

Wisconsin Act 358 FAQs

(Updated and new questions and answers are listed first, above single black line)

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 this Frequently Asked Questions (FAQ) document. This FAQ document was created using current information and legal interpretations. Not all aspects of Act 358 are covered in this document. This document is not complete or the final FAQ document and it will be adjusted during the guidance and rule making processes, and both of those processes include the opportunity for public review and comment.

If land is added to an existing MFL entry/order, what eligibility, withdrawal and transfer rules apply to the "new" added land?

Additions must be at least 3 acres (total) in size, at least part of the added land must be contiguous to the existing entry/order and all owners must be identical to existing/original entry/order. Other eligibility rules that apply to additions are:

- the land must have no buildings and improvements
- if a separate parcel is being added it must be at least 20 acres
- after the addition all parcels must meet the productivity requirements
- land cannot be developed for a use incompatible with the practice of forestry
- if designated as open, the open land must be accessible on foot by the public

Once the amended order becomes effective (following January 1) the entire entry/order will be taxed at the same rate as the land originally enrolled and will expire with the original part of the entry/order. Subsequent transfers and withdrawals must meet all the requirements based on the original entry/order year, which is the last four digits in the MFL order number.

If a landowner wants to apply for a renewal in the future, but they currently have a building on the land what do they need to do to make the land identical for the renewal application?

One of the criteria to be eligible for a renewal is that the land is identical to the current entry/order. So, if the landowner plans to apply for a renewal, they could voluntarily withdraw the land where the building is located (under voluntary withdrawal for construction or small land sales) so that the land applied for as a renewal will match the current entry, which it would once the withdrawal is processed.

If a landowner applies to enter new land in MFL and currently already has 320 acres designated as closed in that municipality, what happens?

The CPW and DNR Forester should let the landowner know that their ownership is currently at the maximum for closed acres and that they will need to change the new pending MFL to be designated as open. If the landowner doesn't change the designation to open, the submitted MFL application would not be approved by the DNR. Also, if an error was made and a landowner exceeds the closed acre maximum, the DNR will contact the landowner to see if they are willing to change the designation of some acres to open to correct the problem. If the landowner refuses to file the appropriate form (MFL Public Access Modification Request form 2450-193), the involuntary withdrawal

process will begin to withdraw the land at the entire order, entire parcel, all the land in that quarter-quarter section/government/fractional lot level with a withdrawal tax and fee.

What will happen if a landowner files a withdrawal form to voluntarily withdraw 8 acres for a small land sale and submits a city/village/township/county ordinance that states that 8 acres is the minimum acres required for small land sales?

The withdrawal will not be processed since the statute specifically states that the land to be withdrawn cannot be less than one acre and not more than 5 acres.

Do changes to a management plan or map constitute a material change where the landowner could withdraw lands from MFL without a withdrawal tax and fee?

No

When adding land to a pre-2017 MFL can the added lands (new acres enrolled) have buildings on them?

No, since the land being added is “new” to MFL that land cannot have any buildings on it. The prohibition of buildings is triggered by issuing an order designating new land, so even though the entry year is pre-2017 the new added lands cannot have buildings.

What about land entered prior to January 1, 2017 that included a building or an improvement?

Buildings can continue to exist on and be built on pre-2017 MFL entries as long as the pre-Act 358 building rules are followed (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, added or renewed in the future will need to meet current eligibility requirements.

If the MFL open lands are not on or near a public road, how does the public access the property?

All MFL open lands must be accessible to the public on foot either by public road or from other land open to public access. If public access is available solely by crossing non-MFL land or closed MFL land under the same ownership as the open land or if access is by easement or other method that gives the owner access, the access shall be marked (signed) according to s. NR 46.21(3)(c), Wis. Adm. Code.

Can a MFL order that is between 10 and 20 acres (either because it is a pre-2017 order or it was renewed under the one-time renewal provision) be transferred to a different owner and/or have some acreage withdrawn?

Yes, if the transferred land and all remaining lands are a minimum of 10 contiguous acres and meet the other eligibility requirements in s.77.82(1), Wis. Stats., then they are eligible to maintain enrollment as MFL property. If transferred land or remaining lands

are smaller than 10 acres or do not meet the other eligibility requirements, the land will be withdrawn from the MFL program.

What if a landowner has multiple expiring MFLs in one municipality or if the landowner has multiple types of entries in one municipality, like a new entry and a renewal, that they want to enter into MFL in the same year?

Lands must be entered into MFL based on the type of order it is (new, addition, renewal, FCL conversion) and if it was a separate entry/order number previously. If the landowner has one parcel that is a renewal and also new acreage to enter in the same municipality in the same year then there must be two separate applications – one for the renewal and one for the new acreage as a new order/entry. If the landowner has multiple expiring entries/orders that are all renewals then each one must be renewed as separate entries.

What if there is a change in ownership that results in the MFL land no longer meeting eligibility requirements?

When there is a change in ownership which leads to eligibility issues (i.e. too many non-productive acres), process the transfer of ownership (Managed Forest Law Ownership Change, form 2450-159) **first**. After the transfer is completed the DNR forester will present the landowner(s) with the appropriate options for withdrawal and update the MFL map(s) as needed.

Has the DOR form that a landowner uses to request a withdrawal tax estimate been adjusted to reflect Act 358?

No, DNR is currently working with DOR to have the form updated, but until it is updated, it will not reflect the fact there are now two different withdrawal tax formulas – one for “large property” owners and one for non-“large property” owners. As soon as the form is able to reflect these changes, that information will be shared.

For the new voluntary withdrawal for 1 to 5 acres for small land sales and construction does the 1 to 5 acres removed need to be one contiguous piece?

Yes, it must be one contiguous piece being withdrawn.

Does Act 358 trigger the provision in the end of s.77.82 (11), Wis. Stats., where if a statute is enacted or a rule promulgated, the landowner can elect to accept the changes or withdraw from MFL without tax and fee?

No, this provision came into effect with the rest of these changes (at the exact same time). This provision would have had to be in effect earlier for this to trigger that threshold.

Are there changes in the withdrawal tax calculations?

Yes, for MFL lands that do not meet the definition of “large property” (s. 77.81(2r), Wis. Stats.*), 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. 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 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 Conversion and Designation 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.

Will partial transfers be allowed for pre-2017 MFL orders?

Yes, as long as the transferred and remaining lands are a minimum of 10 contiguous acres, at least 80% productive, and meet the other eligibility requirements in s. 77.82(1), Wis. Stats. Buildings or improvements on such lands are allowed to remain (as long as they are not a domicile/do not have more than 4 of the 8 building characteristics), but are not eligible for renewal.

Is there a requirement to submit a CSM, map of survey, scaled diagram, etc., that describes the MFL lands that are subject to a partial transfer or a 1 to 5 acre withdrawal for small land sales or construction?

We don't require this information, but we will request it from the landowner if such information exists and it will help us more accurately delineate and map the MFL parcels that will be created or removed. An updated MFL map is required to be submitted with the withdrawal, since it needs to be recorded by the county.

Landowners, CPWs and DNR Foresters should be aware that counties and towns may have ordinances requiring a minimum acreage size for selling lands.

If a landowner is applying for a new entry that is contiguous to their current MFL entry can that land be an addition?

Yes, as long as the land being added meets all the requirements to be an addition. The lands added to the original entry will be taxed at the same rate as the land currently entered and all the land will expire at the same time.

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. There is no maximum for the number of acres that can be added to an existing MFL entry.

Are cutting reports for MFL and FCL still required?

Yes, the Cutting Notice and Report form (Form 2450-032) is still required per s. 77.86(4), Wis. Stats., for MFL and s. 77.06(4), Wis. Stats., for FCL. Cutting notices and reports still need to be sent to Madison after the final volumes are reported and the DNR forester has approved them.

Is a camper considered a building or improvement?

Campers, hunting blinds and other structures and improvements will be looked at on a case by case basis. As the program guidance and rule making processes continue, which includes opportunity for public review and comment, terms like these will be defined.

What is an example of a structure or fixture needed for sound forestry practices?

A fence that was built exclusively for the purpose of excluding deer to protect tree regeneration would be an example of a structure or fixture needed for sound forestry practices.

What if an owner of MFL open lands cannot provide access to the public?

If a landowner cannot provide public access by foot either by public road or from other land open to public access, they can withdraw or designate their land as MFL closed.

Does the new 320 acre closed acreage limit apply retroactively to all existing orders?

Yes, this applies to all current and future entries. This change may prompt some land owners to request a change in the open vs. closed acreage status for their MFL land. All changes to the open/closed designation are effective the following January 1st.

Can owners of MFL land change their open vs. closed designation once an order is established?

Yes, landowners need to file a MFL Public Access Modification Request form (form 2450-193) and follow the rules established under s. NR 46.18 (6), Wis. Adm. Code, which remains unchanged by Act 358.

Reminder: changes to the open/closed designation must be received by the Madison office prior to December 1, and the designation change will be effective on January 1.

Is there a scenario in which a landowner can designate more the 320 acres closed?

Only if that landowner owns land in more than one municipality. The new law stipulates that the 320 acre maximum is per owner, per municipality.

Note: The previous MFL provision that allowed owners to exceed the closed acreage limit if their land included government lots or fractional legal descriptions that were larger than 40 acres in size has been repealed.

If a landowner is voluntarily withdrawing land for a small land sale or construction, can they apply to withdraw less than one acre of land? What about “partial” acreages?

Act 358 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. It also specifically indicates 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).