

REVENUE DEPARTMENT[701]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 272
“Flood Mitigation Program”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 418.12 and 421.14

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 418 and sections 423.2A(2) and 423.2A(3)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/msc-ekdk-xws
PH: 262.864.1688
PIN: 672 555 995#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Hoover State Office Building
P.O. Box 10457
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Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 272 and adopt 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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rulemaking does not impose costs beyond what is imposed by the underlying statutes.

- Classes of persons that will benefit from the proposed rulemaking:

The public, including local jurisdictions that receive the funding from this program, will benefit from information about the process the Department performs to calculate and remit flood mitigation funding and the administrative fee the Department retains from the amount it would otherwise distribute.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is no economic impact associated with these rules beyond what is provided in the underlying statutes.

- Qualitative description of impact:

The qualitative benefit of this rulemaking beyond what is already provided by the statute is the value of having rules that describe the process for calculating and remitting flood mitigation funding in order to reduce confusion and so that the public and those jurisdictions receiving funding have access to the information in the rules.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the State beyond what is required to administer the relevant statutes, since they are procedural rules required to implement the underlying statutes. The Flood Mitigation Program funding is ongoing, and this proposed rulemaking does not provide any significant changes to this process. The rule relating to the calculation of the administrative fee authorized under Iowa Code section 423.2A(3) is an explanation of the fee that the Department already retains. Unnecessary and duplicative statutory language is removed from the rules as well.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues beyond what is contained in the statutes. The proposed rulemaking clarifies the process for calculating and remitting flood mitigation funding to qualified jurisdictions and calculating the administrative fee retained by the Department.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost of inaction would be the failure to comply with the statute's requirement that the Department adopt rules to describe the calculation and remittance of flood mitigation funding, which would lead to confusion. The benefit of this rulemaking is to provide the public and eligible jurisdictions with information and clarification about the calculation and remittance process, as well as clarification about the administrative fee authorized by statute that is retained by the Department.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The purpose of the proposed rulemaking is to provide guidance on the Department's administration of flood mitigation funding, including the retention of an administrative fee by the Department. The Department did not consider the option of not having this proposed rulemaking since it is mandated by statute, but the Department also determined that the proposed rulemaking provides useful clarification to the public and eligible jurisdictions about flood mitigation funding.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department did not consider the possibility of not providing this proposed rulemaking.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Proceeding without the proposed rulemaking would be defying the statute's mandates to adopt rules and would lead to confusion about the process for calculating and remitting flood mitigation funding.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking does not have a substantial impact on small business because it does not differentiate based on the size of an eligible business.

Text of Proposed Rulemaking

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:

<u>Flood mitigation entity's distribution for the quarter</u>		
Total distributions of both the flood mitigation and	x	Either \$25,000 or the
reinvestment districts for the quarter		department's actual expenses,
		whichever is less

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