

APA -1
6/93

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 330 Department or Agency Board of Licensure for Professional Engineers & Land Surveyors

Rule No. Chapter 330-X-2-.01

Rule Title: Definitions

 New; X Amend; Repeal; Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, safety, or welfare? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? Yes

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have any economic impact? Yes

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

.....
Certification of Authorized Official

I certify that the attached rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama, 1975 and that it conforms to all applicable filing requirements of the Administrative Procedures Division of the Legislative Reference Service.

Signature of certifying officer Regina a. Ding
Date 5/20/2014

ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))

Control No. 330 Department or Agency Board of Licensure for Professional
Engineers and Land Surveyors

Rule No: Chapter 330-X-2-.01

Rule Title: Definitions

 New XX Amend Repeal Adopt by Reference

 This rule has no economic impact.

 XX This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:

The proposed amendment of rule provides clarification as to the inclusions and exclusions to the term "Practice of Land Surveying" as defined in Section 34-11-1(8), Code of Alabama. With the increase use of handheld devices, there has been confusion as to what activities are or are not within the practice of land surveying. Many individuals are offering a service that does not provide the property owner with correct information on property lines, etc. This proposed amendment provides guidance on what is or is not land surveying.

2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVEING THE STATED PURPOSE:

Certain aspects of gathering data on the earth are included in the definition of land surveying and a method to obtain licensure for a professional land surveyor is already in place. Those areas identified as not being within the practice of land surveying do not require a professional land surveyor license. The adoption of this amendment would clarify when a license is required and when it is not.

3. EFFECT OF THIS RULE ON COMPETITION:

There may those who have believed that they do not require licensing to perform certain aspects of surveying. This amendment may require some to acquire a professional land surveying license. If the individuals cannot meet the education, experience, and examination requirements for licensure, they will not be able to perform the functions that are identified as surveying unless they do so under the direct supervision of a licensed professional land surveyor.

4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

The cost of doing business for those who are not licensed will increase. The cost of the services may be increased since licensure would be required. If the services are already being performed by licensed professional land surveyors, there would not be an increase in the cost of services or of doing business.

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

Those that are practicing illegally would have to cease operating.

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

No additional costs involved to implement.

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

The quality of survey data and maps/databases that are developed using the survey data will be improved. The overlay maps will have a standardized base maps. The standardization of the base maps should result in fewer conflicts between the different types of overlay maps. Significant efforts have been made statewide to be able to share data gathering resources. This amendment is being proposed to assist in those efforts.

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDEN OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

Since this is a clarification of a definition of what is included in the practice of land surveying, it is unknown how many instances of those who are not licensed are currently offering services.

9. THE EFFECT ON THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

The requirement for professional land surveying licensure during these processes will protect the environment and the public health by requiring the data of our land to be mapped under specific guidelines. The areas of impact can include property boundaries, flood elevation determinations, and the tracking of erosion.

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:

Litigation involving property line disputes and challenges to FEMA flood certificates could occur.

ALABAMA STATE BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 330-X-2-.01 Definitions of Terms


INTENDED ACTION: Amend

SUBSTANCE OF AMENDMENT: The Board proposes to amend an existing rule to add a subparagraph that defines the inclusions and exclusions to the term "Practice of Land Surveying" as defined in Section 34-11-1(8), Code of Alabama and to add a subparagraph that clarifies the term " Practicing or Offering to Practice" as defined in Section 34-11-1(6), Code of Alabama.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held only if requested by an interested party. A written request should be submitted to the agency contact person listed below. Interested persons may present their views in writing to the Alabama Board of Licensure for Professional Engineers and Land Surveyors, 100 N. Union Street, Suite 382, Post Office Box 304451, Montgomery, Alabama 36130-4451.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Written comments concerning these changes must be received by the Alabama Board of Licensure for Professional Engineers and Land Surveyors no later than July 14, 2014.

CONTACT PERSON AT AGENCY: Regina A. Dinger, Executive Director; Alabama Board of Licensure for Professional Engineers and Land Surveyors; P.O. Box 304451, Montgomery, AL 36130-4451; (334) 242-5568.


Regina A. Dinger, Executive Director
Alabama State Board of Licensure for
Professional Engineers and Land Surveyors

**BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

**CHAPTER 330-X-2
DEFINITIONS**

330-X-2-.01 Definitions of Terms.

(1) Section 34-11-1, Code of Alabama 1975 provides for definitions of the following terms: Board, engineer or professional engineer, engineer intern, practice of engineering, land surveyor or professional land surveyor, land surveyor intern, practice of land surveying, practice and offer to practice, and responsible charge.

(2) The terms "consultation," "investigation," "evaluation," and "planning" as used in the definition of the practice of engineering set forth in Section 34-11-1(7), Code of Alabama 1975, shall include, but are not limited to, services provided by testing laboratories involving the selection of proper tests to be performed (consultation and planning) when done for the purpose of developing design criteria or for the purpose of determining cause of failures (investigation) and analyses to provide recommendations for the foundation and materials to be used in the design or judgment which relate to the acceptability of structural or foundation construction (evaluation). Testing and inspection do not constitute the practice of engineering (1) when they are performed in accordance with previously written standards or specifications or satisfy the standards setting forth the methods and techniques to be followed by the testing agency and no judgement is required other than a comparison of the materials in place with the previously specified standards or (2) when testing or inspection data are collected in conformance with a specific standard.

Any attempt to determine the structural integrity or capacity of a building, or any sub-system thereof, other than detection of problems by visual inspection or normal operation of the user's controls, constitutes the practice of engineering.

(3) The term "gross negligence" as used in Section 34-11-11(a)(2), Code of Alabama 1975, shall mean the practice of engineering or land surveying by a licensee characterized by the reckless disregard for the rights, safety, or welfare of others, which could result in injury or loss of life or damage to property or financial loss.

(4) The term "incompetency" as used in Section 34-11-11(a)(2), Code of Alabama 1975, shall mean the practice of engineering or land surveying by a licensee who is either incapable of exercising ordinary care and diligence, or who lacks the ability and skill necessary to properly perform the duties he or she undertakes, or who is not qualified by experience and/or education to perform adequately and competently.

(5) The term "misconduct" as used in Section 34-11-11(a)(2), Code of Alabama 1975, shall mean the practice of engineering or land surveying by a licensee who performs any acts, causes omissions or makes any assertions or representations which are fraudulent, deceitful, or misleading, or which in any manner whatsoever discredits or tends to discredit the profession of engineering or land surveying.

(6) The term "principal officer" of the firm as used in Section 34-11-9, Code of Alabama 1975, shall also be construed to mean "principal engineer" or "principal land surveyor" which is defined

as the senior technical person who is a licensed professional engineer or licensed professional land surveyor and who makes significant technical and/or contractual judgements on behalf of the firm which would affect the firm's professional reputation and liability.

(7) The term "Certification" when used in conjunction with the sealing of documents shall mean a statement signed, sealed, and dated by a licensed professional engineer or licensed professional land surveyor representing that the engineering or land surveying services addressed therein, as defined in Section 34-11-1, Code of Alabama 1975, have been performed by the licensed professional engineer or licensed professional land surveyor based on knowledge and information in accordance with commonly accepted procedures consistent with acceptable standards of practice, and is not a guaranty or warranty, either expressed or implied.

(8) The acronym NCEES as used in Chapter 330-X means the National Council of Examiners for Engineering and Surveying.

(9) The term "jurisdiction" shall mean any state, district, or territory of the United States.

(10) The term "Signature" shall mean handwritten or digital as follows:

(a) A handwritten message identification containing the name of the person who applied it;
or

(b) A digital signature that is an electronic authentication process attached to or logically associated with an electronic document. The digital signature must be:

1. Unique to the person using it,
2. Capable of verification,
3. Under the sole control of the person using it, and
4. Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

5. A digital signature that uses a process approved by the board will be presumed to meet the criteria set forth in subsections (b)1. through (b)4. above.

(11) The term "Inactive Licensee" shall mean a licensee who is not engaged in the engineering or land surveying practice which requires licensure in Alabama. No licensee granted inactive status may practice or offer to practice engineering or surveying in Alabama as defined in Code of Alabama Section 34-11-1(6).

(12) The term "Retired Licensee" shall mean a person who is retired from the profession of engineering or land surveying in Alabama.

(13) The term "Lapsed License" shall mean a license that has not been renewed as of the deadline for renewing. A license not renewed will remain in a lapsed status for a maximum of four years.

(14) The term "Expired License" shall mean a license that has been lapsed for more than four years.

(15) The term "Responsible Charge" shall mean direct control, personal supervision of, and legal responsibility for the engineering work or land surveying work performed. This responsible charge shall be of such a nature that the client may reasonably presume that the licensed engineer or land surveyor which he has employed is the provider of the professional services.

The licensed professional engineer or licensed professional land surveyor providing such control and supervision shall have made decisions on technical matters of policy and design and shall have exercised his or her professional judgment in all engineering or land surveying matters that are embodied in the design and the plans, specifications, land surveys, or other documents involved in the work. By applying his or her seal, and/or signature, and date to the final documents, the licensee signifies compliance with the requirements of these definitions and the Rules of Professional Conduct (Code of Ethics) and accepts responsibility therefore.

(16) The term "surrender" shall mean the voluntary relinquishment of a license or certificate and shall have the same force and effect as a revocation.

(17) The term "principal officer" of the firm as used in Section 34-11-9, Code of Alabama 1975, and Section 330-X-15.01 of the Administrative Code shall be construed to mean "principal engineer" or "principal land surveyor" which is defined as the designated person who is a licensed professional engineer or licensed professional land surveyor and who makes significant technical and/or contractual judgments on behalf of the firm which would affect the firm's professional reputation and liability. The principal's responsibilities include overall supervision of the firm's licensed and subordinate personnel providing engineering or surveying work in Alabama and the institution and adherence of policies of the firm.

(18) The term "testimony" as used in Sections 34-11-1(7) and 34-11-1(8), Code of Alabama 1975, shall mean a declaration made by a witness under oath or affirmation related to engineering and surveying activities in the State of Alabama.

(19) The term "supervision of construction" as it relates to an engineer shall mean the general oversight of an engineering project as it relates to the implementation of a design during construction.

(20) The inclusions and exclusions to the term "Practice of Land Surveying" as defined in Section 34-11-1(8) are:

a. Activities included within the "Practice of Land Surveying" must be accomplished by or under the responsible charge of a professional land surveyor (unless specifically exempted in subsection b of this section) include, but are not limited to, the following:

1. The creation of maps and georeferenced databases representing authoritative locations for boundaries, the location of fixed work, or topography. This includes maps and georeferenced databases prepared by any person or government agency where that data is provided to the public as a survey product.

2. Original data acquisition, or the resolution of conflicts between multiple data sources, when used for the authoritative location of features within the following data themes: geodetic control, orthoimagery, elevation and hydrographic, fixed works, private and public boundaries, and cadastral information.

3. Certification of positional accuracy of maps or measured survey data

4. Adjustment or authoritative interpretation of raw survey data

5. Geographic Information System (GIS)-based parcel or cadastral mapping used for authoritative boundary definition purposes wherein land title or development rights for individual parcels are, or may be, affected

6. Authoritative interpretation of maps, deeds, or other land title documents to resolve conflicting data elements

7. Acquisition of field data required to authoritatively position fixed works or cadastral data relative to geodetic control

8. Analysis, adjustment or transformation of cadastral data of the parcel layer(s) with respect to the geodetic control layer within a GIS resulting in the affirmation of positional accuracy.

b. Activities excluded from "Practice of Land Surveying". A distinction must be made in the use of electronic systems between making or documenting original measurements in the creation of survey products, versus the copying, interpretation, or representation of those measurements in such systems. Further, a distinction must be made according to the intent, use, or purpose of measurement products in electronic systems to determine a definitive location versus the use of those products as a locational reference for planning, infrastructure management, and general information. The following terms are not to be included as activities within the definition of the practice of land surveying:

1. The creation of general maps:

a. Prepared by private firms or government agencies for use as guides to motorists, boaters, aviators, or pedestrians

b. Prepared for publication in a gazetteer or atlas as an educational tool or reference publication

c. Prepared for or by education institutions for use in the curriculum of any course of study

d. Produced by any electronic or print media firm as an illustrative guide to the geographic location of any event

e. Prepared by laypersons for conversational or illustrative purposes. This includes advertising material and users guides.

2. The transcription of previously georeferenced data into a GIS or LIS by manual or electronic means, and the maintenance thereof, provided the data are clearly not intended to indicate the authoritative location of property boundaries, the precise definition of the shape or contour of the earth, and/or the precise location of fixed works of humans.

3. The transcription of public record data, without modification except for graphical purposes, into a GIS- or LIS-based cadastre (tax maps and associated records) by manual or electronic means, and the maintenance of that cadastre, provided the data are clearly not intended to authoritatively represent property boundaries. This includes tax maps and zoning maps.

4. The preparation of any document by any federal government agency that does not define real property boundaries. This includes civilian and military versions of quadrangle topographic maps, military maps, satellite imagery, and other such documents.

5. The incorporation or use of documents or databases prepared by any federal agency into a GIS/LIS, including but not limited to federal census and demographic data, quadrangle topographic maps, and military maps

6. Inventory maps and databases created by any organization, in either hard-copy or electronic form, of physical features, facilities, or infrastructure that are wholly contained within properties to which they have rights or for which they have management responsibility. The

distribution of these maps and/or databases outside the organization must contain appropriate metadata describing, at a minimum, the accuracy, method of compilation, data source(s) and date(s), and disclaimers of use clearly indicating that the data are not intended to be used as a survey product

7. Maps and databases depicting the distribution of natural resources or phenomena prepared by foresters, geologists, soil scientists, geophysicists, biologists, archeologists, historians, or other persons qualified to document such data

8. Maps and georeferenced databases depicting physical features and events prepared by any government agency where the access to that data is restricted by statute. This includes georeferenced data generated by law enforcement agencies involving crime statistics and criminal activities.

(21) The following items are not considered "Practicing or Offering to Practice" as defined in Section 34-11-1(6), provided that the engineer or land surveyor is licensed in another jurisdiction:

a. Advertising in publications or electronic media, provided there is no holding out of professional services in jurisdictions where not licensed

b. Responding to letters of inquiry regarding requests for proposals, provided there is written disclosure that the engineer/land surveyor and firm are not licensed in this state and the response is limited to inquiries regarding scope of project and to demonstrate interest

c. Responding to letters of inquiry from prospective clients, provided there is written disclosure that the engineer/land surveyor and firm are not licensed in this state and the response is limited to inquiries regarding scope of project and to demonstrate interest

d. Using the title/designation professional engineer, licensed engineer, P.E., professional land surveyor, licensed land surveyor, P.L.S., or the like in correspondence or on business cards from an office in the jurisdiction where licensure is held

Regardless of the above, proposals may not be submitted, contracts signed, or work commenced until the engineer/land surveyor and firm become licensed or authorized in this state.

Authority: Board

Statutory Authority: Section 34-11-1; Section 34-11-7; Section 34-11-8; Section 34-11-9; Section 34-11-35, Code of Alabama 1975

Effective date: September 10, 1982. Amended: December 19, 1984, April 9, 1990, October 18, 1994, October 28, 1998, June 4, 2003, January 19, 2005, December 5, 2006, July 27, 2012, and May 24, 2013.