

Approved: 1-12-15

**FINANCIAL LIABILITY FOR
GOVERNMENT ISSUED PERSONAL
PROPERTY LOST, DAMAGED, OR
DESTROYED (LDD)**



**NATIONAL NUCLEAR SECURITY ADMINISTRATION
Office of Management & Budget**

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FINANCIAL LIABILITY FOR GOVERNMENT ISSUED PERSONAL PROPERTY LOST, DAMAGED, OR DESTROYED (LDD)

1. **PURPOSE.** This Business Operating Procedure (BOP) provides for the implementation of policies and responsibilities relating to employee financial liability for government property that is lost (including stolen), damaged, or destroyed. The process flow and time restraints are depicted in the attached chart (Attachment 2).
2. **CANCELLATIONS.** BOP 63.001, *Financial Liability for Government Issued Personal Property Lost, Damaged, or Destroyed (LDD)*, Dated 2/05/2009
3. **APPLICABILITY.**
 - a. This BOP is applicable to all paid and unpaid NNSA employees, or persons working under a voluntary services agreement responsible for Government owned or leased personal property within NNSA. (Board of Survey (BOS) Chair will consult with the Director, Office of Human Capital Management for NNSA components for all actions involving members of the career Senior Executive Service (SES), Excepted Service Pay Band IV (when employee basic pay exceeds GS-15 Step 10), Band V employees, and SL or ST employees.)
 - b. This policy does not apply to contractor personnel. This policy applies to NNSA Federal employees and persons working under a voluntary services agreement only.
 - c. The Associate Administrator, Office of Management & Budget (NA-MB-1) may grant equivalencies and exemptions to this policy. This responsibility is non-delegable.
 - d. In accordance with the responsibilities and authorities assigned by Executive Order 12344 and to ensure consistency throughout the joint Navy and DOE organization of the Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors will implement and oversee all requirements and practices pertaining to this policy for activities under the Deputy Administrator's cognizance.
 - e. No action hereunder shall limit the Government's rights to pursue criminal penalties under 18 USC 641 or any other statute.
4. **REQUIREMENTS.**
 - a. NNSA Federal employees responsible for personal property that becomes lost (including stolen), damaged, or destroyed, or who otherwise have oversight responsibilities for such property must comply with the provisions of DOE

Order 580.1A and this BOP.

1. Financial liability will be determined and the amount assessed in accordance with this BOP.
2. This BOP applies to all lost, damaged, or destroyed property meeting one or more of the following:
 - (a) Personal property, regardless of type, with a replacement value equal to or greater than \$1,000 or if multiple items are involved in a single incident and the total value of all items is equal to or greater than \$1,000.
 - (b) Sensitive or other accountable items, regardless of value.
 - (c) Pattern of lost, damaged, or destroyed property, where such pattern indicates possible theft and/or repeated negligence.
- b. If, in the course of the fact-finding, there exists evidence of liability as outlined in 4.c.2 below, a Board of Survey (BOS) will convene to render a determination. Each Board of Survey must include at least one representative from NNSA General Counsel (NA-GC). Representatives from the Office of Information Management (NA-IM), Defense Nuclear Security (NA-70), and other organizations may be requested to participate, as may be deemed necessary by the circumstances of the case. The BOS Chair is responsible for ensuring the appropriate organizations are on the BOS. There will be no set term for participation. There will only be two separate BOS in NNSA. The first for all of NNSA excluding the Office of Secure Transportation (NA-15) and the other for OST. OST will document the composition of their BOS.
- c. Determination of Liability. When Government property is lost, stolen, damaged, or destroyed, a BOS will determine whether the employee(s) involved was grossly negligent and responsible for such loss or damage, and whether such negligence resulted in the incident.
 1. No liability. Employees will not be held financially liable for loss attributable to inadequate instruction, inherent defects in the property, or damage or loss incurred despite reasonable care and precautions. This does not preclude administrative action for failure to safeguard government property; failure to follow safety procedures; failure to comply with established regulations, policy, or guidance; or failure to seek instruction and/or direction from supervisors.

The loss or damage of Government property alone does not automatically indicate gross negligence. If the BOS cannot determine gross negligence based on facts, or convincingly demonstrate in written

argument that the employee acted in an imprudent manner, then it cannot arrive at a determination of gross negligence.

Employees should be relieved of accountability and financial liability when they satisfactorily explain the circumstances surrounding the loss or damage, the evidence is consistent with such explanation, and, under the circumstances, the loss occurred despite reasonable care and precautions.

2. Liability. Employee(s) will be held financially liable when a thorough investigation determines any of the following:
 - (a) Property was missing, damaged, or destroyed as a result of its being used for other than official purposes;
 - (b) The loss, damage, or destruction was due to the failure of the employee to exercise the degree of caution, attention, and vigilance necessary to protect the interest of the Government; or
 - (c) The loss, damage, or destruction was due to willful misconduct, willful negligence, or a wanton and reckless disregard for property.
3. Any case that involves willful misuse of Government personal property must be referred to the Office of the Inspector General in accordance with DOE O 221.1, Reporting Fraud, Waste, and Abuse to the Office of the Inspector General.
4. Whenever there are dissenting opinions from the findings and recommendations among the members of the BOS, the majority opinion will be the recommendation of the BOS. The minority view will be appended to the report.
- d. Supervisors/Managers will contact their Servicing Human Resources Specialist for advice and guidance on the appropriateness of any disciplinary or adverse action based on the loss, damage, or destruction of government property. Determinations of any administrative action are separate and apart from the personal liability determination outlined in this policy.
- e. When circumstances require convening a BOS, the Property Administrator/Accountable Property Officer for the property to be surveyed will immediately notify the BOS Chairperson or Property Manager as determined by local instructions. Within 30 days of notification, the Property Administrator/Accountable Property Officer must prepare a Summary Report.

Survey action shall be initiated within 30 days of the discovery of the loss. Delays shall be explained in writing and attached to the Survey document.

f. Employee Notification and Participation

1. The BOS Chairperson will send written notification to the employee who may be held liable for property loss, damage, or destruction, and afford the employee the opportunity to present a written statement of facts surrounding the loss. The employee must present any such statement to the BOS within fourteen (14) calendar days of the date of the notification. The statement(s) will become a part of the Report of Survey and will be considered in the investigation and determination of financial liability.
2. The employee may also orally address the BOS within the same timeframe, but must provide an accompanying written statement of any facts he/she wishes the BOS to include in the Report of Survey.
3. Employee may have legal counsel present during oral presentations and at any other point in BOS proceedings.
4. Potentially liable employees shall participate in fact-finding and may participate in BOS proceedings. Other employees with relevant knowledge shall also participate upon request from the BOS.

g. Financial Liability and Disciplinary Actions

1. Any deliberation concerning an employee's liability must be completely separate and apart from any personnel action that may be under consideration. The assessment of financial liability is not to be used in lieu of, or as a form of, disciplinary action. BOS must confine its recommendations to recovering Government losses and correcting the cause of the incidents. If findings so indicate, the BOS must defer personnel actions to supervisors, including formal evaluation for appropriate disciplinary action.
2. Before a person can be found to be at fault for lost, damaged, or destroyed property and held financially liable, the findings must show that he or she, through gross negligence, willful misconduct, or reckless disregard, violated a duty to provide reasonable care for the property. (See Section 4. c. above.) Whether the person's actions or omissions constitute gross negligence depends on the circumstances of each case. Actions indicating gross negligence under one set of circumstances may not represent gross negligence in other circumstances. Therefore, the BOS must consider fully many factors when determining the reasonableness of a person's conduct including:

- (a) The person's experience, physical condition, and special qualifications;
- (b) The level of responsibility for the property assigned to the employee(s);
- (c) The type and nature of the property;
- (d) The nature, complexity, level of danger, or urgency of the ongoing activity at the time of the loss, damage or destruction;
- (e) The adequacy of supervisory measures or guidance for property control;
- (f) The feasibility of maintaining close supervision over the property given the nature and complexity of the organization or activity supervised;
- (g) The extent supervision could have influenced the situation considering pressing duties or the lack of qualified assistants.
- (h) Normal wear and tear of the property.
- (i) The length of time the property has been in the employee's possession.

h. Determining the Amount of Financial Liability

1. When the BOS finds that an employee should be held liable for property loss, damage, or destruction, the BOS will determine and specify in writing the exact dollar amount. More than one employee may be found liable for an incident involving a piece of property, but the dollar amount must be prorated equitably among the liable employees; e.g., if two employees are equally to blame for a loss, then the total amount of the loss should be divided between them.
2. The amount of financial liability assessed by the BOS should be determined as follows:
 - (a) Damage. Except as limited by 4.h2.(c) below, the amount of financial liability shall be (i) the replacement cost of a comparable item, or (ii) the estimated or actual cost of repairs, regardless of whether or not the property is repaired; whichever is lower.

- (b) Loss (including theft) or Destruction. The amount of financial liability for loss or destruction of Government property shall be (i) the replacement cost of a comparable item, or (ii) the estimated or fair market value of the property computed by subtracting the accumulated depreciation from the acquisition value, whichever is lower.
- (c) In no case involving gross negligence will the employee be assessed more than \$1,000 or one month's net pay, whichever is less.
- (d) In no circumstances shall consequential costs such as towing, storage, damage to private property, etc. be part of the liability assessed.
- (e) Depreciation Formula for Lost, Damaged, or Stolen Property. Straight-line depreciation is the Departmental standard for depreciation. To determine the value of property at the time of its loss or damage do the following:
- 1 Line 1: Determine the acquisition value (the fair market or estimated value at the time of receipt).
 - 2 Line 2: Identify the salvage value.
 - 3 Line 3: Subtract the salvage value from the acquisition value.
 - 4 Line 4: Subtract the acquisition year from the year in which the incident occurred and multiply the result by twelve.
 - 5 Line 5: Subtract the acquisition month from the month in which the incident occurred.
 - 6 Line 6: Add or subtract the result from line 5 with line 4.
 - 7 Line 7: Multiply the result from line 3 by the result from line 6.
 - 8 Line 8: Determine the useful life and, if applicable, subtract the acquisition year less the model year. Multiply the result by twelve. Model year is applicable only if useful life is directly tied to model design configuration and lifespan of model is known.

9 Line 9: Divide the result from line 7 by the result from line 8.

10 The result from line 9 is the accumulated depreciation for the item at the time of loss and is then subtracted from the acquisition value to determine the value of the property prior to being lost, damaged, or stolen.

i. BOS Chair's Determination of Liability

1. Determines liability from BOS recommendation.
2. If necessary notifies supervisors of BOS findings for appropriate disciplinary action.

j. Employee Notification of Findings and Determination of Liability

1. Immediately following the completion of review and approval of a BOS action, the BOS Chair will notify the employee of a determination of liability or non-liability.
2. The BOS Chair must provide the employee with the following information.

(a) A copy of the signed, reviewed, and approved Report of Survey, including findings and recommendations.

(b) Where a Determination of Liability has been made, a letter stating: "If you (the employee) choose to appeal the findings and determinations of the Board of Survey, you must file a notice of appeal within 30 days of the date of the decision transmitted by this letter. Submit your appeal to the Associate Administrator for Management & Budget (NA-MB), 1000 Independence Avenue, S.W., Washington, D.C. 20585, or FAX Number (202) 596-4856. A copy of your appeal letter must be forwarded to the undersigned and your cognizant Property Administrator [*for employees of NA-15, the Property Management Officer (PMO)*] to ensure billing procedures will not be implemented until your appeal is decided."

k. Employee Appeal of Determination of Liability. An employee may appeal a determination of financial liability within 30 calendar days. Appeals shall be submitted in writing to the Associate Administrator for Management & Budget (NA-MB-1). All findings by the Associate Administrator for Management & Budget are final.

1. The appellant shall send a copy of all appeals to the cognizant Property Administrator/Accountable Property Officer (*for employees of NA-15, the PMO*), who will ensure that billing procedures are not inadvertently begun.
 2. NNSA organizations have the right to respond to an employee appeal. Upon notification of an employee appeal the element/office must immediately contact the appropriate appeal authority, requesting an opportunity to respond. A timeframe for responding will also be established.
 3. Copies of all appeal documents and related correspondence shall be submitted to the BOS Chairperson, members of the BOS, Property Administrator/Accountable Property Officer, Property Manager (if applicable), and recipients of the Report of Survey.
 4. Within 10 days of receipt of a copy of the notice of appeal, the BOS Chair whose decision is being appealed shall ensure that the entire original official file supporting the determination is transmitted to the appropriate appeal authority.
 5. NA-MB-1 must respond to the appeal within 30 days from receiving the official file from the BOS Chair.
1. Billing the Employee
 1. Requirement to establish a claim. At the end of the 30 day appeal period, if the employee has not appealed, the Government will establish its claim against the employee by billing for the amount determined by the BOS. Payment of such billing does not convey title to the property.
 2. Suspension of billing procedures. Billing procedures will be suspended pending the outcome of a timely appeal. Billing will be reinstated if the appeal authority finds in favor of the Government, or when the appeal authority provides that a decision or any part of it shall be in full force and effect immediately.
- m. Debt collection
 1. After the 30-day appeal period or upon final decision by the appeal authority in favor of the Government, debt collection will be initiated by the Property Administrator/Accountable Property Officer. To submit a billing request for debt collection, contact the cognizant field or

headquarters Chief Finance Officer. Amounts owed by an employee resulting from a Survey action may be voluntarily remitted under bureau/office procedures or may be collected by administrative offset in accordance with 10 USC 1533 and DOE O 533.1, Collection from Current and Former Employees for Indebtedness to the United States.

2. Employees may replace lost, stolen, or destroyed items with a comparable item, or have damaged items repaired, upon written approval by the Accountable Property Officer.

5. RESPONSIBILITIES.

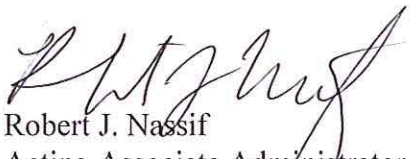
- a. Heads of NNSA Elements (Deputy Administrators, Associate Administrators, NNSA General Counsel, and Field Office Managers).
 1. Ensure compliance with provisions of Title 41 Code of Federal Regulations (CFR), Chapter 101, FPMR; 41 CFR, Chapter 102, FMR; and 41 CFR 109, the DOE O 580.1, as they pertain to Government personal property management.
- b. Associate Administrator for Management and Budget (NA-MB).
 1. Has overall responsibility for developing and overseeing the Department's workforce discipline program for NNSA organizations.
 2. Serves as appeal authority for BOS determinations of liability.
- c. Director, Office of Business Operations, Office of Management and Budget (NA-MB-20):
 1. Serve as the BOS Chair and has final authority for the BOS Report of Findings for NNSA employees, except NA-15.
 2. Notifies potentially liable employee of BOS proceedings.
 3. Notify employees of determination of liability or non-liability.
 4. Designate Property Administrators/Accountable Property Representatives for NNSA.
- d. Assistant Deputy Administrator for Secure Transportation (NA-15).
 1. Appoints the NA-15 BOS Chair.
 2. Notifies potentially liable employee of BOS proceedings.

3. Notify employees of determination of liability or non-liability.
 4. Designate Property Administrators/Accountable Property Representatives for NA-15.
- e. Office of Acquisition Management (NA-APM-10). Has overall responsibility for developing and overseeing the personal property management program.
- f. Office of Information Management (NA-IM), Defense Nuclear Security (NA-70), NNSA General Counsel (NA-GC), and other NNSA elements when requested. Provide support and report to BOS chair.
- g. Property Administrator/Property Management Officer/Accountable Property Officer.
1. Ensures that Government personal property is properly accounted for, controlled, protected, and used.
 2. Administers Government personal property management requirements. Provides effective control over all Government personal property under his/her jurisdiction in accordance with 41 CFR 101, 102, and 109 and DOE O 580.1.
 3. Receives all reports of Government personal property loss, theft, damage, or destruction.
 4. Prepares Summary Reports for submission to BOS.
 5. Makes determination if liable employee may replace lost, stolen, or destroyed items with comparable items, or have damaged items repaired.
 6. Institutes collection activity.
- h. NNSA Personnel.
1. Protect all Government personal property.
 2. Maintain Government personal property in the same condition as received, allowing for normal wear and tear.
 3. Follow appropriate regulations and procedures before any Government personal property transaction occurs such as transfer or removal of Government personal property from the premises. This includes obtaining written authorization (“Property Removal Authorization” or local equivalent) before removing.

4. Notify the Property Administrator/Accountable Property Officer, in writing, of loss (including theft), damage, or destruction of Government personal property within 24 hours from the time of discovery. For lost, damaged, or destroyed property with a replacement value greater than \$1,000.00, submit a concise summary of the case for review by the BOS. The responsibility to notify in cases of lost, damaged, or destroyed property is not limited to the potentially liable party. All personnel are charged with protecting and preserving Government property. If, for any reason, the Government employee responsible lost, damaged or destroyed property is unable or unwilling to comply with this policy, personnel aware of the loss, damage, or destruction must report it to the Property Administrator/Accountable Property Officer.
- i. Board of Survey.
 1. Receives report of lost, damaged, or destroyed property from the Accountable Property Representative.
 2. Performs fact-finding of incident.
 3. Drafts Report of Findings.
 4. Submits a Report of Findings to the BOS Chair.
 5. Determines amount of financial liability, where applicable.
 6. Where appropriate, reports Findings to and/or coordinates with Office of Inspector General and judiciary proceedings.
 7. Will notify the employees supervisor of BOS findings.
6. REFERENCES.
 - a. 18 USC § 641, Crimes and Criminal Procedure.
 - b. 5 CFR § 2635.704, Use of Government Property.
 - c. 10 CFR § 1533, Debt Collection Procedures (see 5 CFR part 550, subpart K. and 31 CFR 285.7, Federal Salary Offset).
 - d. 41 CFR Chapter 101, Federal Property Management Regulations.
 - e. 41 CFR Chapter 102, Federal Management Regulation.
 - f. 41 CFR Chapter 109, Department of Energy Property Management Regulations.

- b. 5 CFR § 2635.704, Use of Government Property.
 - c. 10 CFR § 1533, Debt Collection Procedures (see 5 CFR part 550, subpart K. and 31 CFR 285.7, Federal Salary Offset).
 - d. 41 CFR Chapter 101, Federal Property Management Regulations.
 - e. 41 CFR Chapter 102, Federal Management Regulation.
 - f. 41 CFR Chapter 109, Department of Energy Property Management Regulations.
 - g. DOE O 203.1, *Limited Personal Use of Government Office Equipment Including Information Technology*, dated January 7, 2005.
 - h. DOE O 221.1, *Reporting Fraud, Waste, and Abuse to the Office of the Inspector General*, dated March 22, 2001.
 - i. DOE O 533.1, *Collection from Current and Former Employees for Indebtedness to the United States*, dated September 26, 2003.
 - j. DOE O 580.1A, *Department of Energy Personal Property Management Program*, dated March 30, 2012.
 - k. DOE HQ O 580.1C, *Headquarters Personal Property Asset Management*, dated September 26, 2005.
7. CONTACT. Director, Office of Business Operations(NA-MB-20), (202)586-0631.

BY ORDER OF THE ADMINISTRATOR:



Robert J. Nassif
Acting Associate Administrator
for Management and Budget

ATTACHMENT 1. DEFINITIONS.
ATTACHMENT 2. LDD/BOS PROCESS FLOW CHART

DEFINITIONS

1. Board of Survey (BOS) – A group of individuals, consisting of at least three members and not more than five to investigate reports of missing or damaged Government personal property. The organizational Property Manager, Property Administrator/Accountable Property Officer, or employees reporting the missing or damaged Government personal property are not authorized to serve on a Board of Survey.
2. Days – Calendar days.
3. Disciplinary Actions -- Acts taken only for the purpose of correcting unacceptable conduct: behavior on the job, violations of laws, rules, regulations, or other situations that may adversely affect job performance. Some disciplinary actions are also adverse actions in that they reduce an employee's pay or grade, or involuntarily place the employee in anon-pay status or separate the employee from federal service.
4. Employee – An individual with assigned duties and paid by the Government. This definition includes full and part-time, temporary and career personnel but does not include contractor or uniformed (military) personnel.
5. Fact-Finding – An inquiry suitable to ascertain the relevant circumstances surrounding lost, damaged, or destroyed property, and the basis for a written report that contains appropriate recommendations on the matter and reasons for the recommendations.
6. Gross Negligence – A party's conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable harm to property. It is conduct that is extreme when compared with ordinary negligence, which is a mere failure to exercise the prudence and care that a reasonable person would exercise.
7. Organizational Property Management Officer (OPMO) – Individual appointed to establish and administer a Government personal property accountability program.
8. Personal Property – Property of any kind except for:
 - Real estate, interests therein (such as easements and rights-of-way), and permanent fixtures which are Government owned, chartered, rented, or leased from commercial sources by and in the custody of DOE or its contractors.

- Source, byproduct, special nuclear materials, and atomic weapons as defined in Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014), as amended.
 - Petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.
9. Property Administrator/Accountable Property Officer –Located at the local operating unit having physical custody and/or control over property, the Property Administrator/accountable Property Officer is responsible for keeping the property records for his/her area of responsibility, taking and maintaining inventories, and informing the OPMO, and/or HQ Property and Supply Management Team Office of all new items of accountable property acquired and old items of accountable property excessed and removed. (Note: Most NNSA organizations and DOE O 580.1 *Department of Energy Personal Property Management Program* designate this function as Property Administrator. The Office of Secure Transportation uses the title Accountable Property Officer.)
 10. Property Manager – Individual whose primary job function is control of government property. Where they exist, their responsibilities include oversight of Property Administrators/Accountable Property Officers in their property-related duties and liaison to the cognizant OPMO.
 11. Sensitive Items (also designated Sensitive Property) —Property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals. Portable electronic storage media includes thumb drives, laptop computers, blackberries, disks, and other easily transported means of saving electronic data. When portable electronic storage media contain sensitive unclassified information (SUI), they are considered sensitive property.
 12. Survey Chairperson – The Board of Survey Chairperson leads the Board of Survey in investigating the circumstances leading to the LDD of the personal property. The Board of Survey Chairperson is appointed by the Associate Administrator for Management and Budget and is selected based on training, experience, competence, and ability to conduct independent and objective investigations.
 13. Words in singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

