

761—115.1(306A) General information.

115.1(1) *Scope of chapter.* This chapter covers initial placement, adjustment and maintenance of utility facilities in, on, above or below the right-of-way of primary highways, including attachments to primary highway structures. It embodies the basic specifications and standards needed to ensure the safety of the highway user and the integrity of the highway.

115.1(2) *Considerations.* If the department determines that the literal application of these rules to a specific situation will create or result in an unsafe situation or an unreasonable design, the department shall use sound engineering practices to determine the appropriate design for the specific situation. This design shall address:

1. Safety of motorists, pedestrians, construction workers and other highway users.
2. Integrity of the highway.
3. The impact upon the economy of the state.
4. Protection of the rights of the traveling public and of property owners, including the rights of abutting property owners.

Justification for the design must be included in the permit or the highway project file, as applicable.

115.1(3) *Waivers.* The director of transportation may, in response to a written request or petition, waive provisions of this chapter. 761—Chapter 11 applies, with the following exceptions:

a. If a person is applying for a utility permit under this chapter, the person shall submit a related waiver request as an addendum to the application, in lieu of petition for waiver. The request must include:

- (1) A description of and citation to the specific rule from which a waiver is requested.
- (2) The specific waiver requested.
- (3) The relevant facts and reasons the applicant believes will justify the waiver, if they have not already been provided to the department in the application. The applicant should address each of the following:

1. Why applying the rule will result in an undue hardship to the applicant.
2. Why waiving the rule will not prejudice the substantial legal rights of any other person.
3. Whether the provisions of the rule are specifically mandated by statute or another law other than the rule.
4. How substantially equal protection of the public health, safety, and welfare will be afforded by means other than those prescribed by the rule.

(4) The names of persons who may be adversely impacted by the grant of the waiver, if known.

b. In all other cases, a person requesting a waiver shall submit a petition for waiver in accordance with 761—11.5(17A). The petition shall be submitted to the district engineer.

c. Rescinded IAB 10/12/05, effective 11/16/05.

d. Rescinded IAB 10/12/05, effective 11/16/05.

115.1(4) *Additional requirement for waivers involving interstate highways.* The department shall not waive these rules in utility accommodation and adjustment situations involving the interstate highway system, including its ramps, without the approval of the Federal Highway Administration.

115.1(5) *Contact information.* Information and forms regarding this chapter may be obtained from any of the department's six district offices or from the Office of Traffic and Safety, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.