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## **ATC Communications - Readback Rules**

You will look in vain for a rule in Part 91 that expressly requires the readback of an ATC clearance or an instruction. Of course, there are rules that expressly require compliance with air traffic control clearances (FAR 91.123(a)) and air traffic control instructions (FAR 91.123(b)). The exceptions to these rules are very limited and principally involve emergency situations. These express rules are ones that are taught and learned, and tested by the FAA. Our practice to repeat clearances and instructions received from ATC does not stem from a regulatory responsibility to do so, but comes from our interest in making sure we are accurately following ATC directions that are designed to keep us safe in our flying. By default, this practice also helps us be sure we are satisfying our regulatory responsibility to comply with that specific clearance or instruction.

That is, time and experience has dictated a practical rule to the effect that all air traffic control clearances and instructions should be repeated back to the controller to the extent practical (in some high traffic areas with frequency congestion it may not always be practical). One thing that comes through loud and clear from past FAA enforcement cases is that a pilot can avoid a lot of grief by giving a full readback. If the clearance or instruction was not properly communicated or understood, a pilot's readback gives the controller an opportunity to correct the misunderstanding. If the controller does not correct the readback, or the misunderstanding was caused by some mechanical or other problem not the fault of the pilot, or if the controller initially caused the misunderstanding, the violation of the clearance or instruction rule will be excused or mitigated. That is how the practical or "not-quite-a-regulation" came into being.

The classic case illustrating this "not-quite-a-regulation" involved a Northwest Airlines flight that was departing the Los Angeles area, having been cleared by air traffic control to climb to 17,000 feet. While Northwest was on the radio frequency and executing the climb, the controller cleared a different aircraft - an American Airlines flight - to flight level 230 (23,000 feet). The Northwest captain mistakenly thought that the clearance intended for the American flight was for his Northwest flight. And so, the Northwest captain acknowledged the clearance with a full readback. The controller did not correct the readback. Northwest proceeded to change altitude. The controller saw the Northwest radar return indicating a climb through 17,000 feet and corrected the situation, but not before there was a loss of standard ATC separation between the two flights.

What happened was that the Northwest captain's readback was stepped on by the American flight's acknowledgement of the clearance. As a result, the controller never heard Northwest's readback, and the Northwest captain did not know that his readback had not been received by ATC.

The FAA brought a violation action against the Northwest captain for deviating from his assigned altitude in violation of the ATC clearance given to him, which was appealed to the National Transportation Safety Board. The NTSB excused the violation entirely because of the full readback. Not satisfied with the outcome of full exoneration for a pilot's mistake, the FAA then issued an interpretive rule (not a regulation in FAR Part 91) restricting the effect of the NTSB decision by saying that: "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."

The result of this case was the birth of a helpful "not-quite-a-regulation" that should be taught and learned. And, the point should be made that while a readback is not ordinarily a regulatory requirement, it is sometimes made a requirement when a readback is specified in a clearance or an instruction. For example, you may sometimes hear on the air "readback all hold short instructions" or the like. Failure to read back could then become a violation of FAR 91.123.

Also remember, if there's a hint of a problem during any flight, file an ASRS or ASAP report, as applicable. Not only may doing so help you, but it may help the system if a deficiency is identified that can be remedied before the issue results in a tragedy.

Finally, the FAA's current Compliance Program <https://www.faa.gov/about/initiatives/cp/> is designed to allow the FAA to resolve minor, inadvertent regulatory violations, such as ATC deviations or recently expired currency or medical certification, without taking enforcement action to suspend a pilot's certificate as was the case with the Northwest pilot. The program relies on a certain level of cooperation with the FAA that would then support the FAA's use of "...non-enforcement methods for correcting unintentional deviation or noncompliance that arise from factor such as flawed systems and procedures, simple mistakes, lack of understanding, or diminished skills." That said, it would be wise to consult with competent counsel before *over-cooperating* with the FAA during an investigation.