

TRANSPORT CANADA
SAFETY AND SECURITY

MINISTER'S OBSERVER

Manual
of
Policies and Procedures

PREFACE

To fulfill Transport Canada's mission to develop and administer the policies, regulations and procedures for the best possible transportation system, the Department must have the capability to obtain timely information about transportation occurrences.

Recognizing the Minister of Transport's responsibilities for transportation safety, the Canadian Transportation Accident Investigation and Safety Board Act allows an observer designated by the Minister to attend any investigation of a transportation occurrence being conducted by the Transportation Safety Board.

This manual contains the policy, standards and guidelines to be used to accomplish the objectives of the Minister's Observer Program within the Aviation, Marine and Rail modes of the Department. The Program is a vital part of the Department's safety activities. It is intended to access the information uncovered during a Transportation Safety Board investigation to allow the Department to react to any condition or situation that requires immediate corrective action.

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Deputy Minister**

MINISTER'S OBSERVER MANUAL

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1.0 MINISTER'S OBSERVER POLICY

- 1.1 The Minister of Transport, as a minister having a direct interest in the subject matter of an investigation may, in accordance with subsection 23(2) of the Canadian Transportation Accident Investigation and Safety Board (CTAISB) Act, designate a person to attend as an observer at a transportation occurrence being investigated by the Transportation Safety Board (the "Board").
- 1.2 The person designated as an observer is defined as being the "Minister's Observer" and the program which results in the training, accreditation and designation of an individual to act as a Minister's Observer is described as being the "Minister's Observer Program". This manual establishes the policies and standards that govern the Minister's Observer Program.
- 1.3 Senior officials of Transport Canada (the "Department") will, on the behalf of the Minister and in accordance with this policy manual, designate a Minister's Observer to attend any aviation, marine and rail occurrence that is the subject of an investigation by the Board. The Department may also assign a Minister's Observer to those transportation occurrences being assessed for potential investigation or that are the subject of statistical recording actions.

2.0 PURPOSE OF THE MINISTER'S OBSERVER PROGRAM

- 2.1 The purpose of the Minister's Observer Program is to obtain timely information relevant to the Minister's responsibilities for safety and to contribute to the identification and evaluation of hazards revealed by investigations into aviation, rail, and marine occurrences.
- 2.2 The Minister's Observer will obtain factual information from an ongoing investigation, advise the Department of any significant regulatory factors, identify deficiencies that require immediate corrective actions and coordinate the required support to an occurrence investigation. The Minister's Observer will not participate in any regulatory investigation or enforcement action taken by the Department in relation to any occurrence to which the observer is assigned.

3.0 APPLICATION

- 3.1 The policy and general guidelines in this document apply to the aviation, rail and marine modes that fall within the Minister's and the Department's jurisdiction. These policies will be supplemented by functional directives containing any special procedural requirements specific to each mode of transportation. This manual supersedes the 3rd Edition of TP 11776 dated September 1995 and incorporates changes to reflect the amendments to the CTAISB Act dated 18 June 1998.

4.0 LEVEL OF RESPONSE

- 4.1 The Department's response to an incident or accident must be appropriate to the severity of the occurrence, the potential for a similar occurrence and the complexity of the investigation. The duties of the Minister's Observer may be discharged by a regional office of the Department and the decision to send a Minister's Observer to the accident site is the responsibility of the designating authority. Minister's Observers who are not deployed to the site shall make arrangements with the Board Investigator-In-Charge (TSB IIC) to receive briefings on the progress of the investigation.

5.0 RESPONSIBILITY

- 5.1 The responsibilities associated with this program are summarized as follows:
 - a) The Assistant Deputy Minister, Safety and Security is responsible for establishing the policy and standards for the Minister's Observer Program;
 - b) The Director General Safety Programs, Strategies and Coordination (SPSC) is responsible for monitoring the conduct and effectiveness of this program and for conducting periodic reviews of its applicable policies and standards;
 - c) The modal Directors General are responsible for developing and publishing the functional procedures, including reporting procedures required to achieve the objectives of this program, for monitoring the conduct of the program and, in collaboration with SPSC, for the provision of the training required for individuals who may be designated as a Minister's Observer;
 - d) The Regional Directors General are responsible for the provision of resources for the conduct of the program and for ensuring compliance with the standards detailed in this policy manual; and,
 - e) The modal Regional Directors, in conjunction with the modal Directors General, are responsible for the accreditation and designation of the individuals selected for this appointment and for the timeliness and quality of the required reports.

6.0 STATUS OF THE MINISTER'S OBSERVER

- 6.1 Personnel who are considered by the accrediting authority to meet the standards prescribed for appointment may, in accordance with the appropriate functional directives, be accredited as a Minister's Observer and be designated as Minister's Observer to a specific investigation pursuant to paragraph 23(2)(b) of the CTAISB Act.
- 6.2 Section 10 of the CTAISB Regulations allows a person who is given observer status, subject to any conditions imposed by the Board and under the supervision of a TSB Investigator, to:
- a) Attend the location of the accident, incident or special situation;
 - b) Examine the ship, railway rolling stock or aircraft involved including its component parts and contents;
 - c) Examine, unless prohibited by law, any records or information pertaining to the occurrence which took place; and,
 - d) Attend laboratory tests and/or analyses.
- 6.3 The designation of a Minister's Observer for a specific investigation conducted by the Board is the prerogative of the Minister and the Department. The Board may require a written acknowledgment of the conditions imposed on the observer if attendance at an investigation is required. This action is only a confirmation that the observer is aware of the conditions. It does not imply that the Board is responsible for the acceptance or approval of the person designated by the Minister to attend as an observer.
- 6.4 The rights and privileges granted to an observer shall not, unless authorized by the Board, include attendance at an interview of a witness during an investigation.
- 6.5 Once a Minister's Observer has been designated to attend an investigation, the individual remains the Minister's Observer until the Board issues the final report or until the designated individual is formally relieved of the responsibility by the designating authority.
- 6.6 Other Transport Canada employees with specialist skills and knowledge in the matter under investigation may be assigned by the designating authority to assist the Minister's Observer as required. The activities of these specialists and their attendance at the investigation site shall be coordinated by the Minister's Observer with the TSB IIC. An individual assigned to attend or assist a Minister's Observer is subject to all of the applicable restrictions under the CTAISB Act that apply to a Minister's Observer and the presence of a Transport Canada specialist in conjunction with, or on behalf of the Minister's Observer, does not mean that the responsibility of the Minister's Observer has passed to that individual.

7.0 CONFLICT OF INTEREST

- 7.1 Subsection 23(3) of the CTAISB Act allows the Board to remove an observer from an investigation if the observer contravenes a condition imposed by the Board on the observer's presence or if, in the Board's opinion, the observer has a conflict of interest that impedes the conduct of the investigation.
- 7.2 Conflict of interest can arise when a condition or factor could compromise the independence of the Board relative to the regulatory body. This includes the designation as an observer of anyone who is engaged in a regulatory investigation or enforcement action of the same occurrence or who might be interviewed by the TSB relative to the same occurrence. Conflict of interest could also arise if someone uses information obtained from their privileged relationship to the investigative process other than for the development of corrective actions.

- 7.3 Designating authorities must make every effort to ensure that no conflict of interest exists or appears to exist prior to designating a Minister's Observer. The Minister's Observer must ensure that no actions on the part of any Transport Canada employee during the investigation are in conflict. If conflict of interest occurs while the investigation is in progress, the TSB IIC may take action to have the Minister's Observer officially removed, and if this occurs, the Board should immediately notify the designating authority.

8.0 ACCREDITATION STANDARDS

- 8.1 A Transport Canada employee who is classified as a Civil Aviation Inspector, Civil Aviation Safety Inspector, Senior Marine Surveyor, Rail Safety Inspector, Security Inspector or a Dangerous Goods Inspector may be accredited as a Minister's Observer providing the accrediting authority has established that this person:
- a) has sufficient knowledge of the relevant sections of the CTAISB Act;
 - b) Is familiar with, as considered relevant to the accident, the Aeronautics Act, Canada Shipping Act, Marine Transportation Security Act, Railway Safety Act and the Transportation of Dangerous Goods (TDG) Act, and any other applicable regulations related to the mode of transportation being investigated;
 - c) Is familiar with the conventions and established procedures used by the Board for accident investigations and with the conditions that may be imposed on an observer by the Board;
 - d) Understands the concepts of evaluating and classifying accident situations based on the interrelationship of the personnel, equipment, environmental and management factors;
 - e) Has demonstrated the ability to identify systemic deficiencies from an evaluation of the results of an occurrence investigation;
 - f) Is capable of determining what factors are of particular interest to the Minister and the Department during the course of an occurrence investigation;
 - g) Is familiar with the application of the risk management process; and,
 - h) Has been given the opportunity to become familiar with the personnel and the operational procedures of the regional TSB offices.
- 8.2 Provision of the training required for an individual to act as a Minister's Observer is the responsibility of the modal Director General. Completion of the training and demonstrated ability to apply the standards specified in this manual will qualify individuals to be accredited as Minister's Observers.

9.0 ACCREDITATION AUTHORITY

- 9.1 Accreditation of a qualified individual as a Minister's Observer is the responsibility of the modal Regional Director and/or the modal Director General. This accreditation is granted when a person selected for their experience and suitability has attained the standards specified in this manual. A list of accredited Minister's Observers will be maintained by the modal Regional Directors and at the modal Directorate.
- 9.2 This accreditation is valid for an indefinite period, subject to an annual review by the accreditation authority, and is validated by the retention of the individual's name on the list of accredited Minister's Observers. A copy of this list will be provided to the Board and to the Director General, SPSC.

10.0 DESIGNATION AUTHORITY

- 10.1 The modal Regional Directors will designate, on behalf of the Minister and by means of a functional directive, an accredited person to be a Minister's Observer to an investigation of a transportation occurrence within their region. The person exercising this delegated authority shall ensure that these designations are made in consideration of the individual's knowledge of the operational conditions, equipment and facilities associated with the occurrence that is the subject of the investigation by the Board.
- 10.2 The formal designation of a Minister's Observer consists of a memorandum from the designating authority specifying the individual and the occurrence. It shall be addressed to the Board with copies to the modal Director General and to the Director General, SPSC. The memorandum form is contained in an appendix to the procedural guidelines. The designating authority will provide an amending memorandum if the Minister's Observer is changed for any reason.
- 10.3 Notwithstanding the authority delegated in Section 10, the designation of a Minister's Observer by a Regional Director may be superseded on the direction of the Deputy Minister if the Minister's interests may be better served by the provision of a Minister's Observer from headquarters or from another region. This action may be necessary in the case of a high profile or complex investigation and the modal Director General will designate the Minister's Observer in these cases. If this action is taken, the region of occurrence will be consulted and will have the option to assign an advisor to the investigation.

11.0 DUTIES OF THE MINISTER'S OBSERVER

- 11.1 The duties of the Minister's Observer are to:
- a) Contact the TSB IIC and proceed to observe the investigation and examine information and materials as allowed by the CTAISB Act and Regulations;
 - b) Collect, consolidate and report all factual information concerning the occurrence to the Department;
 - c) Identify any issues relevant to the Minister's responsibilities relating to:
 - (i) Possible inadequacies of any Act, Regulation, Order, Certification Document or Standard issued by the Department;
 - (ii) The performance of any Transport Canada facility or service;
 - (iii) The competence of any Transport Canada personnel or agency; and,
 - (iv) The presence of any inappropriate or deficient safety-related information, recommended practices or guidelines issued on the behalf of the Department.
 - d) Bring to the attention of the Department the possible need for a separate regulatory investigation;
 - e) Arrange, if required by the Department or if requested by the Board, for the assignment of specialist Transport Canada Aviation, Marine, Rail or Dangerous Goods advisors to assist the Minister's Observer;
 - f) Coordinate, in conjunction with the TSB IIC, the activities of any Transport Canada personnel assisting in the Board's investigation;
 - g) Evaluate the occurrence and advise the Minister and the Department of any circumstances that, in the observer's opinion, could constitute a deficiency that should be addressed by the Department;

- h) Attend, as required, any testing or research conducted by the Board or the Department in support of the investigation or coordinate the attendance of qualified Transport Canada specialists at test facilities or laboratory examinations; and,
 - i) Be prepared to brief Transport Canada officials on the proceedings of the investigation, including the identification of any hazards or system deficiencies and any potential recommendations that may result from the investigation.
- 11.2 The Minister's Observer will ensure that there is a mutual exchange of information between the representatives of the Board and the Department during the conduct of an investigation. The Minister's Observer will coordinate with the TSB IIC to ensure the accuracy of the factual information contained in the Minister's Observer report and should keep the Board informed of any potential corrective activities that may be under consideration by the Department.

12.0 MINISTER'S OBSERVER REPORTS

- 12.1 A report provided by the Minister's Observer shall consist of the factual information concerning the circumstances, personnel and equipment involved in an occurrence and the observations of the Minister's Observer as to what may represent any critical or sensitive areas relevant to the Minister's responsibilities.
- 12.2 The Minister's Observer report should be as concise as possible, contain sufficient detail to identify the equipment and the operation involved and allow the reader to understand the implications of the opinions and recommendations provided by the Minister's Observer. It is the responsibility of the modal authorities to determine the format of these reports and to ensure that instructions with respect to the format are included in the appropriate procedural directives for each mode.
- 12.3 Factual information shall be kept separate from the observations in a Minister's Observer report. The observations or subjective opinions of the Minister's Observer shall be considered as being advice to the Minister but they are not to be construed as being an official position attributable to the Minister or the Department.
- 12.4 The amount of detail and supporting information included in a Minister's Observer report is determined by the severity of the occurrence and the scope of the investigation. Although the information reported may be expanded or modified at the discretion of the Minister's Observer, the Minister's Observer report will normally include:

Factual Information

- a) Factual details. Factual information relating to the occurrence such as: time, location, equipment, operator or any other relevant aspects of the occurrence; and,
- b) Description of the Occurrence. A sequential description of what type of equipment became involved in an occurrence and under what circumstances and conditions. This narrative will identify the initiating and successive events which were involved in the occurrence and which factors resulted in damage, injury or death.

Observations

- a) Department Responsibilities. The observations or subjective opinions of the Minister's Observer relating to regulatory aspects or any other Transport Canada responsibilities in accordance with paragraph 11.1(c) of this manual; and,

- b) Functional Evaluation. The Minister's Observer's analysis and assessment of the factors involved in the occurrence and any suggestions for corrective action.
- 12.5 The Minister's Observer will, in consideration of the progress of the investigation, send an **Initial Minister's Observer Report** as soon as is practical. This report will detail the basic circumstances of the accident as best as these are known and, if possible, provide a preliminary assessment about any possible safety or regulatory deficiencies.
- 12.6 The Minister's Observer will send **Update Reports** as the investigation progresses and when additional information becomes available concerning the items mentioned in paragraph 11.1(c) of this manual. These reports will be sent as required and will be numbered in sequence. When the investigation has been concluded, the Minister's Observer shall provide a final report to include, if required, any comments on administrative or procedural improvements that may be needed to the Minister's Observer Program.
- 12.7 The designating authority will coordinate the distribution of Minister's Observer reports. Normal distribution of the reports shall include as a minimum the designating authority, the modal Director General and the Director General, SPSC. The distribution of reports containing sensitive material or advice should be limited to the aforementioned parties. In such circumstances, the need for the subsequent internal distribution of a report, or any extracts from a report required to substantiate corrective action, will be determined by these individuals.
- 12.8 The information acquired by the Minister's Observer may be used in the preparation of departmental briefing notes to inform senior management about the progress and implications of an ongoing investigation. The actual preparation and distribution of a briefing note is a management responsibility and is not part of the Minister's Observer's duties.

13.0 REGULATORY INVESTIGATIONS

- 13.1 The Minister's responsibilities for the development, administration and enforcement of regulations require that the Department conduct an investigation to determine if there are any regulatory deficiencies or violations linked to an occurrence and, if this is established, to carry out enforcement action. The assignment of a Minister's Observer does not limit the responsibility of the Department for initiating any such regulatory investigation or special purpose audit when the situation appears to warrant such action.
- 13.2 If, during a TSB investigation, the Minister's Observer becomes aware of information that suggests regulatory investigative action is required, the Minister's Observer shall advise the designating authority. Whenever the Department initiates a regulatory investigation while the Board's investigation is in progress, the Minister's Observer and the Board shall be informed. Minister's Observers will not conduct or be engaged in any regulatory or enforcement activity associated with the occurrence for which they have been assigned as Minister's Observer.
- 13.3 Regulatory investigations conducted by the Department are completely separate from the Board's investigation and the activities of the Minister's Observer, but the factual information gathered by the Minister's Observer is to be made available to the Department's investigation.

- 13.4 Subsection 22(1) of the CTAISB Act requires the Department, upon being notified of an occurrence that the Board has the power to investigate, to provide the Board with the particulars of the occurrence and to advise the Board of any investigation or remedial measures the Department plans to take. Section 22 of the Act allows a TSB investigator to attend as an observer at any investigation conducted by the Department and specifies that any interim or final reports made by the Department in respect to these investigations shall be provided to the Board.
- 13.5 If the Department is investigating an occurrence and/or takes any remedial measures with respect to an occurrence, Section 15 of the Act requires the Board and the Department to take all reasonable measures to coordinate their activities. In the event of any conflicting interests that may arise during these coordinating activities the requirements of the Board take precedence and are paramount, but nothing prevents the Department from taking emergency remedial actions made under any other act or regulation.

14.0 JURISDICTION OF THE BOARD

- 14.1 Subsection 14(3) of the CTAISB Act states that, notwithstanding any other Act of Parliament, the Department may not commence an investigation into a transportation accident for the purposes of making findings as to its causes and contributing factors if the accident is being investigated, or is proposed to be investigated by the Board.
- 14.2 However, paragraph 14(4)(a) of the CTAISB Act states that nothing in subsection 14(3) prevents a department from commencing or continuing to investigate a transportation occurrence for any other purpose other than making findings as to its causes and contributing factors, or from investigating any matter that is related to a transportation occurrence which is not being investigated by the Board.

15.0 CONFIDENTIALITY

- 15.1 In order to allow the Minister's Observer to comment freely on the whole range of potential hazards and system deficiencies, it is essential that a degree of confidentiality be imposed on the accessibility and distribution of a Minister's Observer report. Consequently, in derogation to normal government policy concerning the release of accessible information, no part of a Minister's Observer report shall be made available to persons other than those authorized to receive this information pursuant to the provisions of this manual, except through a formal Access to Information Request.
- 15.2 With respect to the release of information subsequent to an Access to Information request, Minister's Observers should be aware of the following:
- a) Factual information contained in a Minister's Observer report would normally be releasable if requested under the Access to Information Act;
 - b) Observations and recommendations constituting advice to the Minister would, subject to review, not normally be releasable under the Access to Information Act;
 - c) Information contained in a Minister's Observer report that concerns an ongoing Board investigation would, subject to review, not normally be releasable if the release could be injurious to the conduct of the investigation;
 - d) Personal information may only be released if:
 - i) the individual consents to the disclosure;

- ii) the information is already publicly available; or,
 - iii) the release is in accordance with the Privacy Act.
- e) Third party information that is detrimental to an individual or an organization cannot be released without the consent of the third party; and,
- f) Persons making requests for information that has already been placed in the public domain by another source (e.g. Board, Coroner, Police, and Media) will normally be directed to that source to obtain the information.

16.0 PUBLIC COMMUNICATIONS

- 16.1 The duties of a Minister's Observer do not include communicating with the public. Any communications with the public or the press should be done through the Department's communication personnel in accordance with any applicable departmental procedure.

17.0 TSB REQUEST FOR PERSONAL INFORMATION

- 17.1 Personal information held by the Department and which is requested by the Board will only be disclosed in accordance with paragraph 8(2)(c) of the Privacy Act, which requires the receipt of a written request specifying the purpose of the investigation and the information required.
- 17.2 When the Board's Investigator requests personal information, the Board will submit a TSB Request For Disclosure Form and the Department will provide the information requested on the form. The disclosure form is contained in an appendix to the procedural guideline annex.

18.0 PRIVILEGED INFORMATION

- 18.1 The CTAISB Act assigns degrees of privilege to on-board voice recordings, video recordings, communication records and witness statements. The Act specifies who may have access to this information and how it may be used.
- 18.2 The Minister's Observer must be familiar with the definitions, restrictions on use and confidentiality described in Sections 28, 29 and 30 of the CTAISB Act which pertain to the following privileged sources of information:
- a) On-Board Recordings. The whole or any part of any recording, transcript or substantial summary of voice communications originating from, or received on or in the flight deck of an aircraft, the bridge or a control room of a ship, or the cab of the locomotive, where the recording equipment is not controlled by the operating personnel. Every on-board recording is considered privileged information and no person shall knowingly communicate such a recording or permit it to be communicated to any person; or be required to produce it or give evidence relating to it in any legal, disciplinary or other proceedings.
 - b) Communication Records. This is the whole or any part of any record, recording, copy, transcript or substantial summary of any type of communications between specified persons pertaining to air, marine and rail traffic control.

Any communication recording relating to any occurrence being investigated by the Board must be released to an investigator who requires access to that recording, but a recording obtained under the authority of the CTAISB Act shall not be used against any person in any legal proceeding or, subject to any applicable collective agreement, in any disciplinary proceedings.

- c) Statements. The whole or any part of any oral, written or recorded statement or transcript or substantial summary of a statement relating to an aviation, marine or rail occurrence, and includes conduct that could reasonably be taken to be intended as a statement. Where a statement is privileged, the identity of its author is privileged to the same extent. A statement shall not be used against a person who makes it in any legal or other proceeding, except in a prosecution for perjury or for giving contradictory evidence or a prosecution under Section 35 of the CTAISB Act.

19.0 ACCESS TO PRIVILEGED INFORMATION

- 19.1 Subsections 28(4) and 30(3) of the CTAISB Act state that the Board may make such use of any on-board recordings or statements as it considers necessary in the interests of transportation safety, but shall not communicate any part of an on-board recording that is unrelated to the contributing factors of the occurrence under investigation. However, factual information derived from these sources may, at the discretion of the Board, be included in a briefing or in any interim report provided to the Minister's Observer and, although the source of the information cannot be identified, the factual data obtained from the privileged sources can be made available to the Minister's Observer.
- 19.2 Should the Minister's Observer consider that information required for the substantiation of a safety hazard exists only in an on-board recording or other privileged source of information, the Minister's Observer may request factual information concerning a specific part of a recording or statement to assist in the identification of a safety deficiency. In seeking access to this privileged information, the Minister's Observer must clearly state the area of concern, understand that it is the Board's decision whether to provide this information and that such information cannot be used for any other purpose or be communicated to any other agency.

20.0 PUBLIC INQUIRIES

- 20.1 The Board may hold public inquiries into transportation accidents. Minister's Observers may be required by the Department to attend and provide support to the Department of Transport spokesperson during any such inquiries.

21.0 ACCIDENTS OUTSIDE OF CANADA

- 21.1 An accident involving Canadian-registered ships, aircraft and railroad rolling stock outside of Canada may be investigated by another country in accordance with international agreements. The Minister's Observer Program does not apply to an investigation conducted by another state.
- 21.2 Aircraft accidents and incidents are investigated in accordance with ICAO Annex 13 (International Standards and Recommended Practices, Aircraft Accident/Incident Investigation) while accidents occurring to Canadian registered ships outside of Canadian waters are investigated in accordance with IMO Resolution A849(20). Investigations of railway accidents involving Canadian owned and operated railway equipment that occur in the United States are investigated by the National Transportation Safety Board (NTSB).
- 21.3 International agreements allow Canada to appoint an Accredited Representative to an air or marine investigation conducted by another state. This representative is provided by the Board and the Department may appoint an Advisor to work with the Accredited Representative. The Advisor will normally be appointed by the modal Director General and will act in accordance with the applicable international agreements under the direction of the Accredited Representative. An Advisor assigned to the Accredited Representative during an investigation being conducted outside

of Canada will participate fully in the investigation as required by the applicable agreements. In the event that the Board does not appoint an Accredited Representative, the Department may do so.

PROCEDURAL GUIDELINES

GENERAL

Purpose

The following guidelines have been prepared for the use of Transport Canada personnel who have been designated as Minister's Observers. These guidelines are intended to assist in the application of the policy and standards established for the conduct and administration of the Minister's Observer Program.

Status of the Minister's Observer

The CTAISB Act authorizes the Minister of Transport to designate a representative to observe an investigation being conducted by the Board. The assignment, by the Department, of an individual to an investigation by the Board, is made on the behalf of the Minister of Transport. The responsibilities of an observer are detailed in the Minister's Observer manual and should be referred to if explanations are required about the purpose or application of this program.

Generalist Approach to an Investigation

Individuals are selected to be Minister's Observers on the basis of their experience in a specific field and may, therefore, not have expert knowledge in all areas. However, the Minister's Observer is required to consider all aspects of the Department's responsibilities and must be familiar with the departmental organization in order to be able to access the appropriate expertise and information that is required.

Identification of Cause

Any investigation, examination, inquiry or study into the circumstances of a transportation occurrence undertaken by or on behalf of the Department should be limited to the identification of hazards and the provision of recommendations for corrective actions. The assessment of cause and contributing factors is not required and is specifically excluded from the department's mandate if the Board is investigating the occurrence.

TRAINING

The training required for accreditation of an observer will be in accordance with the functional directives issued by the modal Director General and may be conducted in conjunction with other specialist training. The syllabus and training for a Minister's Observer will be subject to review and monitoring as per Section 5.1(b). The training will include an introductory module given by SPSC on the departmental objectives and priorities with respect to the Minister's Observer Program.

Once accredited as an Minister's Observer, the individual should make every attempt to maintain a degree of familiarity with any investigations or activities being conducted by the Board for their area of interest and should be aware of any recent trends in modal accident causes.

Familiarity with the TSB

An individual on the accredited Minister's Observer list should maintain contact with the regional TSB staff and be familiar with their operating procedures. It is an advantage to acquire this personal knowledge before being assigned as an observer to a specific investigation and prior to appearing at the scene of an accident.

Inter-Branch Familiarity

Every attempt should be made to introduce managers and key personnel who might be required to assist in an investigation into the duties and purpose of the Minister's Observer Program. This could be accomplished by giving lectures or briefings during training seminars.

REPORTING PROCEDURES

Modal Procedures

Within the Department there are specific occurrence reporting procedures for each mode. The Minister's Observer must be familiar with these procedures in order to ensure that the factual information in these reports is compatible with the information provided by the Minister's Observer.

Regional Operations

Regional resources have been allocated to respond to occurrence reporting requirements. In some cases, a 24-hour facility is used, while in others a supervisory staff call-out procedure is used. The Minister's Observer must be familiar with the notification system that each region is required to have in place to coordinate the collection and distribution of occurrence reports between the Board and the Department.

ACTION ON APPOINTMENT

Confirmation of Appointment

The Minister's Observer assigned to an investigation by the Board should immediately confirm their appointment and establish a working relationship with the TSB IIC.

Passage of Information

It is essential that an adequate degree of coordination be exercised in the transmittal of information between a Minister's Observer at an occurrence site and the regional offices following a transportation occurrence. The Minister's Observer should immediately establish a link to the regional or headquarters OPI who is tasked to distribute a report.

The regional contact must be able to check and compare the information provided from all sources to avoid any duplication or contradiction in the information provided within the Department and for directing the reports containing any recommendations for corrective action to the applicable offices of technical interest. The designating authority should establish who is responsible for the preparation and coordination of any documents or reports associated with an occurrence to ensure the accuracy and consistency of the information.

During the initial phase of a Board investigation of a major accident or a critical or high profile occurrence, briefing notes are prepared and distributed within the Department as soon as possible by regional and headquarters management. Although the Minister's Observer is not responsible for writing these notes, the information provided by the Minister's Observer can be used to assist in the preparation of briefing notes.

The HQ modal offices are often required to prepare Anticipated Oral Question Period (QP) Briefing Notes to assist the Minister to respond to questions on transportation matters in the House. These notes are coordinated by the Ministerial Liaison and Public Rights Branch of SPSC.

Scope of the Investigation

The Board is required to inform the Minister of Transport, or any other Minister with a direct interest about the particulars of any occurrence and advise the Minister of any investigation that it plans to conduct and the scope of such an investigation. The Minister's Observer must be aware of the scope and intent of the Board with respect to an investigation as soon as possible to ensure the Departmental offices concerned with an issue are informed.

ACTIONS DURING AN INVESTIGATION

Deployment

If sent to an accident scene, the Minister's Observer should establish his/her presence with the TSB IIC as soon as possible. Upon arrival, the Minister's Observer will confirm his/her location, point of contact and methods for passing information to the regional office.

Investigative Activities

Any request from the TSB IIC for the Minister's Observer to perform investigative duties during an investigation should be respectfully declined since it could be in conflict with the interests of the Department. However, the Minister's Observer may support the Board in the investigation by providing or obtaining specialized knowledge and expertise to assist in the development of a factual record. In addition, if the observer considers that no conflict of interest will be created, an observer may help to examine and identify recovered wreckage, interpret information and perform any other activities or functions for which the observer is qualified.

Access to Reports

Although a completed copy of a Minister's Observer report can be provided to the Board on request, the Minister's Observer should, in addition and throughout the course of the investigation, make every attempt to inform the TSB IIC of any regulatory concerns being addressed and identify any corrective actions being considered by the Department.

REPORT WRITING

Standards

Minister's Observer's reports must be accurate and timely since they are essential to the identification of deficiencies and for ensuring that the issues disclosed during an investigation can be addressed. These reports are an important source of information for senior management and should be written in a logical sequence in an approved format and reflect a high degree of professionalism.

Observations

Since the Minister’s Observer reports may contain observations or subjective opinions about deficiencies on the part of an individual, an operator or the Department, this element of the report must be kept separate from any factual information. It may be more appropriate to include any critical observations in a follow-up report, particularly if these remarks refer to an individual or organization. The Minister’s Observer must also ensure that any opinions expressed are directly related to the situation and do not include unsupported references to previous occurrences or regulatory actions.

Terminology

The utilization of a Minister’s Observer report for subsequent promotional and functional analysis depends on presenting information in a standardized format using key words and phrases. This will allow for specific data searches and reviews of reports for common safety issues.

Confidentiality

The Minister’s Observer must be aware of the sensitivity concerning the sources of the information included in a report. The items of factual information included in a report should not be attributed to a witness or to any specific source. It is sufficient to state, “the vehicle was determined to be traveling at high speed”, rather than saying, “A witness saw the vehicle....”

FUNCTIONAL EVALUATION

The Minister’s Observer has the option to include an evaluation of the contributing factors associated with any deficiency depending on the depth of the investigation and information available. The process which results in the assignment of factors to the circumstances of an accident or incident is not an end in itself but is a means of identifying problems. The application of a standard set of definitions for the common significant factors that are repeated in any accident leads to the formulation of effective preventative measures.

The classification, by the Minister’s Observer, of the personnel, equipment, environmental or management factors present in the accident circumstances will be made in accordance with the evaluation guidelines given in the functional directives. This process will be used to substantiate any recommendations for further investigation and/or corrective actions that the Minister’s Observer feels is appropriate at this point or in the future.

**APPENDIX 1 TO
ANNEX A - TP 11776**



MEMORANDUM NOTE DE SERVICE

TO
À

┌ TSB MODAL OFFICE ┐
└ ┘

Security Classification de sécurité
Your Reference/Votre référence
5002-0-000

From
De

REGIONAL MODAL DIRECTOR

Our Reference/Notre référence
Date MONTH /DAY/YEAR

Subject
Objet

MINISTER'S OBSERVER DESIGNATION

In accordance with Subsection 23(2) of the CTAISB Act, the Minister of Transport hereby designates _____ to attend an investigation as a Minister's Observer of an occurrence, which took place at _____ date _____.

Modal Director
Applicable Region

REGION
FILE
NCR MODE
SPSC

**APPENDIX 2 TO
ANNEX A - TP 11776**

**TSB REQUEST
FOR PERSONAL INFORMATION**

OCCURRENCE _____

LOCATION: _____

DATE: _____ TSB FILE #: _____

In accordance with paragraph 8(2)(e) of the Privacy Act, I, _____ a duly appointed investigator of the Transportation Safety Board, hereby request the following documents containing personal information, for the purpose of carrying out a lawful investigation into the circumstances of the above-noted occurrence.

DESCRIPTION:

SIGNATURE: _____ DATE: _____