

ATC Readbacks



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In this edition of *US AIRWAVES* is a short article by an ALPA Senior Attorney, Mr. Jim Johnson. Mr. Johnson explains an interpretative ruling recently released by the Federal Aviation Administration (FAA). This interpretative ruling may have serious effects on us.

Below is some supplementary information to Mr. Johnson’s article in an effort to improve understanding by all pilots.

Early in 1999, the FAA lost another enforcement action case where a pilot made a readback and the controller did not correct the erroneous readback. The National Transportation Safety Board (NTSB) ruled in favor of the pilot. In an earlier case, a pilot mistakenly accepted the clearance for another aircraft. Although he made a full readback with his aircraft’s identification, the controller did not correct the mistake. A loss of separation occurred and the FAA filed certificate action against the pilot. The NTSB ruled in favor of the pilot.

In response to this and other similar cases, the Legal Department of the FAA issued an interpretive rule. They wanted to change the rules so that a pilot is deemed to be in violation of the Federal Aviation Regulations (FARs) no matter what the cause of the miscommunication between the controller and the pilot.

ALPA’s response was quite strong. Mr. Johnson sent a letter to the head of the Legal Department of the FAA expressing our view on this rule. In that letter, Mr. Johnson asked that a reevaluation of the rule be undertaken. We are awaiting a reply.

Additionally, Captain Paul McCarthy, Executive Air Safety Chairman, sent a letter to the

Acting Associate Administrator for Air Traffic Services, Mr. Steven J. Brown. In that letter, Captain McCarthy expressed ALPA’s views on the shortcomings of this interpretive rule.

One of the important issues brought forward in Captain McCarthy’s letter is the loss of judicial process. Under the rule brought forward by the FAA, a pilot is presumed guilty and the Administrative Law Judge’s only involvement is to determine the amount of sanction. The question is not if a pilot is guilty, but only how much punishment is warranted. This is a most serious change in our legal protections. No longer do we enjoy a check and balance from an erroneous allegation. The FAA now says we are guilty when *they allege* a violation occurred.

At the 1999 ALPA Air Safety Forum, an FAA representative stated that there was no change in how they processed an operational error made by a controller. Many in the audience realized that now the FAA could charge *both* the pilot and the controller for a loss of separation. The pilot would be charged with failure to comply with an air traffic control clearance and the controller would be charged with failing to correct the readback.

This condition of both the pilot and the controller being culpable is unprecedented. Simply stated, it is wrong. What can we do about this abrogation of our rights?

During the Air Safety Forum many Safety representatives met and talked about what actions are appropriate. Captain McCarthy’s letter to Mr. Brown and Mr. Johnson’s letter to the Legal Department of the FAA is only the beginning. FAA Administrator Garvy will soon be

notified of the ALPA position. The Legislative Affairs representatives are beginning to explain the serious deficiencies in the FAA's rule to Senators and Representatives.

Other pilot groups share our concern. Together we will bring a strong coalition to the FAA. As the ultimate user of the FAA's air traffic system, pilots must have the right of a fair judicial review. A condition or rule that is obviously wrong, unfair, and unjust has to be changed.

The change in the readback rule affects all of us every time we fly. As always, we are required to pay close attention to instructions issued by ATC. If, however, we readback what we understood the instruction to be, and fly our airplane in accordance with the clearance we readback, how can we be held in violation? This fundamental question goes unanswered by the FAA. How can a person be held responsible for a clearance they did not hear? How can a person comply with an altitude restriction that they do not understand? The FAA's rule runs counter to reason, fairness, and past practice.

Until changes are made in this rule, all of us must recognize our exposure to potential certificate action. We should ask for verification if there is *any* question about a clearance. We

should readback all components of a clearance. Full readbacks help the controller even during periods of heavy traffic. Additionally, a full readback will make it clear to an administrative law judge that a "vigilant listening watch" is being maintained. We should also advise ATC any time a radio is garbled or unclear. No matter how hectic or frantic the pace of the controller, we must ensure that we understand all parts of a clearance and that the controller hears our readbacks.

One last item that is worthy of note. In the Federal Register Volume 64, number 62 dated April 1, 1999, the FAA cites requirements from the FARs. Specifically, they cite regulations in effect from 1955 through 1962; they apply that language into today's air traffic control system. All of us that fly the high-density corridors of the northeast know of the major changes in traffic levels since 1962. Pilots and controllers have managed to dramatically increase the traffic flow without decreasing safety. The lawyers of the FAA are now attempting to undo the successes we have enjoyed. They seem to think it is still 1962.



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ATC Clearance Readbacks No Longer Protect Pilots

Jim Johnson, ALPA Senior Attorney

It has been a common practice for pilots to ensure that they have correctly understood an ATC clearance to read it back. If the controller does not respond, it was understood by both the pilot and controller to mean that the read back was correct.

On April 1, 1999, the FAA, in “knee jerk” response to an NTSB decision exonerating a pilot who had read back a clearance intended for another aircraft, issued an interpretation of 14 CFR § 91.123 that alters this practice. The interpretation states that “the simple act of giving a readback does not shift full responsibility . . . to air traffic control and cannot insulate pilots from their primary responsibility to listen attentively, to hear accurately and to construe [ATC instructions] reasonably in the first instance.” The FAA warned that pilots would be held responsible in an enforcement action even if a clearance was read back. The FAA allowed that a full readback of an air traffic control transmission could result in mitigation of any penalty but not be a defense to a violation when the controller reasonably should have corrected the error but fails to do so. Thus, with the stroke of a pen, the FAA significantly altered a long-standing pilot and controller relationship to the detriment of pilots and safety.

This ruling stems from the NTSB decision in *Administrator v. Merrill*. In that case, the pilot mistakenly accepted a clearance issued for another aircraft. He read back the clearance. However, the readback was blocked by another transmission. Hearing no response, Merrill relied on the long-standing practice and concluded that the clearance as read back was correct and complied with the ATC instruction. The FAA pursued enforcement action against Merrill, seeking a 60-day suspension of his license. The NTSB dismissed the action and ruled that “pilots who make a full readback, and thereby do everything they can to provide ATC with the opportunity to correct any misunderstandings, do not violate [FAR] 91.123.”

The FAA, in issuing its interpretation, which the NTSB is bound by law to follow, will now hold a pilot responsible for a miscommunication with ATC even when an ATC instruction is read back. ALPA has vigorously protested this interpretation to both the Associate Administrator for Air Traffic Services and the FAA’s chief counsel.

As ALPA explained in its communications to the FAA, the readback process is time tested and has been endorsed by a number of human factors, working groups, and other professional organizations. The ATC system functions as a cooperative system in which all participants must share the responsibility for accurate communications. Pilots recognize that ATC communications can be miscommunicated and to compensate for this situation, they have adopted the practice of reading back all ATC instructions even though it is not required. Pilots believe that the readback process is a safety net for the system and represents their contribution towards eliminating misunderstandings. ALPA strongly urged the FAA to rescind its interpretation.

ALPA is awaiting a response to its protests. However, until the FAA rescinds this interpretation, pilots cannot rely on readbacks to protect them from miscommunications and possible enforcement action. To insure a clearance is correct, the safest course for pilots to follow is to request that the controller verify the clearance. While this verification request is burdensome to both pilots and controllers, it is the only method now available to avoid and protect pilots from ATC miscommunications.