

Chapter 7

Legal Considerations for Implementing an Unmanned Aircraft Program

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§ 7.01. Introduction.

On August 20, 2015, *Bloomberg Business* reported that the energy sector has “increasingly found that swapping humans for small drones equipped with high-definition and thermal cameras can save time, cut costs and improve safety.”¹ Since that time, many companies within the natural resource development and energy sector, large and small, have begun to integrate drones into their business practices. These companies are discovering that drones can allow them to monitor pipelines, roads, storage tanks, buildings, bridges and power lines and provide a critical role in emergency response.

Despite these potential benefits, many business leaders faced with the confusing and quickly changing regulatory structure surrounding drones choose to have a “wait and see” attitude. This approach is understandable,

¹ Olivia Solon, “Flying Robots Replace Oil Roughnecks,” *Bloomberg Business*, August 21, 2015, <https://www.bloomberg.com/news/articles/2015-08-21/flying-robots-replace-oil-roughnecks>.

as the risks associated with the improper or illegal use of drones can be significant.

Energy companies wishing to utilize drones should understand the recent history of drone regulation by the federal government, the current Federal Aviation Administration (FAA) statutes and regulations, including registration and operation requirements, how to best limit the risk of civil liability related to drone incidents and emerging state laws directed at drone regulation. Finally, energy companies using drones should mitigate risk to their reputations and brands by implementing a program that is transparent and respectful to the public and should require contractors to do the same.

§ 7.02. Regulatory History.

In 2012, Congress passed FAA Modernization and Reform Act (P.L. 112-095). The Act made it clear that existing FAA regulations prohibited the commercial use of unmanned aircraft and directed the FAA to integrate the new technology into the national airspace. The Act also formalized the definition of “model aircraft” as aircraft flown strictly for hobby use in compliance with community standards very similar to those previously enumerated in AC-57. For the next several years, all lawful commercial drone use was conducted pursuant to Section 333 of the Act, a provision allowing case-by-case approval of commercial operations.

In August 2016, the FAA enacted 14 C.F.R. Part 107, “Small Unmanned Aircraft Systems.” Part 107 sets forth a regulatory framework for the commercial operation of unmanned aircraft weighing 55 pounds or less. The regulation, by its own terms, does not apply to the operation of “model aircraft.” Government users may choose to operate under the requirements of Part 107 or may seek a special Certificate of Authorization or Waiver (COA) from the FAA. Commercial operators must comply with Part 107.