

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Proposing rulemaking related to flood mitigation program  
and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 272, “Flood Mitigation Program,” Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 418.12 and 421.14.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 418 and sections 423.2A(2) and 423.2A(3).

*Purpose and Summary*

The purpose of this proposed rulemaking is to rescind Chapter 272 and adopt a new Chapter 272, which consists of rules relating to the Department’s role in the administration of the Flood Mitigation Program. These rules are required under Iowa Code chapter 418. These rules interpret the underlying statutes about the calculation and remittance of the sales tax increment funding to projects approved under Iowa Code chapter 418. The Department proposes revisions to the rules to provide clarification and to remove portions of the rules that the Department has determined are unnecessary, obsolete, and duplicative of statutory language. The Department further proposes to add a rule to provide clarification about the administrative fee authorized under Iowa Code section 423.2A(3) that the Department retains from the amount it would otherwise distribute for the Flood Mitigation Program.

A Regulatory Analysis, including the proposed rule text, was published on October 18, 2023. A public hearing was held on November 8, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 21, 2023.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke  
Department of Revenue  
Hoover State Office Building  
P.O. Box 10457  
Des Moines, Iowa 50306-3457  
Phone: 515.336.9025  
Email: [nick.behlke@iowa.gov](mailto:nick.behlke@iowa.gov)

### *Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9 to 11 a.m.	Via video/conference call
January 3, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 272 and adopt the following **new** chapter in lieu thereof:

#### CHAPTER 272 FLOOD MITIGATION PROGRAM

**701—272.1(418) Flood mitigation program.** Iowa Code chapter 418 authorizes and governs the flood mitigation program to assist governmental entities in undertaking approved projects. This chapter sets forth rules for the department of revenue's administration of the calculation and remittance of the sales tax increment funding. The Iowa department of homeland security and emergency management's administrative rules for other aspects of this program are found at 605—Chapter 14.

This rule is intended to implement Iowa Code chapter 418 and sections 423.2(11), 423.2A(2) and 423.2A(3).

**701—272.2(418) Definitions.** For purposes of this chapter, terms mean the same as defined in Iowa Code chapter 418. Additionally, the following definitions apply:

“*Corresponding quarter*” means the quarter in the base year and the quarter in the year in which the increment is measured that end in the same month. For example, if the base year is fiscal year 2013 and the year in which the increment is first measured is 2014, then the quarter ending in September 2012 of the base year would correspond to the quarter ending in September 2014 of the calendar year.

“*Department*” means the Iowa department of revenue.  
This rule is intended to implement Iowa Code section 418.1.

**701—272.3(418) Sales tax increment calculation.**

**272.3(1) *Sales tax increment calculation formula.*** The department will calculate quarterly the amount of the sales tax increment as described in Iowa Code section 418.11(2). To do so, the department will determine the base year for the flood mitigation project when the period for processing returns for the final quarter in the base year is complete.

**272.3(2) *Sales considered within the calculation formula.*** Only sales that are made by retail establishments in the area are taken into consideration when the sales subject to tax are determined. Sales otherwise sourced to the area are not considered in the calculation.

**272.3(3) *Identification of retailers.*** Each governmental entity that has established a project under Iowa Code chapter 418 must notify the department of retail establishments in the governmental entity’s applicable area that are collecting sales tax as soon as possible. This process shall be ongoing until the governmental entity ceases to utilize sales tax revenue under Iowa Code chapter 418.

This rule is intended to implement Iowa Code sections 418.11 and 423.2A(2).

**701—272.4(418) Sales tax increment fund.**

**272.4(1) *Deposits.*** For each governmental entity that establishes a flood mitigation project under Iowa Code chapter 418, the department will deposit collected funds into each applicable area’s sales tax increment fund as described in Iowa Code section 418.12(3). Additionally, moneys will not be deposited in the fund before the period for processing returns is complete.

**272.4(2) *Requests for remittances; limitations.***

*a.* Each quarter, the department will transfer into the sales tax increment fund the full amount of the increased sales tax subject to the limitations described in Iowa Code section 418.12(4)“*a.*” The director of the department may adjust the amount transferred during the year if it becomes apparent that the total amount transferred will exceed the limitations stated in this rule. If, when the total of all the transfers made to a governmental entity during the year is calculated at the end of the fiscal year, it is determined that the governmental entity received more than the maximum amount permissible under this rule, the department may withhold funds in the subsequent fiscal year to recoup the excess payments.

*b.* If the governmental entity has unused funds from a prior quarter in its account within the sales tax increment fund, subject to the limitations in Iowa Code section 418.12(4)“*a.*” those funds will be available in subsequent quarters so long as the amount is necessary for the purposes of this chapter.

**272.4(3) *Authorized expenditures.*** Funds from requests for remittances made to the department by a governmental entity shall only be used for the governmental entities’ costs or obligation to the project as described in Iowa Code section 418.13(1).

**272.4(4) *Remittance of funds to the general fund.*** The board shall assist the department in determining whether the fund or accounts within the fund have met the limitations found in Iowa Code section 418.12(5).

This rule is intended to implement Iowa Code sections 418.12, 418.13 and 423.2A(2).

**701—272.5(418) Administrative fee.**

**272.5(1) *Administrative fee.*** Pursuant to Iowa Code section 423.2A(3), the department will retain an administrative fee from the amount it would otherwise distribute to the flood mitigation program.

**272.5(2) *Amount retained.*** The amount retained each quarter will be the total of the prorated shares amongst all projects in both the flood mitigation program and the reinvestment districts program authorized under Iowa Code chapter 15J.

**272.5(3) *Prorated share.*** Each entity’s prorated share of the administrative fee for each quarter will be calculated as follows:

$$\frac{\text{Flood mitigation entity's distribution for the quarter}}{\text{Total distributions of both the flood mitigation and reinvestment districts for the quarter}} \times \text{Either \$25,000 or the department's actual expenses, whichever is less}$$

This rule is intended to implement Iowa Code section 423.2A(3).