

EO #10: Recommended Revisions & Proposed Structure
Iowa Department of Natural Resources
Financial & Business Assistance Section and Solid Waste & Contaminated Sites Section
September 2023

Introduction:

In response to Executive Order #10 (EO #10), the Financial and Business Assistance Section (FABA) and the Solid Waste and Contaminated Sites Section of the Iowa Department of Natural Resources (DNR) has drafted the following Recommended Revisions and Proposed Structure (Proposal) for the Iowa Administrative Code (IAC) chapters administered by these sections. This Proposal is a starting point and framework for discussions with stakeholders.

To help visualize the proposed structure of how the IAC chapters could be organized, an organizational chart of sorts is included at the end of this document. The primary objective of the proposed structure is to clearly delineate between those disposal activities that are classified as sanitary disposal projects (SDP) and those that are not since Iowa Code places distinct requirements upon SDPs versus non-SDP administrative rules.

A principal example is the proposed consolidation of all sanitary landfill regulations within a single administrative rule chapter. Further, we have also proposed to consolidate the financial assurance requirements within a single administrative chapter.

Several administrative chapters have been proposed for rescission, relying instead upon relevant statutory authority in Iowa Code or Federal regulations. In those cases, the DNR proposes to utilize guidance documents, Frequently Asked Questions, etc. as necessary to provide direction to stakeholders.

Specific recommendations and explanations for each administrative chapter are discussed in the body of this Proposal.

As the DNR and stakeholders work through the EO #10 process, including the details of each administrative chapter, there will be multiple opportunities for discussion, input, and comment. As a result, the approach presented in this Proposal will be updated accordingly by the DNR.

Meanwhile, please bookmark and refer to the DNR Land Quality Bureau's webpage for the EO #10 process outlined in this Proposal. New and updated documents will be posted here along with information on how to be involved in the process. In addition, you can sign up for periodic stakeholder emails on the webpage as well.

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Recommendations and Explanations:

The following terminology is used within this section of the Proposal.

- Rule – Refers to Iowa Administrative Code (IAC) and is also sometimes referred to as administrative rule.
- Code – Refers to Iowa law and is sometimes referred to as Iowa Code or statute.

The DNR section that is responsible for each rule/chapter is noted by the following color code.

SOLID WASTE

FABA

Chapter 11: TAX CERTIFICATION OF POLLUTION CONTROL OR RECYCLING PROPERTY

Recommendation: Rule 567—11.1(427) Scope and subrule 11.6(3) Examples will be removed. The remaining provisions will continue to be a stand-alone chapter.

Explanation: Chapter 11 clarifies the process and eligibility criteria for properties to obtain a pollution control or recycling certification from the DNR. This certification allows the owner to apply for a property tax exemption through their local county assessor’s office. Chapter 11 will be edited for length and clarity without making changes to the program.

Chapter 14: ENVIRONMENTAL COVENANTS

Recommendation: Rescind the chapter. No new chapter will be adopted.

Explanation: While the environmental covenant program itself has many benefits to landowners and the public at large, these rules are not necessary to implement the Uniform Environmental Covenants Act in Iowa Code Chapter 455I. On review of the rule and the Code, the DNR has determined the rule either expressly or implicitly duplicates the Code in many areas. Additionally, there is questionable rulemaking authority to implement these rules, further supporting the legislative intent for the Iowa Code to stand on its own. Rescinding these rules will not impact the DNR’s ability to enter into effective environmental covenants with interested landowners.

Chapter 100: SCOPE OF TITLE—DEFINITIONS—RULES OF PRACTICE

Recommendation: Rescind the chapter.

- Move rule 567—100.1(455B,455D) Scope of title to the beginning of the new overarching SW chapter.
- Move rule 567—100.2(455B,455D) Definitions to appropriate new chapter.
- Move rule 567—100.4(455B) General conditions of solid waste disposal. Move to Chapter 113 and combine with rule 567—102.16(455B) Disruption and excavation of sanitary landfills or closed dumps.

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Explanation: Combining many of the other solid waste chapters will greatly reduce the number of definitions that would be duplicated in multiple chapters. Duplicative definitions to those in Iowa Code and standard dictionary definitions will be removed.

Rule 567—100.4(455B) allows for final disposal of farm waste and dead animals outside of an SDP in specific situations. The Iowa Department of Agriculture and Land Stewardship (IDALS) also has regulatory authority over the disposal of dead animals (Iowa Code Chapter 167), which conflicts with the provisions of paragraph 100.4(2)“b.” Discussions will need to take place with IDALS to determine which agency has primacy over the burial of dead animals and make changes accordingly. Input from DNR Field Offices regarding enforcement and emergency response considerations pertaining to dead animal disposal will further direct revisions.

Chapter 101: SOLID WASTE COMPREHENSIVE PLANNING REQUIREMENTS

Recommendation: Revise, without making substantial changes to the program, to enhance clarity, remove burdensome requirements for developing and filing plans, and incorporate content from Chapter 111 – EMS Annual Reports.

- Revise rule 567—101.14(455B,455D) Fees for disposal of solid waste at sanitary landfills per Iowa Code section 455B.310 to be more understandable as on the Tonnage Fee Distribution Fact Sheet.
- Revise sections of rule 567—101.13(455B,455D) that list the content requirements for Comprehensive Plans.
- Incorporate content from 567—111(455J) EMS Annual Reports.

Explanation: As needed, reiterations of Code will remain in rule to enhance readability. To enhance clarity, sections such as the tonnage fee schedule and goal progress toward state waste reduction and recycling goals will be revised and/or reformatted. Revising and reducing select requirements for Comprehensive Plans will lighten the regulatory burden upon stakeholders. Combining content from rule 567—111(455J) EMS Annual Reports will consolidate Comprehensive Planning and its alternative program.

Chapter 102: PERMITS AND RULES OF PRACTICE

Recommendation: Some of the rules within this chapter will be rescinded, while others will be moved and consolidated within a new overarching SW chapter.

- Delete rule 567—102.1(455B) Permit required.
- Move rule 567—102.2(455B) Types of permits to the new overarching SW chapter. Need the distinction of different SDP permit types (e.g. Coal Combustion Residue Impoundment Closure Permits)

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- Move/consolidate the following to a general permitting requirements section:
 - Rule 567—102.3(455B) Applications for permits
 - Rule 567—102.4(455B) Preparation of plans
 - Rule 567—102.5(455B) Construction and operation
 - Rule 567—102.6(455B) Compliance with rule changes
 - Rule 567—102.7(455B) Amendments
 - Rule 567—102.8(455B) Transfer of title and permit
 - Rule 567—102.9(455B) Permit conditions
 - Rule 567—102.10(455B) Effect of revocation
 - Rule 567—102.11(455B) Inspection prior to start-up
 - Rule 567—102.12(455B) Primary plan requirements for all sanitary disposal projects
 - Rule 567—102.13(455B) Operating requirements for all sanitary disposal projects
- Simplify rule 567—102.14(455B) Emergency response and remedial action plans. Or delete and rely upon Iowa Code paragraph 455B.306(7)(d).
- Move rule 567—102.15(455B) Solid waste incinerator operator certification to appropriate new Solid waste incinerator permitting chapter or move Iowa Code provisions to DNR Air Quality’s authority.
- Move rule 567—102.16(455B) Disruption and excavation of sanitary landfills or closed dumps. Move to Chapter 113 and combine it with rule 567—100.4(455B) General conditions of solid waste disposal.

Explanation: Much of this chapter is redundant with existing permitting requirements that could all be consolidated and simplified within a single new section on general permitting requirements that would apply to all permits. Rules 567—102.15(455B) and 567—102.16(455B) are outliers and would need to be relocated to appropriate sections of the new regulations.

Chapter 103: SANITARY LANDFILLS: COAL COMBUSTION RESIDUE

Recommendation: Rescind the chapter. Move to Chapter 113 and keep CCR-specific requirements as its own section.

Explanation: This will allow landfill permitting, design, monitoring, and operations to be consolidated into a single chapter, which removes redundancy and ensures greater regulatory consistency. Where overlaps occur between the different types of sanitary landfills, those requirements can be streamlined and consolidated. This will not include the adoption of the Federal CCR landfill regulations at this time.

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Chapter 105: ORGANIC MATERIALS COMPOSTING FACILITIES

Recommendation: Major revisions are needed. Include within a stand-alone Solid Waste Management (SWM) Permitting chapter. Note: Not an SDP.

Explanation: Just before EO #10, a stakeholder group was working on a major revision to Chapter 105. They recommended a tiered approach based on the level of risk associated with the feedstock(s) and the throughput of the facility. This could include a “general” permit, but an option for an individual permit will also be needed for the higher-risk feedstocks such as industrial sludge or biosolids. Stakeholders view this as essential for growing the compost industry and are eager to see it move forward.

Chapter 106: CITIZEN CONVENIENCE CENTERS AND TRANSFER STATIONS

Recommendation: The existing Chapter 106 will be kept as its own chapter under the SDP permitting tract (e.g. Tier II Facilities). Citizen Convenience Centers (CCCs) will be regulated as Transfer Stations (XFRs) and any unique requirements can be incorporated during the revision process.

- Delete rule 567—106.1(455B) Compliance.
- Move rule 567—106.2(455B,455D) Definitions to appropriate new chapter.
- Delete rule 567—106.3(455B) Citizen convenience center and transfer station permits. These general permitting requirements will be incorporated into a new overarching SW chapter to reduce duplication/redundancy.
- Rescind subrule 106.3(11) Emergency solid waste transfer permit. Further discussion is needed with the DNR’s FOs and Emergency Management staff to streamline the process when authorizing temporary debris management sites for post-disaster recovery.
- Move the following to a single XFR permitting section:
 - Rule 567—106.4(455B) Citizen convenience center (CCC) permit application requirements. CCCs will be regulated as XFRs and having duplicative requirements is unnecessary.
 - Rule 567—106.5(455B) Citizen convenience center operations.
 - Rule 567—106.6(455B,455D) Citizen convenience center reporting requirements.
 - Rule 567—106.7(455B) Citizen convenience center closure requirements.
- Simplify rule 567—106.8(455B) Transfer station permit application requirements. These requirements will address all XFR sites, including those redefined CCCs.
- Simplify rule 567—106.9(455B) Transfer station siting and location requirements.
- Simplify rule 567—106.10(455B) Transfer station design standards.
- Simplify rule 567—106.11(455B) Transfer station operating requirements.

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- Move rule 567—106.12(455B) Temporary solid waste storage at transfer stations. These requirements can be included with site operating requirements.
- Retain rule 567—106.13(455B,455D) Transfer station record-keeping requirements.
- Move rule 567—106.14(455B,455D) Transfer station reporting requirements. Combine with record-keeping requirements.
- Move rule 567—106.15(455B) Solid waste transport vehicle construction and maintenance requirements. These requirements can be included with site operating requirements.
- Move rule 567—106.16(455B) Solid waste transport vehicle operation requirements. These requirements can be included with site operating requirements.
- Retain rule 567—106.17(455B) Transfer station closure requirements.
- Delete rule 567—106.18(455B) Citizen convenience center and transfer station financial assurance and include financial assurance in a single Financial Assurance chapter for SDPs.
- Delete rule 567—106.19(455B) Emergency response and remedial action plans. This will be included as part of the general permitting requirements for all SDPs, or just refer to Iowa Code paragraph 455B.306(7)(d).

Explanation: There are requirements within this administrative chapter that are overly prescriptive and that do not allow for any equivalent options without needing to go through the waiver process. Solid waste transfer stations and CCCs are similar in how they operate and have similar permitting requirements. With this in mind, the goal of this administrative chapter could be achieved in a more efficient/streamlined manner by employing a “general” permit approach to oversight of these facilities. This would not only streamline the permitting process for the DNR and the permit applicant, but would result in reduced costs realized through those efficiencies.

Chapter 107: BEVERAGE CONTAINER DEPOSITS

Recommendation: Retain the chapter with minor revisions to enhance clarity.

Explanation: This chapter was recently revised in response to amendments made to Iowa Code Chapter 455C by the 2022 Iowa Legislature, which became effective on January 1, 2023. Additional time is needed to implement the regulation as drafted before proposing any significant amendments.

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Chapter 108: BENEFICIAL USE DETERMINATIONS: SOLID BY-PRODUCTS AS RESOURCES AND ALTERNATIVE COVER MATERIAL

Recommendation: Rescind the chapter. Move landfill ADC provisions in rule 567—108.8(455B,455D), rule 567—108.9(455B,455D) and rule 567—108.10(455B,455D) to a consolidated SDP landfill chapter. Propose rescission of enabling statute (§455B.304(19)).

Explanation: The fundamental deficiency of this chapter is that it's voluntary. There's no statutory obligation to obtain a beneficial use determination (BUD) before utilizing a solid waste beneficially. Furthermore, with numerous applications being universally approved, there is no way of knowing whether any material was used beneficially unless they adhere to the reporting requirements of the chapter. Again, without a BUD being required, and because of the discrepancy in who's required to comply with the record-keeping and reporting requirements (e.g. CCR, foundry sand, fill projects), there is a vast universe of reuse projects that the DNR is never made aware of. Not being able to quantify the extent of reuse occurring within the state makes it impossible to gauge the program's impact.

Not having a BUD from the DNR is likely not a significant a deterrent for entities who desire to use solid by-products beneficially. Inviting a regulatory agency into its business practices through the issuance of an official determination can itself be a deterrent to reuse adoption and program participation.

There are also questions about whether an appropriate level of initial solid by-product characterization/evaluation was taken regarding universally approved applications, as well as new reuse applications being received. Any potential inadequate evaluation could result in a lack of appropriate environmental controls and oversight, which could adversely affect human health and the environment. The social and economic benefits (e.g. emissions offset from virgin materials, avoided disposal costs, lower purchase price) of material reuse may only be truly realized so long as there is adequate assurance that human health and the environment will not be negatively impacted by its use.

In addition, because of the lack of detail regarding certain universally approved beneficial uses (e.g. a soil stabilizer for construction purposes, a soil amendment pursuant to 567-Chapter 121 and the rules of the Iowa Department of Agriculture and Land Stewardship or a compost amendment), there is uncertainty regarding whether certain minimum requirements have been met. This lack of clarity further complicates the implementation of these regulatory requirements, likely resulting in less diversion through beneficial reuse.

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There are also concerns regarding whether the issuance of a BUD from the DNR places liability upon the State for any subsequent environmental impacts. While there's legal authority for the chapter, much of the program could be administered through guidance, without taking on the potential liability that could result from BUD issuance.

Chapter 109: SPECIAL WASTE AUTHORIZATIONS

Recommendation: Remove language that duplicates Iowa Code and Federal regulations. Consolidate remaining provisions within a yet-to-be-determined SDP chapter (e.g. Sanitary landfills). Updated general special waste provisions of rule 567—109.11(455B,455D) would dovetail well within a consolidated SDP landfill chapter. There is vast stakeholder support for this program and a specific funding source has been established.

Explanation: This chapter provides special handling requirements for the disposal of certain types of waste at a sanitary landfill. Some types of waste addressed within this chapter are also addressed within other SW rules. Consolidating them within a singular location will remove redundancy and foster greater consistency.

Chapter 110: RESERVED

Recommendation: This chapter was slated to receive the Financial Assurance regulations for SDPs. The financial assurance regulations will be incorporated within a separate SDP chapter and is not bound to this specific location.

Explanation: Non-SDP permitting chapters that desire to include a financial assurance component will include closure cost estimate criteria within their respective chapters and refer to the SDP financial assurance chapter for financial instruments. Another option to streamline the financial assurance process for non-SDP sites could be to mandate a specific instrument and value much like the waste tire hauler surety bond approach.

Chapter 111: ANNUAL REPORTS OF SOLID WASTE ENVIRONMENTAL MANAGEMENT SYSTEMS

Recommendation: Rescind the chapter and move relevant sections to Solid Waste Comprehensive Planning.

Explanation: This will consolidate Comprehensive Planning and its alternative, EMS, into a single administrative chapter.

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Chapter 113: SANITARY LANDFILLS FOR MUNICIPAL SOLID WASTE: GROUNDWATER PROTECTION SYSTEMS FOR THE DISPOSAL OF NONHAZARDOUS WASTES

Recommendation: The existing Chapter 113 will be kept as its own administrative chapter under the SDP permitting tract (e.g. Tier I Facilities). The remaining landfill chapters (i.e. Chapters 103, 114, and 115) will be incorporated into Chapter 113 and kept as their own divisions. The financial assurance requirements of rule 567—113.14(455B) will be removed and a reference to the consolidated SDP financial assurance chapter will be included.

Explanation: This will allow landfill permitting, design, monitoring, and operations to be located in a single chapter. Further, where overlaps occur between the different types of landfills, those requirements can be consolidated.

Chapter 114: SANITARY LANDFILLS: CONSTRUCTION AND DEMOLITION WASTES

Recommendation: Rescind the chapter. Move relevant sections to Chapter 113 and combine them with the current Chapter 115 as their own division.

Explanation: This will allow landfill permitting, design, monitoring, and operations to be located in a single chapter. Further, where overlaps occur between the different types of landfills, those requirements can be consolidated. The wording in Chapters 114 and 115 are nearly identical, and combining would not fundamentally change most of the requirements for these facilities.

Chapter 115: SANITARY LANDFILLS: INDUSTRIAL MONOFILLS

Recommendation: Rescind the chapter. Move relevant sections to Chapter 113 and combine them with the current Chapter 114 as their own division.

Explanation: This will allow landfill permitting, design, monitoring, and operations to be located in a single chapter. Further, where overlaps occur between the different types of landfills, those requirements can be consolidated. The wording in Chapters 114 and 115 are nearly identical, and combining would not fundamentally change most of the requirements for these facilities.

Chapter 116: REGISTRATION OF WASTE TIRE HAULERS

Recommendation: Remove requirements that are duplicative of Iowa Code sections 455B.11, 455D.11A, 455D.11B, 455D.11C, 455D.11G, 455D.11I and consolidate into one section of a new Solid Waste Management (SWM) Permitting chapter.

Explanation: The Iowa Code provides more detail on tire management than most other types of waste. Chapters 116 and 117 could be streamlined considerably.

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Chapter 117: WASTE TIRE MANAGEMENT

Recommendation: Remove requirements that are duplicative of Iowa Code sections 455B.11, 455D.11A, 455D.11B, 455D.11C, 455D.11G, 455D.11I and consolidate into one section of a new Solid Waste Management (SWM) Permitting chapter.

Explanation: The Iowa Code provides more detail on tire management than most other types of waste. Chapters 116 and 117 could be streamlined considerably.

Chapter 118: DISCARDED APPLIANCE DEMANUFACTURING

Recommendation: Further discussion, both internal and with stakeholders, is needed to determine if any or all of the provisions of the chapter could be rescinded and instead defer to relevant Federal regulations as well as educate appliance recyclers via guidance with emphasis on limiting stockpiling. Note: Not an SDP.

Explanation: Although some hazardous components, such as PCB capacitors of appliances have been phased out, other components such as refrigerants and mercury-containing switches continue to be used. Further analysis of the annual reports will be completed to determine the cost-effectiveness of continuing to regulate the removal of these components. Additionally, some of the requirements come from Federal regulations and could be removed. Relying on Federal regulations would necessitate an effort to educate appliance demanufacturers about such requirements. There is an opportunity here to apply the Legitimate Recycling provisions of Iowa Code section 455D.4A to further limit stockpiling.

Chapter 119: USED OIL AND USED OIL FILTERS

Recommendation: Rescind the chapter. Defer to relevant Federal regulations and Iowa Code section 455D.13, and educate the public via guidance.

Explanation: The authority resides within Iowa Code section 455D.13, which does not include a mandate to adopt subsequent rules. As a result, the DNR can continue to administer the requirements via guidance.

Chapter 120: LANDFARMING OF PETROLEUM CONTAMINATED SOIL

Recommendation: Include requirements within a Solid Waste Management (SWM) Permitting chapter. Correct inconsistencies (e.g. treatment thresholds and allowed applications) with other Solid Waste chapters. Note: Not an SDP.

Explanation: This chapter was recently revised as part of the 5-year rule review. Given this recent effort, further streamlining isn't anticipated other than identifying a new location within a Solid Waste Management (SWM) Permitting chapter.

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Chapter 121: LAND APPLICATION OF WASTES

Recommendation: Streamline the permitting process and include it within a stand-alone Solid Waste Management (SWM) Permitting chapter. If the revisions cannot be completed within the allotted timeframe for this rulemaking, the existing requirements will be incorporated into the SWM chapter and future rulemaking will address the revisions. Note: Not an SDP.

Explanation: Rather than the current permit-by-rule and individual permits, implement a “general” permit program, regardless of the proposed application rate. To apply for the “general” permit, a generator would need to submit information about the material to be land applied and a proposed application rate. The DNR would approve the material to be land applied and the rate, but not approve the sites where application takes place. This would save a large amount of paperwork both for permit holders and the DNR. Remove subrule 121.7(2) Waste pesticides. Consider removing the need for financial assurance. Defer to IDALS for anything where an agronomic benefit (Soil Conditioner, Fertilizer, or Agricultural Liming Material) is being promoted (i.e. Iowa Code Chapter 200, 21 IAC 44, Iowa Code section 201A.3).

Chapter 122: CATHODE RAY TUBE RECYCLING

Recommendation: Further discussion, both internal and with stakeholders, is needed to determine if any or all of the provisions of the chapter could be rescinded and instead defer to relevant Federal regulations as well as educating CRT recyclers via guidance with emphasis on limiting stockpiling. Note: Not an SDP.

Explanation: This chapter recently had a major revision that removed a significant amount of language that was not essential. The recent revision focused on preventing the stockpiling of CRTs or CRT glass and compliance with Federal regulations. There is an opportunity here to apply the Legitimate Recycling provisions of Iowa Code section 455D.4A to further limit stockpiling.

Chapter 123: REGIONAL COLLECTION CENTERS AND SATELLITE FACILITIES

Recommendation: Retain the chapter and incorporate select content from Chapter 211.

- Definition for eligible pounds and
- Support funding (reimbursement of costs) in rule 567—211.9(455E,455F).

Explanation: This would consolidate rules pertaining to RCCs into a single chapter.

Chapter 145: HOUSEHOLD BATTERIES

Recommendation: Rescind the chapter. Defer to relevant Federal regulations and Iowa Code, and educate the public via guidance.

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Explanation: The requirements of this chapter are redundant to the enabling language in Iowa Code section 455D.10 for “Land disposal of lead acid batteries – prohibited – collection for recycling,” Iowa Code section 455D.10A for “Household batteries — heavy metal content and recycling requirements,” and Iowa Code section 455D.10B for “Batteries used in rechargeable consumer products.”

Chapter 152: CRITERIA FOR SITING LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITIES

Recommendation: Rescind the chapter. Propose rescission of enabling statute (§455B.486).

Explanation: This chapter is an artifact from the implementation of the Low-Level Radioactive Waste Policy Amendments Act (LLRWPA) of 1980 and the creation of the Midwest Compact. This chapter is not necessary to maintain Iowa’s responsibilities in the Midwest Compact and considering the inter-state agreements that have subsequently been put in place for the disposal of this waste. Further, Iowa has no authority to regulate disposal facilities for radioactive waste. Therefore, it is unnecessary to maintain rules for siting requirements.

Chapter 209: LANDFILL ALTERNATIVES FINANCIAL ASSISTANCE PROGRAMS

Recommendation: Rescind the chapter.

Explanation: Program requirements, such as eligibility, are already incorporated into the application materials.

Chapter 211: FINANCIAL ASSISTANCE FOR THE MANAGEMENT OF HOUSEHOLD HAZARDOUS MATERIALS AND HAZARDOUS WASTE FROM VERY SMALL QUANTITY GENERATORS

Recommendation: Rescind the chapter. Move select content to current Chapter 123 requirements.

Explanation: This would consolidate rules pertaining to RCCs into a single chapter.

Chapter 213: PACKAGING—HEAVY METAL CONTENT

Recommendation: Rescind the chapter and rely upon Iowa Code section 455D.19 and educate the public via guidance.

Explanation: This rule is almost verbatim to the Iowa Code.

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