DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

Pilot Responsibility for Compliance With Air Traffic Control Clearances and Instructions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interpretive rule.

SUMMARY: Pilots operating in areas in which air traffic control is exercised are required by regulation to comply with the clearances and instructions of air traffic controllers except in very narrow circumstances. The FAA has consistently construed and enforced this requirement as ascribing to pilots a high level of responsibility to monitor air traffic control communications attentively. Under normal circumstances, the FAA has expected pilots to understand and to comply with clearly transmitted and reasonably phrased clearances and instructions that govern their operations. Nevertheless, a series of recent National Transportation Safety Board (NTSB) enforcement decisions has raised a question regarding the regulatory responsibility of pilots to hear and to comply with air traffic control clearances and instructions. This interpretive rule confirms the FAA's historical construction of its regulations that require compliance with air traffic control clearances and instructions.

EFFECTIVE DATE: This document is effective March 26, 1999.

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SUPPLEMENTARY INFORMATION:

History

The FAA's general operating and flight rules require pilots to comply with the clearances and instructions of air traffic control, unless they are amended, except in an emergency or in response to a traffic alert and collision avoidance system resolution advisory. Although a number of aviation regulations are based on this requirement, the general responsibility of pilots to comply with air traffic control clearances and instructions is presently located at 14 CFR 91.123 (a) and (b). Aviation regulations according the same responsibility as section 91.123 have existed in similar terms for many decades.

As a practical matter, air traffic control communications rely heavily on accurate verbal radio communication. As a result, the FAA has long considered that aviation safety requires air traffic control to function as a cooperative system, in which all participants must share the responsibility for accurate communication. In the FAA's view, the duty of pilots and air traffic controllers alike is adherence to a high standard in communicating clearly, listening attentively, and understanding reasonably.

Bearing in mind these shared responsibilities, when a miscommunication or misunderstanding occurs, the FAA deems responsible the participant who is the initiating or principal cause of the error. For example, the use of unclear terminology, a failure to hear accurately, or a failure to understand a clear transmission can be the initiating or principal cause of a miscommunication. An example in which an air traffic controller's role excuses the pilot might arise from the controller's issuance of an ambiguous clearance or use of misleading terminology that reasonably causes the pilot's misunderstanding. An example in which neither air traffic control nor the pilot is to blame for a miscommunication might exist when the aircraft's radio fails.

With respect to the level of attention and comprehension expected of pilots, an interpretation of a regulatory predecessor to 14 CFR 91.123 was published with the regulation from 1955 through 1962.[1] This interpretation reflects an expectation that pilots will pay particular attention to the transmissions of air traffic control, because air traffic controllers frequently must issue clearances that differ from those that pilots anticipate.

> It is important that pilots pay particular attention to the air traffic clearance and not assume that the route and altitude are the same as requested in the flight plan. It is suggested that pilots make a written record of clearances at the time they are received [] and verify the clearance with Air Traffic Control if any doubt exists.

This interpretative language captures the general responsibility of pilots to remain attentive to the content of air traffic control transmissions, as well as the duty of pilots to resolve any confusion they perceive by contacting air traffic control. The FAA's codification of the latter aspect of these responsibilities currently appears in 14 CFR 91.123(a), which requires pilots to request clarification in the event that they are uncertain about an air traffic control clearance or instruction.

With respect to the more general duty of pilots to remain attentive to and to comprehend air traffic control transmissions, the FAA considers responsibility to hinge on the circumstances. It is air traffic control's practice not to presume that a pilot has received a clearance or instruction unless the pilot first acknowledges receipt of the radio transmission. When a clearance or instruction is issued and acknowledged but the pilot nevertheless fails to comply with the transmission, the FAA construes its regulations to indicate pilot responsibility where neither air traffic control involvement nor a mechanical problem causes the pilot's lapse. Thus, when air traffic control transmits a clearance or instruction that is properly acknowledged and there is no evidence of radio malfunction or similar interference with receipt, the FAA presumes that the radio transmission is received in the aircraft cockpit. Based on the pilot's duty to listen attentively to air traffic control transmissions and to construe them reasonably, if a clearance or instruction is reasonably phrased and received in the cockpit, the pilot's failure to hear or to understand it is the result of the pilot's negligence.

In reviewing the FAA's enforcement of FAA regulations, the NTSB has historically agreed with the FAA's construction of the air traffic control regulations. In *Administrator* v. *Wolfenbarger*, for example, an NTSB administrative law judge dismissed the FAA's allegation that a pilot did not comply with an air traffic control instruction to stop his aircraft short of the active runway. Noting that the pilot's radios were working and that air traffic control's radio transmissions were being broadcast, the NTSB granted the FAA's appeal.

> Whether radio frequencies are mis-selected, whether a pilot does not hear because his attention is elsewhere, or whether he hears a transmission but chooses to ignore it, is irrelevant. * * * As the Administrator points out * * *, the law judge's construction (that a pilot might excusably miss an air traffic control transmission without reason] would lead to avoidance of all [air traffic control]) instruction violations simply by claiming that they were not received. Not only is this

[1] 20 FR 2512, 2523 & n.3 (1955) (promulgating 14 CFR 60.21–1); *see, e.g.*, 14 CFR 60.21–1 n.3 (1962).

a strained reading, but it is inconsistent with our prior interpretation of the rule.[2] Similarly, in *Administrator* v. *Nelson*, the NTSB agreed that the text of an air traffic control clearance supported the conclusion that the pilot did not exercise the high level of care and attention expected of him when he mistakenly took a clearance, because it was directed to another aircraft. Although a portion of the clearance may have been blocked and therefore not received by the pilot, the NTSB found that the pilot should not have construed the clearance to be directed to his aircraft.[3]

Related to the responsibilities of pilots and air traffic controllers in conducting radio communications, the NTSB has added to a pilot's full and complete readback—or verbal repetition—of an air traffic control clearance or instruction offers a level of redundancy that reduces the risk of miscommunication.[4] At the same time, the NTSB acknowledged that FAA regulations do not require pilots to give a full and complete readback. The NTSB observed that there is concern that full readbacks can lead to the congestion of radio frequencies and in some instances disserve air safety.[5]

Nevertheless, when pilots incorrectly repeat air traffic control transmissions, the NTSB's apparent preference for full readbacks has led to two inconsistent lines of case law. The first line of NTSB reasoning generally accords with the FAA's interpretation of FAA regulations. In these cases, the NTSB concludes that an air traffic controller's failure to identify and to correct a pilot's erroneous readback contributes to the pilot's error and warrants a mitigation of the sanction for the pilot's regulatory violation.[6]

A second line of NTSB decisions, which diverges from the FAA's longstanding construction of FAA regulations, suggests that providing a readback will excuse the pilot even if the pilot is the initiating or principal cause of a miscommunication. In *administrator* v. *Frohmuth*, the NTSB appeared to base its decision on a finding the air traffic controller initiated and then supported the two pilots' misunderstanding.[7] In language not directly required for its legal conclusion, the NTSB added that the pilots' full readback placed responsibility to correct the error on air traffic control.[8] Regardless, the NTSB acknowledged the importance of pilots' careful attention to air traffic control transmissions and specified that pilots will, as a general rule, be held responsible for their mistakes.[9]

Despite the limiting language in *Frohmuth*, the NTSB recast the decision the following year in *Administrator* v. *Atkins*, developing a line of reasoning that does not hold pilots responsible for the errors that they initiate.

> (In *Frohmuth*), we clarified [our] precedent by explaining that even if a deviation from a clearance is initiated by an inadvertent mistake on the pilot's part, that mistake will be excused and no violation will be found if, after the mistake, the pilot takes actions that, but for [air traffic control], would have exposed the error and allowed for it to be corrected.[10]

The NTSB expanded this reasoning to excuse pilots based on certain partial readbacks in its decision in *Administrator* v *Rolund*.[11] In *Rolund*, the NTSB accepted that a pilot, without explanation, did not hear the altitude portion of his clearance, although he correctly read back another portion of the clearance.[12] The NTSB excused the pilot from responsibility despite his failure to provide a full and complete readback, concluding that the air traffic controller should have questioned the pilot about the part of the clearance that the pilot failed to read back.[13]

More recently, in *Administrator* v *Merrell*, the NTSB excused a miscommunication for which the pilot was the initiating or principal cause due to an unexplained ''error of perception,'' resulting in the pilot's acceptance of a clearance for another aircraft and a loss of separation between two commercial flights.[14] The NTSB agreed that the pilot's unexplained error caused the miscommunication and also seemingly agreed that there was no prior or subsequent air traffic control contribution to the pilot's error.[15] The NTSB excused the pilot's error based on his readback, although the pilot's readback was blocked by another radio transmissions and could not have been received and corrected by air traffic control.[16]

The NTSB's line of reasoning originating in *Frohmuth* and presently culminating in *Merrell*, in effect, substitutes a duty to provide a full or, in some cases, a partial readback for a pilot's duty to listen carefully to and understand reasonably the air traffic control transmissions received in his or her aircraft. The NTSB's interpretation does not correspond to the FAA's construction of FAA regulations and requires correction.

Interpretation

The NTSB's *Frohmuth*-based line of decisions deviates from an accurate construction of the FAA's regulations governing air traffic control communications. These FAA regulations require pilots to comply with air traffic control clearances and instructions. Contrary to the NTSB's reasoning, pilots do not meet this regulatory imperative by offering a full and complete readback or by taking other action that would tend to expose their error and allow for it to be corrected. Readbacks are a redundancy in that they supply a check on the exchange of information transmitted through the actual clearance or instruction. Full and complete readbacks can benefit safety when the overall volume of radio communications is relatively light; however, they can be detrimental during periods of concentrated communications.

Giving a full readback of an air traffic control transmission could result in the mitigation of sanction for a regulatory violation when the air traffic controller, under the circumstances, reasonably should correct the pilot's error but fails to do so. Accordingly, the FAA may take this factor into consideration in setting the amount of sanction in FAA enforcement orders. However, the simple act of giving a readback does not shift full responsibility to air traffic control and cannot insulate pilots from their primary responsibility under 14 CFR 91.123 and related regulations to listen attentively, to hear accurately, and to construe reasonably in the first instance.

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[2] *Wolfenbarger*, No. EA–3684, 1992 WL 289055, at *3 (N.T.S.B. Oct. 8, 1992) (citation omitted).

[3] *Nelson*, 2 N.T.S.B. at 1900, 1902 (1975).

[4] *See, e.g.*, *Administrator* v. *Hinkle*, 5 N.T.S.B. 2423, 2425–26 (1987).

[5] *Hinkle*, 2 N.T.S.B. at 2426.

[6] *See Administrator* v. *Swafford*, No. EA–4117, 1994 WL 108069, at *2–3 (N.T.S.B. Mar. 31, 1994) (reversing the administrative law judge's initial decision dismissing the FAA's complaint, reinstating two pilots' regulatory violations, and reducing the sanction for the violations).

[7] No. EA–3816, 1993 WL 75479, at *2 (N.T.S.B. Mar. 18, 1993).

[8] *Frohmuth*, No. EA–3816, 1993 WL 75479, at *2–3.

[9] *Frohmuth*, No. EA–3816, 1993 WL 75479, at *2.

[10] *Atkins*, No. EA–4078, 1994 WL 49589, at *2 (N.T.S.B. Feb. 16, 1994).

[11] No. EA–4123, 1994 WL 132539, (N.T.S.B. Apr. 8, 1994) (order denying reconsideration), *aff'd*, 57 F.3d 1144 (D.C. Cir. 1995).

[12] *Rolund*, No. EA–4123, 1994 WL 132539, at *2.

[13] *Rolund*, No. EA–4123, 1994 WL 132539, at *2.

[14] No. EA–4530, 1997 WL 335741, at *2 (N.T.S.B. Mar. 12, 1997), *recon. denied*, No. EA–4670, 1998 WL 309790 (N.T.S.B. June 11, 1998), *petition for review docketed*, No. 98–1365 (D.C. Cir. Aug. 7, 1998).

[15] *Merrell*, No. EA–4530, 1997 WL 335741, at *2; *Merrell*, No. EA–4670, 1998 WL 309790, at *1 & 3 n.4.

[16] *Merrell*, No. EA–4530, 1997 WL 335741, at *1, 2; *Merrell*, No. EA–4670, 1998 WL 309790, at *1 & 3 n.4.

Economic Considerations

This interpretation is not a change to the subject regulation that must undergo the economic analyses prescribed in Executive Order 12866 or the Regulatory Flexibility Act of 1980. It is not ''a significant regulatory action'' as defined in the Executive Order or the Department of Transportation Regulatory Policies and Procedures. This interpretive rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. Because this interpertive rule merely provides the correct interpretation of a regulation as the FAA has enforced it, it does not impose a separate economic impact, and no further economic evaluation is warranted.

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Administrator.

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