. Code.) and/or does not meet the rest of the eligibility requirements listed in s. 77.82(1) Wis. Stats., then the DNR may 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 pre-2017 MFL entries/orders:

- The pre-Act 358 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 pre-2017 entry/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 entry/order:

- If the land applied for transfer meets the eligibility requirements listed in s. 77.82(1) Wis. Stats.*, then the DNR shall issue a transfer order and allow the lands to remain under MFL designation.
- If the land applied for transfer does not meet the eligibility requirements listed in s. 77.82(1) Wis. Stats.*, then the DNR may issue a withdrawal order and assess the withdrawal tax and fee.
- If the transfer is a partial transfer of a 2017 or future MFL entry/order the remaining MFL land will be allowed to stay under MFL designation only if the land meets the eligibility requirements listed in s. 77.82(1) Wis. Stats.*
- If the remaining MFL land does not meet the eligibility requirements listed in s. 77.82(1) Wis. Stats.*, then the DNR may issue a withdrawal order and assess the withdrawal tax and fee.

*If a landowner has renewed an MFL entry of less than 20 acres under the one time renewal provision in s. 77.82(1)(a)1., Wis. Stats., then the land must be at least 10 acres in size for continued MFL enrollment.

If transferred lands and lands remaining after a partial transfer do not meet the productivity requirements (at least 80% productive; no more than 20% unsuitable), the landowner may be able to apply for the new voluntary withdrawal provision described in the Voluntary Withdrawals – Productivity & Sustainability section.

Note: Updated MFL map(s) are required to be uploaded in to WisFIRS by the DNR Forester when a transfer is completed (processed and new order number(s) assigned, etc.)

Contracts (MFL):

Act 358 specifies that all current and future MFL orders are now considered contracts. If a statute is enacted or a rule is promulgated in the future (not including the Act 358 changes) that “materially changes” the terms of the order, a landowner must accept the modifications to their contract or voluntarily withdraw the land without withdrawal tax and fee. Material changes will be defined during the rule making process (writing of Administrative Code). More information on this provision will be shared in the future.

Renewals (MFL):

Act 358 now defines a renewal application very specifically. If a landowner of MFL land meets several criteria (see below and in s.77.82 (12), Wis. Stats.) and the renewal application is submitted by the June 1st before the current entry/order expires, they are eligible for a renewal and renewal applications are not required to include a MFL management plan.

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. 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 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 entry/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 DNR 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 entry/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 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 specifies that no buildings or improvements are allowed. Excluding acreage due to a building or an improvement, or for any other reason, at the time the renewal application is submitted would cause the land applied for renewal to not be identical to the land in the current entry/order and therefore not qualify as a renewal.

Original entry:	After excluding building/improvement, acreage is:	Result:
Contains building/improvement	< 20 acres	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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"?

At the time the renewal application is submitted, the land in a renewal application must be identical to the land under the existing entry/order. There are some scenarios where upon renewal, it may be 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 landowner or 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.

Renewal process for 2018 and future entries:

What is required with renewal application?

- Application form
- Deed
- Tax bill
- Map (updated in last 5 years from the date of application)
- Recon data & practices for the next/renewal order period (reviewed & updated in last 5 years from the date of application)
- Other items in WisFIRS, listed below (reviewed & updated in last 5 years from the date of application)

What it means to have management plan “reviewed and updated”

All stands have been updated and have a stand exam date that is less than 5 years old from the date of application. Other items also requiring update/check in WisFIRS are: name, address, legal descriptions, acres, owner goals/objectives, Natural Heritage Inventory & Archeological, Historical, Cultural and ecological landscape. All changes and updates must be reviewed and approved by the DNR Forester.

Who can update stands in WisFIRS?

- **Certified Plan Writer (CPW)** - updates (and can create new if needed) all stands, as needed, uploads new map and adds practices then submits to DNR FR for review and approval. Needs to be done in last 5 years and/or after last harvest, if applicable, to be eligible for renewal. (WisFIRS updates are needed before this can take place, until then CPWs can supply DNR FR with the information and map.)

- **DNR Forester (DNR FR)** - continues to only update stand(s) and map(s) after harvests and does not schedule practices outside the current entry/order period.

Process

1. Landowner (LO) contacts DNR FR and expresses an interest in applying for a renewal in the future. DNR FR determines if the landowner is currently eligible for a renewal (see *What it means to have management plan "reviewed and updated"* section above).
2. If the LO is not currently eligible for a renewal, they are referred to the CPW list. If the LO is unable to get the services of a CPW then the DNR may update the entire map and plan. The DNR FR should consider / answer the following questions before completing an entire update: Is renewal possible (e.g. are the lands identical or can they be made identical before the renewal, etc.) Is it last 5 years of the existing MFL order period? Are there any more scheduled harvests?

Who can submit an application for renewal?

Landowner (LO)

Process

- LO contacts local DNR Forester (DNR FR).
- DNR FR determines if LO is eligible for renewal (all criteria met, map and entire plan is also updated in last 5 years)
 - If LO **eligible**
 - LO submits application form, application fee, deed & tax bill to DNR FR. DNR FR uploads form, attachments, and current map with new order number (DNR FR must put new order number on map(s) and upload and also verify name, address, legal descriptions, acres, owner goals/objectives, Natural Heritage Inventory & Archeological, Historical, Cultural and ecological landscape in WisFIRS). DNR FR prints remittance form and submits with fee.
 - If LO **not** eligible (all renewal criteria not met, plan/map not updated)
 - DNR FR refers LO to CPW list. LO must hire CPW to apply as a new entry with an updated management plan.

OR

Certified Plan Writer (CPW)

Process

- CPW contacts DNR FR to check if LO is potentially eligible for renewal then submits application in WisFIRS as renewal, copies info into new draft renewal and submits all attachments/requirements to DNR FR for review and approval. If not approvable, DNR may need to return it to the CPW to complete as new entry.

Note: Forest Tax has added to the landowner expiration notice letters to contact the DNR FR as soon as possible if considering renewal.