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5.8 Real Property Reports of Survey Added 10/2005

5.8.1 General Added 10/2005

A Report of Survey (ROS) is a report of administrative action to remove assets from property and financial accounting systems and to relieve the Real Property Custodian (RPC) of responsibility for specific government property. ROSs are generally associated with personal property and in that context, processing is carried out in accordance with FAA Order 4630-3c. There are, however, rare occasions when assets accounted for as real property are lost, damaged or destroyed under circumstances that merit investigation: an example is when events (fire, flood or other natural disaster) or acts (vandalism, theft or sabotage) make it necessary to relieve the accountable individual of responsibility for the property. Circumstances may also dictate an investigation to determine culpability and financial liability associated with the
losses. In extreme cases, ROSs may lead to disciplinary or legal action seeking restitution for losses brought on by individual acts of negligence or willful misconduct when such acts are proven to be the proximate cause of the loss, damage or destruction of property.

5.8.2 Special Terms Added 10/2005

Terms used in the ROS system have very specific meanings that bear directly on results and validity of the ROS. For example, a person can be judged *culpable* and held *financially liable* for destruction of Government property only if the Survey Officer (SO) finds conduct that was not *reasonable* or *prudent* but was instead demonstrably *negligent* or attributable to *willful misconduct* and that this negligence or willful misconduct was the *proximate cause* of the destruction. In reading this section, the following definitions apply

- Personal Responsibility. The obligation of all persons to use, care for and secure all Government property in their possession. This obligation is not contingent upon an assumption of signature responsibility.
- Signature responsibility. The obligation of a person to ensure that Government property he or she has received is properly used cared for and secured and that records associated with its custody are maintained.
- Supervisory Responsibility. The obligation of a supervisor to ensure that all Government property in the possession of his or her subordinates is properly used, maintained, secured and accounted for in accordance with existing laws, regulations, policies and procedures.
- Reasonable and prudent. Describes conduct or action expected of persons in full possession of their faculties performing tasks for which they are suited by training, experience and duty position.
- Negligence. Acting, or failing to act, in a manner expected of a reasonable and prudent person with similar training, experience and resources under the same circumstances. Failure to comply with existing laws, regulations, policies or procedures may be considered as evidence of negligence but such failure is not negligence in and of itself unless it can be demonstrated that the person knowingly committed the violation.
- Gross Negligence. A reckless, deliberate departure from the actions expected of a reasonable and prudent person with a demonstrable disregard of readily foreseeable consequences.

- Willful Misconduct. A willful (knowing) violation of existing laws, regulations, policies or procedures committed by a person or persons in the absence of duress or other extenuating circumstances.
- Proximate Cause. The act or event from which loss, damage or destruction of Government property resulted as a natural, direct and immediate consequence. Without this act or event, the loss, damage or destruction would not have occurred.
- Culpability. A determination of fault arising from a finding of negligence or willful misconduct that was the proximate cause of loss, damage or destruction of government property.
- Financial Liability. The statutory obligation of an individual to reimburse the Government for property that is lost, damaged or destroyed as a result of their negligence or willful misconduct.

5.8.3 Loss, Damage or Destruction of Government Real Property Added 10/2005

5.8.3.1 Loss of Government Real Property Added 10/2005

To make a determination that property has been lost, the RPC must have definitive knowledge of the property's existence at a particular location, and a specific point in time. Receiving Reports and inventory records are examples of documents that would serve to support the physical placement of property at a particular location. Secondly, the RPC must ensure that the "loss" is real and not due to administrative error or oversight in processing documents relating to the property.

5.8.3.2 Damage to Government Real Property Added 10/2005

Damage to real property must be attributable to specific events or acts and not to degradation in condition or serviceability brought about through fair wear and tear. In assessing any damage to real property, the RPC must evaluate the prior condition of the asset, secure estimates for repairs needed to return the property to current serviceability standards, and make a determination as to the economic viability of asset repair versus replacement.

5.8.3.3 Destruction of Government Real Property Added 10/2005

Real property assets are characterized as destroyed when damage is sustained to a degree that repair is clearly impossible and the only residual value of the property is as scrap or salvage.

5.8.4 Report of Survey Investigations, Findings and Recommendations Added 10/2005

The RPC and the SO work in concert to gather evidence, establish an audit trail and assemble the forms and documents necessary to prepare ROSs for IRO and RPM review.

5.8.4.1 Real Property Custodian Added 10/2005

The RPC prepares FAA Form 4800-4 when it has been determined that real property assigned to his or her account has been lost, damaged or destroyed. This action must be accomplished within ten (10) working days of the date the loss, damage or destruction is discovered. Instructions for the preparation of this form are contained in Appendix C and are based on the following guidelines

- The RPC must specify the date on which the loss, damage or destruction was discovered and the person or persons making the discovery.
- The affected property must be identified exactly as it is recorded in automated property accounting systems.
- Unit cost will include the acquisition cost and the cost of any improvements.
- The descriptive narrative must be complete, precise and, whenever possible, supported by documentary evidence.
- Persons having knowledge of circumstances relating to the property will be identified in the narrative. Statements from these persons will be appended to the ROS as Exhibits when doing so serves to clarify circumstances surrounding the loss, damage or destruction to property.
- Evidentiary documents (police reports, fire reports, inventory records, etc.) will be used to support the narrative and will also be appended as Exhibits to the ROS.
- If the affected property is deemed repairable, an estimate of repair costs will be appended as an Exhibit to the ROS.

5.8.4.2 Survey Officer Revised 4/2012

The SO is appointed by the IRO to investigate incidents of loss, damage or destruction of government property. The SO may be named on a standing appointment or appointed on a case-by-case basis at the discretion of the Regional RPM. The SO will not be in the direct chain of accountability, responsibility or custody of any property being investigated. The SO will review the ROS for completeness and technical accuracy, coordinating with the initiator and other persons having knowledge of events to secure any additional statements, information or documents deemed necessary. Using the information gathered during the investigation, the SO will enter a narrative account of events and circumstances surrounding the loss, damage or destruction of the property involved in the Survey Officer Findings section of FAA Form 4800-4. The narrative will be followed by a set of findings developed by the SO after a thorough review of all available evidence. The SO is allowed thirty working (30) days from the date the ROS is received to complete the findings and recommendations portion of FAA Form 4800-4. The following entries are mandatory

- An opening finding that: "(Negligence and/or Willful misconduct) (is or is not) believed to be the proximate cause of the (loss and/or damage and/or destruction) of the Government property described in this Report of Survey". (Select the appropriate terms).
- The date the loss, damage or destruction was discovered and identification of the person or persons making the discovery.
- A statement as to the specific event, act or omission that was the proximate cause of the loss, damage or destruction of Government property. Evidence that directly supports this

statement will be cited in detail.

- A tabulation of the depreciated value of lost or destroyed property.
- A comparative analysis of repair versus replacement costs when property is damaged. The age, condition and Net Book Value of the damaged asset will be considered in formulating the cost analysis.

When the SO opening finding is that the loss, damage or destruction of government property was not due to negligence or willful misconduct, no additional comment need be made in the Findings section of FAA Form 4800-4. If, however, the SO indicates that negligence or willful misconduct was a proximate cause the following is required

- Identification of any person or persons deemed culpable due to his or her negligence or willful misconduct by name, job title and permanent duty location.
- An affirmation that the person or persons deemed culpable due to his or her negligence or willful misconduct possessed the requisite training and experience to have prevented the loss incurred by the Government had they acted in a reasonable and prudent manner.
- Text citing specific instances when the person or persons deemed negligent failed to act in a reasonable and prudent manner.
- Text linking individual acts of negligence or willful misconduct to the specific property items affected by those acts accompanied by references to the supporting ROS Exhibit.
- A statement assigning culpability to the person or persons whose negligence or willful misconduct was determined to be the proximate cause of the losses incurred by the Government.

To support a finding of joint liability, the SO must demonstrate that specific acts by the persons found culpable were, when taken in combination, the proximate cause of the loss incurred by the Government.

The SO will prepare recommendations based on the results of the investigation and record them in the Survey Officer Recommendations section of FAA Form 4800-4. In cases not involving negligence or willful misconduct the SO will recommend that all accountable persons be relieved of responsibility for the lost or destroyed property. Property remnants, if any exist, will be released for disposal. When damage to property is under investigation and no negligence or willful misconduct is involved, the SO will recommend that the property be released for repair. If, however, there is a finding of negligence or willful misconduct and a further finding that such negligence or willful misconduct was the proximate cause of the losses under investigation, the SO must identify the person or persons deemed financially liable and the amount of their liability. The SO calculates financial liability using the guidelines shown in Paragraph 5.8, below and enters the following statement

> "(Insert Name) has been found culpable for losses incurred by the Government as a result of (his or her) (negligence or willful misconduct). Further, it has been found that this (negligence or willful misconduct) was the proximate cause of the loss, damage or destruction of property described in this Report of Survey. I recommend that (Insert Name) be held financially liable in the amount of ($)."

NOTE: In those cases where more than one person has been recommended for financial liability (joint liability), this statement will be repeated with the appropriate name and dollar amount entered for each person named.

5.8.5 Survey Officer Calculations for Property Value, Repair Cost and Financial Liability

Added 10/2005

5.8.5.1 Value of Lost or Destroyed Real Property **Added 10/2005**

The amount of financial liability arising from a loss incurred by the Government is dependent in part on the value of the property at the time of its loss or destruction. The SO will calculate property value as follows

- Determine the original acquisition date and cost of the property.
- Calculate monthly depreciation by dividing the property's acquisition cost by the life expectancy of the property expressed in months. Life expectancy for "Buildings" (Property Code 2) is 480 months; for "Other Structures" (Property Code 3) it is 180 months.
    - EX: Building Acq Cost = $12,000. Divide by 480 months = <u>$25.00 depreciation per month</u>.
- Using the original acquisition date, calculate the number of months the property was in service prior to its destruction.
    - EX: Acq Date = Jan 1980 / Destruction Date = June 2003 / <u>Months in Service = 282</u>
- Calculate accumulated depreciation by multiplying the monthly depreciation amount by the number of months the property was in service.
    - EX: Monthly Depr @ $25.00 x 282 months in service = <u>Total depreciation $7,050.00</u>
- Determine current value by subtracting total depreciation from the original acquisition cost of the property. Depreciation is limited to 95% of the recorded acquisition cost; i.e., the 5% residual is considered to be the asset's scrap value.
    - EX: Acq Cost = $12,000 minus Total Depr @ $7,050.00 = <u>Building Value $4,950.00</u>

In this example, the calculated loss to the government is $4,950.00 -- the adjusted value of this unimproved building. While this is the preferred method and the one most likely to be used, there may be instances where the original acquisition cost and/or a precise acquisition date cannot be determined. In such cases the SO may use a "comparable value" method whereby cost and date information is derived by reference to like property known to have been acquired at roughly the same time as the lost or destroyed asset. When this method is used the SO will so indicate in the Findings section of FAA Form 4800-4.

If the building in the above example had been the subject of an "Improvement" during its lifespan, the current value of the improvement would have been calculated (cost minus depreciation) and added to the current value of the building thus increasing the "loss to the Government" amount. Depreciation on improvements is determined by calculating the number of months between the "Improvement Date" and the expiration of the parent asset's lifespan. For example, this 1980 building's service life would have expired in January 2020 so a June 1998 improvement would have a 258-month life expectancy. To calculate the value of the improved building at the time it was destroyed

- Divide the improvement cost by the life expectancy of the improvement expressed in months.
    - EX: Improv Cost = $4,000.00. Divide by 258 months. Monthly depreciation = $15.50
- Determine the improvement's months in service prior to destruction.
    - EX: Improv Date = June 1998 / Destruction Date = June 2003 / Months in Svc = 60
- Calculate accumulated depreciation by multiplying the monthly depreciation amount by the number of months the property was in service.
    - EX: Monthly Depr @ $15.50 x 60 Months in Svc = Total Depreciation $930.00
- Determine current value by subtracting total depreciation from the original improvement cost.
    - EX: Improv Cost = $4,000 minus Total Depr @ $930.00 = Improvement Value $3,070
- Combine the building's value with the value of the improvement to arrive at a value for the improved building at the time of its destruction.
    - EX: Building Value = $4,950.00 plus Improv Value @ $3,070 = Total Value $8,020.00

The calculated loss to the Government in this case is $8,020.00 - the combined value of the building and the improvement. The same method is used to establish values for "Other Structures" (Property Code 3); however, the standard life expectancy is fifteen years (180 months) rather than forty years as is the case with buildings.

5.8.5.2 Value of Damaged Property Added 10/2005

Damaged property is property that can be economically repaired and returned to service with no degradation in its capability or serviceability. The SO will coordinate with the owning property custodian to arrange preparation of a written estimate of repair costs to include time, material, travel and miscellaneous expenses involved in returning the damaged asset to service. This written estimate is the basis for determining the extent to which an individual may be held financially liable and a copy will be attached to the ROS as an exhibit. In some instances, the estimate for repairs is so high that it is in the Government's best interest to consider the property destroyed and to replace it outright. When this occurs, values will be calculated using the technique described in Paragraph 5.8, above.

5.8.5.3 Limits of Liability Added 10/2005

The following individuals/entities may be assessed liability for the full amount of the Government's loss, minus amounts charged to other parties

- States and territories of the United States - Contractors and contractor employees
- Perpetrators of criminal acts causing the loss
- Individuals or entities not federally employed

Federal civilian employees may be assessed an amount not to exceed 1/12 of the individual's annual base pay.

Using the example in Paragraph 5.8, above, and assuming that an FAA employee and a contractor have been found jointly liable

Value of the Improved Bldg	$8,020.00
Maximum Liability of FAA Employee	< $3,670.75 >
w/ Annual Base Pay of	$44,049.00
Loss to the Government	$4,349.25
Liability of Contractor	< $4,349.25 >
Loss to the Government	$0

5.8.6 Internal Review Officer Responsibilities Added 10/2005

The IRO is the Appointing Authority for SOs and may either name a single appointee to serve as SO until relieved of the duty or appoint SOs on a case-by-case basis as the need arises. The Regional RPM will establish the policy to be followed in this regard. The IRO is also the final Approving Authority for ROSs when investigation reveals that no negligence or willful misconduct was a factor in the losses suffered by the Government. The IRO is allowed five (5) working days from the date the ROS is forwarded for review to either accept or reject the ROS. In reviewing ROSs the IRO must

- Examine the ROS for completeness and accuracy.
- Direct the RPDO remove property described on the ROS from property accounting systems.
- Make any additional inquiries or request any additional documents deemed necessary to support the findings.
- Evaluate the findings and recommendations of the SO and concur or non-concur.

If the SO states in the findings a belief that negligence or willful misconduct was the proximate cause of the loss, damage or destruction of the property, the IRO will evaluate the ROS and decide whether the evidence does or does not support such a finding.

When the evidence **does not support the finding

- The IRO consults with the SO and seeks to reconcile their different conclusions by joint review of the evidence.
- If no reconciliation of views is possible, the IRO disapproves that portion of the findings bearing on negligence/willful misconduct and states the reasons for doing so in the IRO Review section of FAA Form 4800-4.
- The IRO signs FAA Form 4800-4 as Approving Authority, and forwards the completed ROS to the Regional Real Property records custodian and the owning RPC.

When the evidence **does support the finding

- The IRO indicates concurrence with the findings in the IRO Review section of FAA Form 4800-4.
- In the same section of FAA Form 4800-4, the IRO will address the SO recommendation and indicate concurrence or non-concurrence. In the case of non-concurrence, the IRO will make alternate recommendations.
- The IRO forwards the ROS to the RPM with any additional comments or recommendations deemed necessary to expand upon or clarify the findings and recommendations of the SO.

5.8.7 Report of Survey (ROS) Board Revised 4/2012

When the IRO concurs with a SO recommendation that financial liability be assessed against one or more persons, the ROS will be reviewed by an appointed ROS Board. ROS Board requirements are as follows

- The ROS Board will be appointed by the RPM who serves as chairperson.
- The ROS Board will consist of a minimum of three members, including the RPM.
- ROS Board members will not be in the property accountability chain associated with the lost, damaged or destroyed property.
- ROS Board members may be appointed as "standing members" to serve until relieved from the appointment or they may be appointed on an "as needed" basis at the discretion of the RPM.

The ROS Board will convene as soon as possible after a ROS recommending assessment of financial liability is forwarded from the IRO to the RPM. The Board will examine the ROS to determine whether

- Evidence cited to support a finding of negligence or willful misconduct is sufficient to prove the point.
- The proximate cause of the loss suffered by the Government was a direct result of the negligence or willful misconduct described.
- The assignment of culpability to individual(s) flows logically from the negligence or willful misconduct described.
- The amount of financial liability assessed is appropriate to the situation and calculated correctly (see Paragraph 5.8, above).

During deliberations, the Board may call upon persons having knowledge of events pertinent to the ROS under consideration for additional information, statements or evidence as necessary to clarify any doubtful issues. After considering all available evidence, Board members will state their individual conclusions regarding findings of financial liability to the RPM. If a majority of the board agrees with the SO findings and recommendations, the ROS is approved. If no majority is achieved, the RPM in his/her capacity as Board Chairperson will render a decision as to approval or disapproval of the ROS.

5.8.8 Real Property Manager Responsibilities Added 10/2005

The RPM, as Chairperson of the ROS Board, signs the ROS as Approving Authority on all real property ROSs that result in an assessment of individual financial liability. The RPM, acting through the ROS Board, may also disapprove any findings and recommendations whenever a ROS is found to be in error or the conclusions unsupported. In the event of non-concurrence, the RPM will direct that all action on the ROS be terminated; in the event of concurrence, processing continues as described below.

5.8.9 Review by Counsel Added 10/2005

Within five (5) working days after the RPM concurs with a finding of financial liability, a copy of the ROS (complete with all exhibits and attachments) will be forwarded to the Regional legal office for review by counsel. The reviewing attorney will advise the RPM, in writing, whether the documents presented are sufficient to justify the assessment of financial liability against the person or persons identified in the ROS. If the ROS is legally acceptable, the RPM will notify these persons, in writing, of the liability finding and allow them an opportunity to respond. If the ROS is legally unacceptable, the RPM has the following options

- Reopen the investigation if there is a reasonable prospect that additional information will be discovered that would make the ROS legally acceptable.
- Terminate the ROS proceedings.

5.8.10 Notifying Respondent(s) of Financial Liability Findings Added 10/2005

If the ROS is judged legally acceptable, the SO will notify the person or persons found financially liable, in whole or in part, for the losses incurred by the Government. This notification will be accomplished using the memorandum shown in Appendix C as "Notice of Financial Liability" accompanied by a copy of the ROS with all exhibits. Notification will be sent by Certified Mail - Return Receipt Requested. Return of the signed certified mail receipt to the SO is taken as proof of notification of liability and as an acknowledgement that the respondent is aware of his or her rights in the matter.

5.8.10.1 Respondent's Rights Added 10/2005

The respondent has the right to

- Make voluntary restitution of the total amount by setting up a collection arrangement or payment schedule.
- Inspect and copy all documents associated with the ROS.
- Obtain legal advice relating to the assessment of financial liability.
- Submit a written request for reconsideration of the liability finding to the RPM. Such a request must be based on legal error, procedural error, new evidence or extenuating circumstances.
- In the event a request for reconsideration is denied, the respondent may submit a written

request for cancellation of the debt to the RPM on the basis of personal hardship.

5.8.10.2 Processing Time Added 10/2005

Thirty (30) calendar days are allowed for the exercise of respondent rights. An exception to this schedule is made when an individual submits a request for reconsideration, in which case no action will be initiated until ten working days (10) after an RPM denial of the request. This extension allows time for the respondent to request that the RPM cancel the debt on the grounds that payment would constitute an undue hardship.

5.8.11 Finalization of Reports of Survey Added 10/2005

ROSs are considered finalized when the RPM signs the original copy of the ROS. Thereafter, the action is treated as a Government claim against an individual and accounting policies governing amounts to be collected, collection periods, installment payments, appeals for relief, negotiated settlement, etc., will apply. A copy of the entire ROS packet will be retained in the Logistics Division administrative files for not less than three years after which time the file will be permanently retired.

5.8.12 Special Actions Added 10/2005

On rare occasions it may be necessary to re-visit closed ROSs in order to address substantive property issues or provide relief to an individual erroneously assessed liability.

5.8.12.1 Recovered Property Added 10/2005

In spite of an SO's best efforts, property will occasionally be deemed lost when, in reality, it was merely misplaced or not identifiable because of a failure to maintain a proper paper trail. If property subjected to ROS proceedings is found after the ROS is finalized, a Real Property Account Adjustment Report will be prepared to document the "recovery" of the property. This document supports re-entering the asset to the property accounting system and will be retained as a permanent record in the affected facility's property file. If the ROS was finalized with an assessment of liability and subsequent collection action, the amounts collected will be remitted to the person or persons erroneously charged for the supposed loss incurred by the Government.

5.8.12.2 Repayment of Amounts Erroneously Collected Added 10/2005

An individual subjected to collection action can dispute or appeal the Government's claim for damages and the ROS can be overturned after it has been closed. In such cases, the individual must file a claim with the Department of the Treasury seeking repayment of the erroneously collected amounts.