

OPINION



As the use of commercial drones by A/E firms expands, the insurance market is evolving as well.

Rise of the drones

By assessing how they plan to use drones, and by carefully evaluating related risks, A/E firms will benefit from this new capability.



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GUEST SPEAKERS

As more A/E firms begin integrating drones into their operations, they need to comply with new Federal Aviation Authority regulations for drone use and address a new set of related risks.

Drones – also known as unmanned aerial systems or unmanned aerial vehicles – offer design firms safer and potentially more cost-effective ways to survey and inspect project sites and/or existing structures.

Since the FAA implemented new rules for drone use at the end of August, the agency estimates 7,500 small commercial drones will be in use by 2018, including a large number by the construction industry.

While many larger A/E firms are purchasing and operating their own drones, others are considering outsourcing the services to commercial drone operators. Both approaches require evaluating related risk management measures and insurance.

Historically, most commercial general liability policies written for organizations not primarily in the aviation business include an aircraft exclusion that would negate coverage for use of drones.

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However, several insurance companies have begun to offer endorsements to CGL policies that fill this coverage gap. Meanwhile, there is a rapidly emerging market for stand-alone drone liability and property coverage.

A/E firms choosing to operate their own drones must comply with the FAA’s new small UAS rule – Part 107, which includes requirements with respect to the weight of the drone (less than 55

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pounds), as well as drone registration, operation, pilot certification, and certain restrictions.

For instance, drones must be controlled or directly supervised by an individual with “Remote Pilot in Command” certification from the FAA. The agency also stipulates that drones can be flown at a maximum altitude of 400 feet and only during daylight hours. They must be flown within the operator’s visual line of sight and cannot fly above any persons not directly participating in the operation or under a covered structure or inside a covered stationery vehicle.

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Meanwhile, insurers have established their own rules for businesses, such as design firms, seeking to obtain coverage for drones. Above all, insurers have stated they will not provide coverage for any firm not in compliance with the FAA Rule 107 requirements. Thus, any drone utilized must be registered with the FAA and operated according to the agency’s rules.

In addition, applicants for drone insurance will need to provide the following information:

- Intended use of the drone (operations/services provided)
- Size of the drone
- Number of drones operated
- Expected number of flights per year
- Controls to address privacy implications (management of video or captured images)
- Intended use of the video and images captured
- Name and remote pilot certification information of any operators

Once they qualify for drone insurance, design firms can opt to add drone coverage to an existing commercial general liability policy or obtain a quote for a mono-line drone policy. The former may be the most cost-effective option, with many insurers charging either no premium for this additional exposure or minimal additional premiums (\$250-\$500).

Note, however, that some insurers currently are not offering “Personal and Advertising Injury” coverage for drones. In these cases, drone operators would have no coverage for lawsuits claiming invasion of privacy or similar offenses.

Further, under these endorsements there is no “non-owned coverage” for utilizing subcontracted drone services. These arrangements may call for purchasing a separate insurance policy.

Additionally, at present, most insurers will not extend drone coverage to umbrella/excess policies. As a result, only the CGL policy limit (typically \$1 million) is available

to pay claims, which could leave design firms operating drones underinsured.

Finally, under this approach, there may not be any “property” coverage for damage to the drone itself or its payload (such as expensive video or electronic equipment). This protection will require purchase of separate “hull” coverage.

ASSESSING STAND-ALONE DRONE INSURANCE. The market for stand-alone drone insurance is currently competitive and evolving rapidly. Coverage can be obtained for: physical damage (hull), including the drone, cameras, sensors, and ground station equipment; as well as for liability, including non-owned aviation liability.

Many insurers now offer limits of up to \$1 million for hull/physical damage and as much as \$100 million or more for liability. Nonetheless, be sure to evaluate any stand-alone drone policies carefully and assess any coverage restrictions, such as exclusions or sublimits.

MANAGING OUTSOURCED DRONE EXPOSURES. A/E firms choosing to use outsourced drone vendors should make sure the vendor has related experience or can demonstrate the capabilities required to effectively and safely undertake your work.

A key issue in using outsourced drone operators involves contractual risk transfer. The contract should define obligations and describe services provided. It should also contain an indemnity clause in favor of the A/E firm. The contract should spell out insurance requirements and name the A/E firm as an additional insured on the drone operator’s liability policy.

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Because drone insurance coverage can vary, it may be prudent to contractually require the subcontracted drone operator to provide you with a copy of the actual insurance policy and all endorsements. That way, you can review any exclusions or other coverage terms to ensure you are truly protected.

As the use of commercial drones by A/E firms expands, the insurance market is evolving as well. By assessing how they plan to use drones, carefully evaluating related risks and taking appropriate measures to manage them, design firms will be in position to get the most from this exciting new capability. ▀

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