

CHAPTER 35

THE REPORT OF SURVEY SYSTEM

SENIOR OFFICER LEGAL ORIENTATION COURSE

I. REFERENCES.

- A. AR 735-5, Policies and Procedures for Property Accountability, 10 June 2002.
- B. AR 600-4, Remission of Indebtedness for Enlisted Members, 1 Dec. 83.
- C. AR 15-185, Army Board for the Correction of Military Records, 29 Feb 00.
- D. AR 25-50, Preparing and Managing Correspondence, 5 Mar. 01.
- E. AR 15-6, Procedures for Investigating Officers and Boards of Officers, 30 Sep. 96
- F. DA Pam 735-5, Survey Officer's Guide, 1 Mar. 1997.
- G. DA Pam 710-5, Unit Commander's Supply Handbook, 15 April 1987.
- H. www.usapa.army.mil (Official Army regulation and pamphlet website).

II. INTRODUCTION.

- A. Applicability. AR 735-5 applies to all elements of the U.S. Army and to all U.S. Army property. While processing time and authority levels differ, the general substantive provisions apply equally to:

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1. Active Component.
 2. U.S. Army Reserve and National Guard.
 3. Department of the Army (DA) Civilians.
- B. Purposes. AR 735-5, para. 13-1.
1. Document circumstances of loss, damage or destruction of Government property.
 2. Serve as a voucher for adjusting property books.
 3. Document a charge of or relief of financial liability.
- C. The report of survey or any other method used to enforce property accountability is not intended as corrective action or punishment. However, commanders are not precluded from using administrative or disciplinary measures if appropriate. AR 735-5, para. 12-1.

III. ALTERNATIVES TO REPORTS OF SURVEY.

- A. Statement of Charges/Cash Collection Voucher when liability is admitted and the charge does not exceed one month's base pay. (These two functions have been combined in the new DD Form 362 which rescinds the independent DD Form 1131, Cash Collection Voucher.)
- B. Cash sales of hand tools and organizational clothing and individual equipment.
- C. Unit level commanders may adjust losses of durable hand tools up to \$100 per incident, if no negligence or misconduct is involved.
- D. Abandonment order may be used in combat, large- scale field exercises simulating combat, military advisor activities, or to meet other military requirements.

- E. Recovery of property unlawfully held by civilians is authorized — show proof it is U.S. property and do not breach the peace.
- F. AR 15-6 investigations and other collateral investigations can be used in conjunction with the DA Form 4687 as a substitute for report of survey investigations.
- G. If the **approving authority** determines that no negligence was involved in the damage to the property no report of survey is required. The approving authority assumes all responsibility for computation of charges and notification to the respondent.

IV. THE REPORT OF SURVEY SYSTEM (AR 735-5 CHPS. 13 AND 14).

- A. Initiating the Report of Survey.
 - 1. The Active Army will initiate and present reports of survey to the appointing or approving authority not later than **15 calendar days**. U.S. Army Reserve will initiate and present reports of survey to the appointing or approving authority not later than **75 calendar days** after the date of discovering the discrepancy. Army National Guard will initiate and present reports of survey to the appointing or approving authority not later than **45 calendar days** after date of discovering the discrepancy Active Army requirement of **15 calendar days**. 735-5, para. 13-7.
 - 2. The goal? A thorough investigation.
 - 3. A unit **must** initiate a report of survey when:
 - a. An individual refuses to admit liability and negligence or misconduct is suspected.
 - b. A higher authority or other DA regulation directs a report of survey.
 - c. A sensitive item is lost or destroyed.

- d. Property is lost by an outgoing accountable officer, unless voluntary reimbursement is made for the full value of the loss.
 - e. The amount of loss or damage exceeds an individual's monthly base pay, **even** if liability is admitted.
 - f. The damage to government quarters or furnishings exceeds one month's base pay.
 - g. The loss involves certain bulk petroleum products.
4. Certain losses require an AR 15-6 investigation as the underlying investigative mechanism. A ROS DA Form 4697 will be completed as the adjustment document, but the appointing or approving authority will not conduct a separate Report of Survey investigation. These types of losses include:
- a. Sensitive items.
 - b. Items enumerated in AR 190-11, app. E.
- B. Total processing time. Total processing time is computed by subtracting the approval date from the initiation date minus time used to notify respondent of rights. Under normal circumstances these time constraints are as follows:
- 1. The U.S. Army Reserve component: 240 days (8 months).
 - 2. The Army NG: 150 days (5 months).
 - 3. The Active Army Component: 75 days (2 1/2 months).
- C. Approval/Appointing Authority. AR 735-5, para. 13-16.

1. The approving authority is an Army officer, or DA civilian employee authorized to appoint a survey officer and to approve reports of survey “by authority of the Secretary of the Army.” The approving authority does not have to be a court-martial convening authority.
 - a. U.S. Army Active and Reserve Components. The minimum grade for an approval authority is LTC (O-5) or above, DA civilian in a supervisory position in the grade of GS-14 or above.
 - b. Army National Guard. The minimum grade for an approval authority is a federally recognized COL (O-6) commander.
2. The appointing authority is an officer or civilian employee designated by the approving authority with responsibility for appointing report of survey investigating officers.
3. Generally, a lieutenant colonel (05) commander is both appointing and approval authority.
4. Retained Approval authority. When a Colonel (O-6)/ GS 15 or above retains approval authority, he or she may designate a Lieutenant Colonel (05) (or major in a lieutenant colonel billet) or DOD civilian employee in the grade of GS-13 (or a GS-12 in a GS-13 billet) or above as an appointing authority.
5. Regardless of who initiates the report of survey, it is processed through the chain of command of the individual responsible for the property at the time of the incident, provided the individual is subject to AR 735-5. AR 735-5, para. 13-4.

D. Survey Officer Qualifications. AR 735-5, para. 13-26.

1. The survey officer will be senior to the person subject to possible financial liability, “except when impractical due to military exigencies.”

2. The survey officer can be an Army commissioned officer; warrant officer; or enlisted soldier in the rank of Sergeant First Class (E-7), or higher; a civilian employee GS-07 or above; or a Wage Leader (WL) or Wage Supervisor (WS) employee. In joint commands or activities, any DOD commissioned or warrant officer or non-commissioned officer E-7 or above assigned to the activity or command can be the survey officer.
3. Consult AR 600-8-14, table 8-6 for the grade equivalency between military personnel and civilians employees.
4. The Survey officer's primary duty is the investigation.
 - a. The U.S. Army Reserve Component: **60 Calendar days** to complete investigation.
 - b. The Army National Guard: **60 Calendar days** to complete investigation
 - c. The Active Army Component: **30 Calendar days** to complete investigation.
5. The surveying officer **should** get a briefing from a judge advocate.

V. VALUING THE LOSS.

A. Types of Loss.

1. Loss. There are two types of losses which can result in financial liability:
 - a. Actual loss. Physical loss, damage or destruction of the property.
 - b. Loss of accountability. Due to loss circumstances, it is impossible to determine if there has been actual physical loss, damage, or destruction because it is impossible to account for the property.

2. The **actual value** at the time of the loss is the **preferred method** of valuing the loss. AR 735-5, App. B, para. B-2a.
 - a. Determine the item's condition item at the time of the loss or damage.
 - b. Determine a price value for similar property in similar condition sold in the commercial market within the last 6 months.

3. Depreciation.
 - a. **Least** preferred method of determining the loss to the government. AR 735-5, App. B, para. B-8.
 - b. Compute charges according to AR 735-5, App. B, para B-2b.

4. Limits on financial liability. AR 735-5, para. 13-39.
 - a. **General rule:** An individual will not be charged more than one month's base pay.
 - (1) Charge is based upon the soldier's base pay **at the time of the loss.**
 - (2) **For ARNG and USAR personnel, base pay is the amount they would receive if they were on active duty.**
 - (3) For civilian employees it is 1/12 of their annual salary.
 - b. **Exceptions** to the general rule. There are times when personnel are liable for the **full amount of the loss.** AR 735-5, para. 13-39a.

- (1) Any soldier is liable for the full loss to the Government (less depreciation) when they lose, damage, or destroy personal arms or equipment.
 - (2) Any person is liable for the full loss of public funds.
 - (3) Accountable officers will be liable for the full amount of the loss.
 - (4) Any person assigned government quarters is liable for the full amount of the loss to the quarters, furnishings, or equipment as a result of **gross negligence or willful misconduct** of the responsible individual, his guests, dependents, or pets.
5. Collective Financial Liability: Two or more persons may be held liable for the same loss.
- (1) There is no comparative negligence.
 - (2) Financial loss is apportioned according to AR 735-5, Table 12-4.
 - (3) DO NOT use Table 12-4 if one of the collective liability respondents is not federally employed AR 735-5, para. 13-39d.
 - (a) Take the total number of respondents divide the total amount of the loss. This is the amount each respondent is liable for — subject to a one month's base pay cap for soldiers and civilian employees.

B. Involuntary Withholding of Current Pay.

1. Members of the armed forces may have charges involuntarily withheld. 37 U.S.C. § 1007.

2. Involuntary withholding for civilian employees. 5 U.S.C. § 5512, AR 37-1, Chapter 15.
3. No involuntary withholding for the loss of NATO property (DAJA-AL 1978/2184).
4. No involuntary withholding for the loss of MFO property.

VI. IMPOSING LIABILITY.

A. Responsibility For Property AR 735-5, paras. 2-8 & 13-28, and figure 2-1.

1. Command Responsibility.

- a. The commander has an obligation to insure proper use, care, custody, and safekeeping of government property within his or her command.
- b. Command responsibility is inherent in command and cannot be delegated. It is evidenced by assignment to command at any level.

2. Supervisory Responsibility.

- a. The obligation of a supervisor for the proper use, care, and safekeeping of government property issued to, or used by, subordinates. It is inherent in all supervisory positions and not contingent upon signed receipts or responsibility statements.
- b. If supervisory responsibility is involved, also consider the following factors.
 - (1) The nature and complexity of the activity and how it affected the ability to maintain close supervision.

- (2) The adequacy of supervisory measures used to monitor the activity of subordinates.
 - (3) The extent supervisory duties were hampered by other duties or the lack of qualified assistants.
- 3. Direct Responsibility.
 - a. The obligation to ensure the proper use, care, custody, and safekeeping of all government property for which the person has receipted.
 - b. Direct responsibility is closely related to custodial responsibility (discussed below).
- 4. Custodial Responsibility.
 - a. An individual's obligation regarding property in storage awaiting issue or turn-in to exercise reasonable and prudent actions to properly care for and ensure property custody and safekeeping of the property.
 - b. Who has custodial responsibility? A supply sergeant, supply custodian, supply clerk, or warehouse person who is rated by and answerable directly to the accountable officer or the individual having direct responsibility for the property.
 - c. Responsibilities include:
 - (1) Ensuring the security of all property stored within the supply room and storage annexes belonging to the supply room or SSA is adequate.
 - (2) Observing subordinates to ensure they properly care for and safeguard property.

(3) Enforcing security, safety and accounting requirements.

(4) If unable to enforce any of these, reporting the problems to their immediate supervisor.

5. Personal Responsibility.

a. An individual's obligation to properly use, care, and keep safe government property in their possession, with or without a receipt.

B. Negligence. AR 735-5, para. 13-28 b and App. C, para. C-10).

1. Simple negligence—the failure to act as a reasonably prudent person would have acted under similar circumstances.

a. Remember, a reasonably prudent person is an average person, not a perfect person. Also consider:

(1) What could be expected of the person considering their age, experience, and special qualifications?

(2) The type of responsibility involved.

(3) The type and nature of the property. More complex or sensitive property normally requires a greater degree of care.

b. Examples of simple negligence.

(1) Failure to do required maintenance checks.

(2) Leaving weapon leaning against a tree while attending to other duties.

(3) Driving too fast for road or weather conditions.

- (4) Failing to maintain proper hand receipts.
2. Gross negligence—an extreme departure from the course of action expected of a reasonably prudent person, all circumstances being considered, and accompanied by a reckless, deliberate, or wanton disregard for the foreseeable consequences of the act.
- a. Reckless, deliberate, or wanton -
 - (1) These elements can be express or implied.
 - (2) Does not include thoughtlessness, inadvertence, or errors in judgment.
 - b. Foreseeable consequences.
 - (1) Does not require actual knowledge of actual results.
 - (2) Does not need to foresee the particular loss or damage that occurs, but must foresee that some loss or damage of a general nature may occur.
 - c. **Examples of gross negligence.**
 - (1) Soldier drives a vehicle at a speed in excess of 40 mph of the posted speed limit. Intentionally tries to make a sharp curve without slowing down.
 - (2) Soldier lives in family quarters and has a child who likes to play with matches. Soldier leaves matches out where child can reach them.
3. Willful misconduct—any intentional or unlawful act.
- a. Willfulness can be express or implied.

- b. Includes violations of law and regulations such as theft and misappropriation of government property.
- c. A violation of law or regulation is not negligence *per se*.
- d. Examples of willful misconduct
- e. A violation of law or regulation is not negligence *per se*.
 - (1) Soldier throws a tear gas grenade into the mess tent to let the cooks know what he thought about breakfast, and as a result, the tent burns to the ground.
 - (2) Soldier steals a self-propelled howitzer, but he does not know how to operate it. Accordingly, his joy ride around post results in damage to several buildings.

C. Proximate cause—the cause which, in a natural and continuous sequence, unbroken by a new cause, produces the loss or damage, and without which the loss or damage would not have occurred. It is the primary moving cause, or the predominant cause, from which the injury follows as a natural, direct, and immediate consequence, and without which it would not have occurred.

- 1. The damage arises out of the original act of negligence or misconduct.
- 2. A continual flow or occurrence of events from the negligent act or misconduct.
- 3. Use common sense.
- 4. Examples of proximate cause.

- a. Soldier driving a vehicle fails to stop at a stop sign and strikes another vehicle after failing to look. Proximate cause is the soldier's failure to stop and look.
 - b. Soldier A illegally parks his vehicle in a no parking zone. Soldier B backs into A's vehicle. B did not check for obstructions to the rear of his vehicle. A's misconduct is not the proximate cause of the damage. Instead, B's negligent driving is the proximate cause.
5. Independent intervening cause—an act which interrupts the original flow of events or consequences of the original negligence. It may include an act of G-d, criminal misconduct, or negligence.

VII. RIGHTS OF THE RESPONDENT (AR 735-5, PARA. 13-40).

A. General Information.

1. When a survey officer recommends financial liability against an individual, that individual is called the Respondent.
2. The report of survey form (DA Form 4697) contains a rights notice.

B. Respondents' Rights. AR 735-5, paras. 13-32 and 13-33. (Survey Officer)

1. The survey officer will notify the respondent by memorandum of the proposed recommendation of financial responsibility. The survey office will notify the respondent of the following:
 - a. The right to inspect and copy the report of investigation.
 - b. The right to obtain legal advice.
 - c. The right to submit a statement and other evidence in rebuttal to the recommendation

d. Time limits for submitting rebuttal evidence are as follows. AR 735-5, para. 13-33).

(1) *7 calendar days*—when survey and investigation are hand delivered to the respondent.

(2) *15 calendar days*—when respondent is unavailable but in the same country and the survey and investigation are mailed.

(3) *30 calendar days*—when respondent is unavailable and in a different country and the survey and investigation are mailed.

C. Respondents' Rights. AR 735-5, para. 13-40. (Approval Authority).

1. Involuntary withholding of current pay. If the approval authority approves the assessment of financial liability, the money can be involuntarily withheld from the respondent's pay.

a. Members of the armed forces may have charges involuntarily withheld. 37 U.S.C. § 1007.

b. Involuntary withholding for civilian employees. 5 U.S.C. § 5512, AR 37-1, Chapter 15.

c. No involuntary withholding for the loss of NATO property (DAJA-AL 1978/2184).

d. No involuntary withholding for the loss of MFO property.

e. Time limits for submitting rebuttal evidence are as follows. AR 735-5, para. 13-33).

2. The approval authority must notify the respondent of that collection efforts will commence in *30 days* (**NOTE: ARNG affords 60 days**). In the memorandum the approval authority must also notify the respondent of the following rights.

- a. The right to inspect and copy the file.
- b. The right to legal advice.
- c. The right to request reconsideration based on legal error.
- d. The right to a hearing before finance (for DOD civilians only).
- e. The right to request remission of indebtedness. AR 600-4
 - (1) Enlisted soldiers only.
 - (2) Only to avoid extreme hardship.
 - (3) Only unpaid portions can be remitted. Suspend collection action long enough for the soldier to submit his request for remission of the debt.
 - (4) Must request reconsideration before submitting request for remission of indebtedness.
- f. The right to request extension of collection time.
- g. The right to petition Army Board for the Correction of Military Records (ABCMR). AR 15-185
- h. Civilian employees may avail themselves of the grievance/arbitration procedures.

VIII. JUDGE ADVOCATE REVIEW BEFORE APPROVING AUTHORITY ACTION.

- A. Before the approving authority approves a recommendation of liability, a judge advocate **WILL** review the survey for legal sufficiency of the evidence and propriety of the findings and recommendations. AR 735-5, para. 13-36.
- B. The approving authority is not bound by the survey officer's, or judge advocate's recommendations.

IX. RELIEF FROM REPORTS OF SURVEY.

- A. Appeals. AR 735-5, paras. 13-42, 13-48 and 13-49).
 - 1. **Appeal authority** is the next higher commander above the approving authority (normally the brigade commander).
 - 2. Two step process:
 - a. Submit request for reconsideration to approval authority.
 - b. If the approving authority, after legal review and notice to respondent continues to approve financial liability, the approval authority must forward the survey to the appeal authority within **15 calendar days**.
 - 3. If the approving authority denies reconsideration the following actions are required before forwarding to the appeal authority:
 - a. Prepare a memorandum giving the basis for denying the requested relief.
 - b. The approving authority must personally sign the denial.
 - 4. The appeal authority must get an independent legal review before acting on the appeal.

5. Action by the appeal authority is final.
- B. Reopening Reports of Survey. AR 735-5, para. 13-46.
1. Not an appeal.
 2. Authority to reopen rests with the approval authority.
 3. May occur:
 - a. as part of an appeal of the assessment of financial liability.
 - b. when a response is submitted to the surveying officer from the person charged subsequent to the approving authority having assessed liability.
 - c. when a subordinate headquarters recommends reopening based upon new evidence.
 - d. when the property is recovered.
 - e. When the approving authority becomes aware that an injustice has occurred.

X. JUDGE ADVOCATE ROLES.

- A. Advisor to the Survey Officer.
1. Briefing
 2. Guidance on the investigation, findings and recommendations.
- B. Legal review and advice to the Approving Authority. AR 735-5, para. 13-36.

1. Before approving authority takes action, a judge advocate must review the survey and investigation for legal sufficiency.
 2. The approving authority is not bound by the survey officer's or the judge advocate's recommendations.
- C. Legal review and advice to the Appeal Authority. AR 735-5, para. 13-49b.
1. Before appeal authority takes action on an appeal, a judge advocate must review it.
 2. Judge advocate must be different than the one who reviewed the survey and investigation for the approval authority.
- D. Attorney for Respondent. AR 27-3, para. 3-6 g(4)(b).
1. Legal Assistance office required assist on rebuttal to report of survey.
 2. Civilians not otherwise entitled to legal assistance receive assistance for report of survey purposes.

XI. CONCLUSION.

