

Approved: 2-05-09

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



**NATIONAL NUCLEAR SECURITY ADMINISTRATION
Office of Acquisition & Supply Management**

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

1. PURPOSE. This Business and Operating Policy (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. None.
3. APPLICABILITY.
 - a. This BOP is applicable to all paid and unpaid NNSA employees responsible for Government owned or leased personal property within NNSA. (Determining Authorities will consult with the Director of Human Resources 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 only.
 - c. The Director, Office of Acquisition and Supply Management (NA-63) may grant waivers to this policy. This responsibility is non-delegable. There are no other forums of redress.
 - 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 580.1 and this policy.

- (1) Financial liability will be determined and the amount assessed in accordance with this policy letter.
 - (2) This policy 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 and/or sensitive items regardless of value. If multiple items are involved in a single incident, the total value of all items equal to or greater than \$1,000, or including one or more sensitive items regardless of value.
 - (b) Sensitive or other bar-coded items, regardless of value.
 - (c) Pattern of lost, damaged, or destroyed property, where such pattern indicates possible theft and/or negligence.
- b. If, in the course of the fact-finding, there exists evidence of liability as outlined in 4.c.2 below, the Board of Survey findings will be referred to the Determining Authority (the Site Manager, the Deputy Administrator (NNSA HQ organizations), or, in the case of the Office of Secure Transportation, to the Assistant Deputy Administrator for Secure Transportation.)
- c. Determination of Liability. When Government property is lost, stolen, damaged, or destroyed, a Board of Survey (BOS) will determine whether the employee(s) involved was 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 unavoidable accidental damage or loss. This does not preclude administrative action for failure to safeguard government property; follow safety procedures; comply with established regulations, policy, or guidance; or seek instruction and/or direction from supervisors. The loss or damage of Government property alone does not automatically indicate negligence. If the Board of Survey cannot prove 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 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:
 - (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 simple or ordinary neglect or negligence, which is an act or 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 gross negligence, which is an act or omission of the employee constituted by misconduct, willful negligence, or a wanton and reckless disregard for property.
 - (d) Any case that involves gross negligence or willful misuse by an NNSA employee 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. In such cases, cause of damage to the property is irrelevant.
 - (3) Whenever there are dissenting opinions from the findings and recommendations among the members of the Board of Survey, the majority opinion will be the recommendation of the Board. The minority view will be appended to the report for the information of the employee's line manager.
- 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 Board of Survey, the Property Administrator/Accountable Property Officer for the property to be surveyed will immediately notify the Board of Survey Chairperson or Property Manager as determined by local instructions. The Property Administrator/Accountable Property Officer is responsible, within 30 days of the notification, for preparing 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 Board of Survey 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 Board of Survey 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 Board within the same timeframe, but must provide an accompanying written statement of any facts he/she wishes the Board to include in the Report of Survey.
- (3) Employee may have legal counsel present during oral presentations and at any other point in Board of Survey proceedings.
- (4) Potentially liable employees shall participate in fact-finding and Board of Survey proceedings. Other employees with relevant knowledge shall participate upon request.

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. Boards of Survey must confine their recommendations to recovering Government losses and correcting the cause of the incidents. If findings so indicate, the Board of Survey 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 negligence or willful misconduct, violated a duty to provide reasonable care for the property. Whether the person's actions or omissions constitute negligence depends on the circumstances of each case. Actions indicating negligence under one set of circumstances may not represent negligence in other circumstances. Therefore, the Board of Survey must consider fully the following factors when determining the reasonableness of a person's conduct:

- (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 LDD;
 - (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 Board of Survey finds that an employee should be held liable for property loss, damage, or destruction, the Board will determine and specify in writing the exact dollar amount. More than one employee may be found negligent for an incident involving a piece of property, but the dollar amount must be prorated equitably among the negligent 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. The total amount of liability assessed should be determined as follows:
 - (2) The amount of financial liability assessed by the Board of Survey in cases where property loss, damage, or destruction was the result of simple or gross negligence shall be:
 - (a) Damage. Except as limited by 4.h(2)(c) below, the amount of financial liability for damage resulting from simple or gross negligence 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 resulting from simple or gross negligence 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 simple 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, whether for simple or gross negligence.
- i. 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.

j. Determining Authority's Determination of Liability

- (1) Coordination on the Board of Survey Report of Findings and the Determination of Liability appended thereto shall constitute the Determining Authority's concurrence with Board recommendations and Determination of Liability.
- (2) The Determining Authority's decision to not coordinate is final.

k. Employee Notification of Findings and Determination of Liability

- (1) Immediately following the completion of review and approval of a Survey action, the Determining Authority will notify the employee of a determination of liability of non-liability.
- (2) The Board of Survey must provide the employee with the following information. This action must be concurrent with notification by the Head of the NNSA element.
 - (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 & Administration (NA-60), 1000 Independence Avenue, S.W., Washington, D.C. 20585, or FAX Number (202) 596-4856. [*For employees of the NA-60 element, this sentence should read, Submit your appeal to the Associate Principal Deputy Administrator (NA-1), 1000 Independence Avenue, S.W., Washington, D.C. 20585, or FAX Number (202)-586-7535.*] A copy of your appeal letter must be forwarded to the undersigned and your cognizant Property Administrator [*for employees of NA-15, the Accountable Property Officer*] to ensure billing procedures will not be implemented until your appeal is decided."

1. Employee Appeal of Determination of Liability
 - (1) An employee may appeal a determination of simple or gross negligence and/or financial liability.
 - (a) For employees outside the NA-60 organization, appeals shall be submitted in writing to the Associate Administrator for Management & Administration (NA-60). All findings by the Associate Administrator for Management & Administration are final.
 - (b) For employees within the NA-60 organization, appeals shall be submitted in writing to the Associate Principal Deputy Administrator (NA-1). All findings by the Associate Principal Deputy Administrator are final.
 - (2) The appellant shall send a copy of all appeals to the cognizant Property Administrator/Accountable Property Officer, who will ensure that billing procedures are not inadvertently begun.
 - (3) 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.
 - (4) Copies of all appeal documents and related correspondence shall be submitted to the Board of Survey Chairperson, members of the Board of Survey, Property Administrator/Accountable Property Officer, Property Manager (if applicable), and recipients of the Report of Survey.
- m. Transmittal of the Official File
 - (1) Within 10 days of receipt of a copy of the notice of appeal, the Determining Authority whose decision is being appealed shall ensure that the entire original official file supporting the determination is transmitted to the appropriate appeal authority.
 - (2) The official file must be organized in a logical reverse chronological order and bound or stapled so that it will not become disorganized in the transmittal process.
- n. Billing the Employee
 - (1) Requirement to establish a claim. After the Determining Authority has concurred with a Board of Survey finding of financial liability, and the

employee has been so notified, there will be a 30 day appeal period. At the end of the 30 days, if the employee has not appealed, the Government will establish its claim against the employee by billing for the amount determined by the Board of Survey. 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.
- (3) Exemption. Because of the costs associated with the collection process, NNSA offices may elect not to collect small amounts in cases of simple negligence. If the amount is less than the estimated cost to effect the collection and does not exceed \$250, the Determining Authority may waive it.

o. 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 (Site Managers, Head of the Service Center, and HQ Associate Administrators and Deputy Administrators).
 - (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.

- (2) Designate Property Administrators/Accountable Property Representatives for their NNSA elements.
 - (3) Serve as final Determining Authority for Board of Survey Report of Findings.
 - i. The Determining Authority for the Office of Secure Transportation may be delegated down to the Assistant Deputy Administrator for Secure Transportation.
 - ii. In the absence of such delegation or in cases of conflict of interest, the Determining Authority for the Office of Secure Transportation will be the Principal Assistant Deputy Administrator.
 - (4) Notifies employee of determination of liability or non-liability.
- b. Associate Administrator for Management and Administration (NA-60).
- (1) Has overall responsibility for developing and overseeing the personal property management program and the Department's workforce discipline program for NNSA organizations.
 - (2) Appoints Boards of Survey to investigate lost, damaged, or destroyed property involving potential liability of NNSA employees.
 - (a) Appointment of Boards of Survey may be delegated to Site Managers or HQ Deputy Administrators.
 - (b) Boards of Survey may be appointed for a single incident of lost, damaged, or destroyed property; for multiple related incidents; or for a stated period of time.
 - (3) Serves as appeal authority for employees outside the NA-60 element.
- c. Associate Principal Deputy Administrator. Serves as appeal authority for employees of the Associate Administrator for Management and Administration (NA-60).
- d. Property Administrator/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 Board of Survey.
 - (5) Makes determination if liable employee may replace lost, stolen, or destroyed items with comparables items, or have damaged items repaired.
 - (6) Institutes collection activity.
- e. 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 Government personal or personally owned property from the premises.
 - (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 Board of Survey. 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.

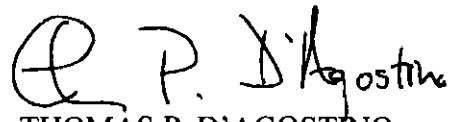
- f. Board of Survey.
 - (1) Receives report of lost, damaged, or destroyed property from the Accountable Property Representative.
 - (2) Notifies potentially liable employee of Board of Survey proceedings.
 - (3) Performs fact-finding of LDD incident.
 - (4) Drafts Report of Findings and coordinates with NNSA Office of General Counsel.
 - (5) Submits review and approval of Report of Findings to the Determining Authority (Site Manager, HQ Deputy Administrator, or, for the Office of Secure Transportation, the Assistant Deputy Administrator for Secure Transportation).
 - (6) Determines amount of financial liability, where applicable.
 - (7) Where appropriate, reports Findings to and/or coordinates with Office of Inspector General and judiciary proceedings.

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.
- 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 580.1, *Department of Energy Personal Property Management Program*, dated December 7, 2005.
 - k. DOE HQ O 580.1C, *Headquarters Personal Property Asset Management*, dated September 26, 2005.
7. CONTACT. Director of Policy, Office of Acquisition and Supply Management (NA-63), (202)586-8257.

BY ORDER OF THE ADMINISTRATOR:


THOMAS P. D'AGOSTINO
Administrator

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, who are appointed by the Associate Administrator for Management and Administration or his/her designee, 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. Determining Authority – a) Head of Site Office (HSO); b) Deputy Administrator (for HQ actions); or, c) for the Office of Secure Transportation, the Assistant Deputy Administrator for Secure Transportation . The individual or their appointee (appointments must be in writing) who will make a determination of responsibility and liability for LDD based on the final BOS report.
4. 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.
5. 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.
6. 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.
7. Negligence – A party's failure to exercise the prudence and care that a reasonable person would exercise in similar circumstances to prevent injury or loss to another party. The doing of something which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do under like circumstances.
8. Organizational Property Management Officer (OPMO) – Individual appointed to establish and administer a Government personal property accountability program.

9. 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.
10. 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.)
11. Property Manager – Individual whose primary job function is control of government property. Not all NNSA sites have property managers. Where they exist, their responsibilities include oversight of Property Administrators/Accountable Property Officers in their property-related duties and liaison to the cognizant OPMO.
12. Reviewing Authority – General Counsel (GC) - The individual who shall assure via a review of the pertinent information and documentation that there is a fair and balanced result derived from the actions of the Determining Authority and other members of the Board of Survey team. This review shall be documented on all BOS cases and filed with a retirement work order. If the Reviewing Authority disagrees with the Board of Survey's findings and determinations, a written statement will be prepared outlining reasons for such disagreement, and attached to the Report of Survey.
13. 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.

14. Survey Chairperson – The Board of Survey Chairperson leads the Board of Survey in investigating the circumstances leading to the LDD of the personal property. Senior in grade to the individual subject to potential assessment of personal responsibility and/or liability, the Board of Survey Chairperson is normally appointed by the Associate Administrator for Management and Administration or his/her designee and is selected based on training, experience, competence, and ability to conduct independent and objective investigations.
15. 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.

Attachment 2
NNSA POLICY LETTER -----, (DATE)
FINANCIAL LIABILITY FOR GOVERNMENT ISSUED PERSONAL PROPERTY LOST, DAMAGED, OR DESTROYED (LDD)

