India

Aviation, Aerospace & Transportation

May 18, 2016

Indian Regulator to Consider the Civil and Commercial Use of Drones

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Last month, India's civil aviation regulator, the Directorate General of Civil Aviation (DGCA), issued draft guidelines proposing a framework to regulate the civil and commercial use of unmanned aerial systems or drones ("Guidelines"). Comments are due by May 21, 2016. This is a pivotal moment in India's adoption of the use of drones, and it presents an important opportunity for industry stakeholders to voice their opinion in order to better ensure India's rules are harmonized with international best practices.

Overview of the proposed Guidelines

Drones are becoming increasingly popular in India and are readily available on the Internet. They have been enthusiastically adopted mostly by movie studios, real estate companies and wedding planners, who are using drones to capture panoramic views and otherwise difficult-to-capture aerial shots. This despite a ban imposed in 2014 by the DGCA on the civil and commercial use of drones. The ban was met with considerable opposition with several industries making a case that drones can be used effectively and safely in a variety of scenarios. In the preamble to the Guidelines, the DGCA acknowledges the constructive uses of drones in several areas such as for monitoring of critical infrastructure such as power plants, ports and pipelines, as well as for aerial mapping, which is particularly useful in agriculture and wildlife assessment and for assessing damage after natural calamities among others.

The Guidelines therefore reverse the overarching ban and instead seek to regulate the use of drones for civil applications by licensing the operator and the unmanned aerial system (UAS) intended for civil use. The Guidelines classify drones as Micro (less than 2 kgs[1]), Mini (greater than 2 kgs but less than 20 kgs[2]), Small (more than 20 kgs but less than 150 kgs[3]) and Large (greater than 150 kgs).

[1] About 4.4 pounds

[2] About 44 pounds

[3] About 330 pounds

Registration requirements. The DGCA will permit civil operations of UAS at or above 200ft above ground level (AGL) in uncontrolled airspace. The Guidelines stipulate that any UAS intended to be operated in India will need to be registered and issued a Unique Identification Number (UIN) by the DGCA. As an indicator of ownership the UAS will need to be affixed with a UIN and a radio frequency ID tag.

Natural persons or companies wanting to engage in civil operations of drones ("operator") will require an authorization to engage in the activity in the form of an Unmanned Aircraft Operator Permit (UAOP) issued by the DGCA. The UAS operator will need to file a flight plan[4] and obtain additional approvals from the local Air Traffic Services (ATS) unit and the local district commissioner. Security clearance of the operator firm/company from the Bureau of Civil Aviation Security (BCAS) is a precondition for the grant of a UAOP with personnel approved by the operator to fly the UAS also having to clear security checks. Further, the operator will have to intimate the local ATS unit, the BCAS, aerodrome operator and the local administration, before the commencement of UAS operations. Intimation is also required in the event of termination or cancelation of UAS operations. UAOPs will be valid for a period of two years. Renewals will require security clearance from the Ministry of Home Affairs and the BCAS. UAOPs will not be transferable.

The Guidelines restrict who can apply for an UIN by stipulating that an UIN would be granted to a natural person who is a citizen of India or, to a body corporate (i) that is registered in India and has its principal place of business within India (ii) whose chairman and at least two-thirds of its director are citizens of India and (iii) whose substantial ownership and effective control vest with Indian nationals.

Conditions of operation. Guidelines state that drones cannot be flown over restricted areas such as nuclear stations and military facilities, within 30 kms radius from the center of India's capital, New Delhi or within 50 kms of India's international borders. The Guidelines do not indicate if a more comprehensive list of restricted airspaces will be notified to include airspaces above other strategic locations. As a condition of operation, drones will also have to fly with 500m of visual line of sight for the entire length of the flight. Again, the Guidelines do not indicate if this requirement is applicable to all categories of drones or restricted to micro and mini UAS. Drones can be operated only during daylight when ground visibility is 5kms and surface winds are not more than 20 knots. Drones cannot be launched when rain or storm condition warnings are in force.

UAS operations below 200ft AGL in uncontrolled airspace and clear of notified, restricted, temporary segregated and temporary reserved areas will be exempt from obtaining an UAOP registration in order to conduct operations. Further model aircraft, which are described as UAS without payload and meant solely for recreational purposes flying below 200ft in uncontrolled airspace will also be exempt from requiring a UAOP registration. The Guidelines appear to suggest that permission for operating exempt categories of UAS may nonetheless be required from local authorities.

In what will have implications for delivery service companies the Guidelines stipulate that drones cannot "drop substances" unless they are specifically authorized to do so. Drones will also not be permitted to carry dangerous goods and animal or human payloads.

[4] The flight plan is intended to convey information on description of the type and purpose of the intended operation, flight rules, dates of intended flights(s), departure/destination points, cruising speed, level, route, duration, maximum climb and descent rates, range, endurance, frequency of flights, location of remote pilot stations, payload information, proof of adequate insurance and contact details of the remote pilot station and pilot.

Comparison with the U.S. Framework

With these Guidelines, India has followed the U.S. Federal Aviation Administration (FAA), which has already granted over 5,000 Section 333 exemptions to allow commercial operators to use UAS in the national airspace. In the U.S., the first UAS users were public institutions and agencies that the FAA authorized to fly with a Certificate of Waiver or Authorization (COA) to conduct UAS research and development. The FAA allowed the first commercial small UAS (sUAS) operations under Section 333 exemption in September 2014. The Indian Guidelines appear to take example on the U.S. approach. Registration and operational requirements, similar to the FAA requirements, seem to indicate India's willingness to be more flexible for drone users.

Similarities. Currently, only government agencies can fly UAS in India. With the Guidelines, both private and commercial drone users could operate in the national airspace under the same requirements. The FAA makes a distinction based on the weight of the UAS and between commercial and recreational use of drones. Flying a UAS for commercial purposes in the U.S. requires a Section 333 exemption and a COA, or a Special Airworthiness Certificate for experimental or restricted categories. In addition, the UAS must be registered with the FAA and the pilot must obtain an FAA airman certificate. Civil operators who get a Section 333 exemption also get a "blanket COA" authorizing sUAS to fly at or below 400 feet, operate during daytime Visual Flight Rules (VFR) conditions, within visual line of sight of the pilots and maintain distances away from airports or heliports.

A UAS operator flying from or within the restricted area of an airport must obtain a separate COA specific to the proposed flight on or near an airport, also referred as a "full COA." In India, the concepts of a "blanket COA" and restricted areas are reflected in the proposed regulations. Nuclear stations, military facilities, the country's capital, New Delhi, and international borders are among the restricted areas addressed in the Guidelines. Moreover, UAS operations below 200 feet, similar to the previous U.S. "blanket COA," in uncontrolled airspace will be exempt from the registration requirements.

FAA requirements. The FAA is currently developing rules and policies, and is at the forefront of the UAS framework that allows for commercial operations of drones. Among them, an FAA rulemaking for sUAS is expected at the end of June. The rule would limit flights to daylight and visual-line-of-sight operations, and would address height restrictions, use of visual observer, registration and operational requirements. The proposed Indian framework for UAS does not yet address different rules for the different categories of drones.

The FAA has demonstrated its willingness to be more flexible as the UAS operational and safety framework evolves. Last month, the FAA approved the first nighttime operation for commercial UAS under heightened safety requirements and monitoring. Last week, the FAA announced the creation of a new broad-based advisory committee to provide advice on key unmanned aircraft integration issues and its plans to relax existing restrictions to allow students to fly UAS as part of their coursework. Once the Guidelines are adopted, India will likely follow a similar path to respond to local industry pressure to further open the national airspace to UAS operations.

Conclusion. Both in India and in the U.S., the driving force for UAS regulations is the local industry eager to exploit innovative UAS applications. India's industry is now waiting for the government's clearance to take off. The U.S. initiated the UAS integration in the national airspace four years ago and is moving fast to allow a seamless registration process and safe operations. This encourages other countries like India to walk in their footsteps. The Guidelines are an important first step to allow the civil and commercial use of UAS. Even though adjusted to the current framework and needs of the country, India's approach to regulate UAS is similar to that of the U.S. The country will likely develop further regulations in the next few

years to adapt to the likely pressure from the industry. Given the rapid growth of India's industry and the multitude of possibilities that UAS offer, these new rules could have a significant impact on sUAS developments.

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