

761—115.4(306A) General requirements for occupancy of the right-of-way.**115.4(1) Permit required and exceptions to permit.***a. Permit required.*

(1) A utility owner shall obtain permission from the department in the form of a utility accommodation permit before it places its utility facilities in, on, above or below the primary highway right-of-way; attaches its utility facilities to a primary highway structure; or adjusts existing utility facilities occupying the right-of-way.

(2) The purpose of the permit process is to ensure the safety of motorists, pedestrians, construction workers and other highway users; to ensure the integrity of the highway; and to document the location of utility facilities for use in managing the highway right-of-way and in locating the facilities in the future.

b. Exceptions to required permit.

(1) A permit is not required for storm sewers, subdrains, and lighting designed and constructed as part of a department highway construction project.

(2) A permit is not required for service connections within the corporate limits of a city. These connections require city approval rather than department approval; the utility owner shall apply to the city. However, service connections shall meet all other requirements of this chapter.

115.4(2) Agreement required. For certain utility facility adjustments, the department may require an agreement between the department and the utility owner. However, the agreement by itself does not constitute a permit nor does it grant permission to occupy the primary highway right-of-way. The utility owner is responsible for obtaining a permit prior to commencing work within the right-of-way. The agreement shall then be attached to and become a part of the permit.

115.4(3) Compliance with requirements. It is the responsibility of the utility owner to ensure that its utility facility complies with all applicable federal, state, local and franchise requirements and meets generally accepted industry standards at the time of installation.

115.4(4) Performance bond. The department may require a performance bond for utility work within the highway right-of-way under the following circumstances: the installation is unusual; abnormal site conditions exist, such as but not limited to unstable soil or unique vegetation; or the utility owner has a history of performance problems. A performance bond is required for longitudinal freeway occupancy; see subrule 115.16(9) for specific requirements.

a. If a performance bond is required, the utility owner shall file the bond with the department prior to commencing work within the right-of-way.

b. The minimum amount of a required performance bond is \$5,000 per permit. Depending on the type and extent of the facility installed, the department may require a higher bond amount. The bond shall be in force for the duration of the permit. The department shall have the right to file a claim against the bond for two years thereafter.

c. The department may accept an annual performance bond in the amount of \$50,000 for statewide activities in lieu of an individual bond for each permit. The statewide performance bond shall be kept in force for as long as the utility owner's facilities occupy the primary highway right-of-way anywhere within the state of Iowa. The department shall have the right to file a claim against the bond for two years thereafter.

d. A performance bond shall guarantee prompt restoration of any damage that is the result of the utility facility's occupancy of the highway right-of-way.

115.4(5) Execution of work. Utility construction and maintenance work within the primary highway right-of-way shall be executed in a satisfactory manner and in accordance with good construction practices.

115.4(6) Disturbance of other contractors. Utility construction and maintenance work within the primary highway right-of-way shall be accomplished in a manner that minimizes disturbance to any other contractor working within the right-of-way. It is the responsibility of the utility owner to coordinate work with other contractors.

115.4(7) No adverse effect on highway. A utility facility shall not adversely affect the safety, design, construction, operation, maintenance or stability of the present use or future expansion of a primary highway.

115.4(8) *Safety, health and sanitation.* Construction and maintenance of a utility facility shall be accomplished in a manner that minimizes disruption of primary highway traffic and other hazards to the highway user. The utility owner shall comply with the MUTCD and all applicable federal, state and local statutes, ordinances and regulations governing safety, health and sanitation. The owner shall furnish such additional safeguards, safety devices and protective equipment and shall take such actions as are reasonably necessary to protect the life and health of the public.

115.4(9) *Parking or storage in clear zone or median.* When not in actual use, vehicles, equipment and materials shall not be parked or stored within the clear zone or median.

115.4(10) *Protection of landscaped or planted areas.* A landscaped or planted area that is disturbed shall be restored as nearly as practical to its original condition. Specific authorization must be obtained from the district representative prior to trimming trees or spraying within the right-of-way.

115.4(11) *Noncompliance.* The department may take any or all of the following actions for noncompliance with any provision of this chapter or any term of a permit:

- a. Halt utility construction or maintenance activities within the right-of-way.
- b. Withhold an adjustment reimbursement until compliance is ensured.
- c. Revoke the permit.
- d. Remove the noncomplying construction or maintenance work, restore the area to its previous condition, and assess the removal and restoration costs to the utility owner.
- e. Place all pending and future permits on hold until the issue is resolved.

115.4(12) *Private utility facility.* A utility facility that is dedicated to private use shall be accommodated in accordance with this chapter. However, the district representative may, when necessary, allow an exception to the cover requirements of subrule 115.13(1) for tile lines and sewer lines.

115.4(13) *Insufficient capacity of right-of-way.* The department shall deny issuance of a permit if it determines there is insufficient room for additional utility facilities within the right-of-way.