

New Delhi, the 18th October, 2007OFFICE MEMORANDUM**Subject: New Coal Distribution Policy**

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In supersession of existing coal distribution policy for core and non-core sector and other instructions issued in this regard from time to time, the Government is pleased to approve the New Coal Distribution Policy. The new policy is as follows:

1. Classification of Consumers :

The existing classification of consumers into Core & Non-core has been reviewed and it has now been decided to dispense with the same. Instead, each sector/consumers would be treated on merit keeping in view, inter-alia, the regulatory provisions applicable thereto and other relevant factors.

2. Distribution and Pricing of coal to different consumers/sector(s):-

2.1 Requirements of defence sector and Railways will be met in full at notified price, as at present.

2.2 Power Utilities including Independent Power Producers (IPPs)/ Captive Power Plants (CPPs) and Fertilizer Sector

100% of the quantity as per the normative requirement of the consumers would be considered for supply of coal, through Fuel Supply Agreement (FSA) by Coal India Limited (CIL) at fixed prices to be declared/notified by CIL. The units/power plants, which are yet to be commissioned but whose coal requirements has already been assessed and accepted by Ministry of Coal and linkage/ Letter of Assurance (LOA) approved as well as future commitments would also be covered accordingly.

2.3 Other consumers

75% of the quantity as per the normative requirement of the consumers/actual users would be considered for supply of coal through FSA by CIL at notified prices to be fixed and declared by CIL. The balance 25 % of

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coal requirement of the units will be sourced by them through e-auction / import of coal etc., as per their preference. The units which are yet to be commissioned but whose coal requirement has already been assessed and accepted by Ministry of Coal and linkage/LOA approved as well as future commitment finally made would also be covered accordingly.

All the existing linkage holders of erstwhile core and non core sector and not having FSAs would be required to enter into FSA with coal companies. At present small and tiny consumers in non core sector, whose annual consumption is less than 500 metric tonnes are eligible to get coal through State nominated agencies/NCCF etc. The scope of coverage through State nominated agencies is now being increased upto 4200 tonnes per annum. It means that now the distribution of coal to units whose requirement is upto 4200 tonnes per annum will be done through the agencies nominated by State Government. Units whose requirement is more than 4200 tonnes per annum will take coal directly from Coal India Limited/Subsidiary companies through FSAs. As far as the linked consumers of erstwhile non core sector, whose annual requirement is less than 4200 tonnes are concerned, they would be given the option to either entering into FSA with the coal company as per the terms and conditions, including satisfaction level applicable to the other consumers or they may opt out of FSA regime and access their coal requirement through agencies nominated by State Governments.

2.4 Coking Coal to Integrated Steel plants:

Supply of coal to Steel plants would be based on Fuel Supply Agreements (FSAs). The price of coal would be on the basis of import parity pricing with suitable adjustment for quality. This system is already in vogue.

3. Consumers in small & medium sector

3.1 The State Governments are requested to work out genuine requirement of such units in small and medium sector like Smokeless fuel, brick kiln, coke oven units etc. on a transparent and scientific basis and distribute coal to them accordingly. The State Governments may take appropriate steps to evaluate the genuine consumption and monitor use of coal. The present cap is also enhanced to 4200 tonnes per annum for the targeted consumers under this category. In order to meet the enhanced cap fixed for such consumers, the quantity earmarked for distribution to these agencies would also be increased to 8 million tonnes annually, to start with. This quantity would be allocated for distribution to those units/consumers in small and medium sector across the country whose requirement is less than 4200 tonnes per annum and are otherwise not having any access to purchase coal or conclude Fuel Supply Agreement (FSA) for coal supply with coal companies.

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The earmarked quantity would be distributed through agencies notified by the State Governments. These agencies could be State Govt. Agencies / Central Govt. Agencies (National Co-operative Consumer Federation[NCCF]/ National Small Industries Corporation[NSIC] etc) or industries associations, as the State Govt. may deem appropriate. The agency so notified will continue to distribute coal until the State Govt. chooses to denotify it.

The agency /association so notified by the State Govts., would be required to enter into FSA with coal company to be designated by the Coal India limited. The FSA will continue to remain in force till either the State Govt. denotifies the agency/association or CIL shifts the obligation to some other coal company due to production, transportation logistics etc,. In the latter case, a fresh FSA would be signed with the new coal company. The FSA would be based on firm commitment and compensation for default in performance on either side. These State Government/Central Govt. agencies would be free to devise their own distribution mechanism. However, the said mechanism should inspire public confidence and should result in distribution of coal in a transparent manner.

The price charged to such agencies would be same notified price as applicable to other consumers entering into FSA. The agency would be entitled to charge actual freight and upto 5% margin as service charge, over and above the basic price charged by the coal company, from their consumers. The concerned State Governments and Central Govt. Deptt. having administrative control over the agencies would be responsible to ensure that coal allotted for targeted consumer is distributed in a fair and transparent manner and appropriate action taken to prevent its misuse.

3.2 The quantity to be allocated to this sector may be reviewed on the basis of their performance in the beginning of every year. Allocation of this quantity amongst the states would be done on the basis of their consumption pattern in the past.

4. Replacement of Linkage System by Fuel Supply Agreement (FSAs)

The linkage system will be replaced with a more transparent bilateral commercial arrangement of enforceable FSAs. All the existing valid linked consumers whose linkage/MPQ during the year 2006-07 was 4200 tonnes or more would have to enter into FSAs with coal companies not later than six months from a date to be notified by CIL. The other valid linked consumers will have the option to opt out of FSA regime or enter into FSA within six months. On opting out, they may access their coal requirement through various channels like e-auction, distribution network of State nominated agencies etc. Failure to enter into FSA will result in discontinuation of supplies at fixed prices. All existing

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FSA, as prevailing on the date of introduction of this policy, will continue. However, they would need to be modified in view of the new provisions.

5. Policy for New Consumers

5.1 The Letter of Assurance (LoA) to be issued now pursuant to the new policy will have a validity of 24 months for consumers/applicants of Power Utilities, CPPs & IPPs and 12 months for other consumers instead of 30 months as earlier. The allottee of LoA would be required to fulfill certain stipulated conditions and meet the milestones within this period and there upon approach coal companies for entering into FSA. Such FSA would be completed within three months. Further, with a view to ensure that only serious and committed consumers approach for LoA, they would be required to furnish an "Earnest Money Deposit" (EMD). EMD can be in the form of Bank Guarantee and would stand discharged once FSA is concluded within the stipulated period. However, on failure, the EMD will be forfeited. The amount of EMD could be initially kept at 5% of the value of Annual coal requirement. However, CIL may decide a different level, based on various relevant facts, with the approval of Board of Directors of Coal India Limited.

5.2 For new commitments including short-term tapering commitment to consumers having captive coal block, Power Utilities, CPPs, IPPs, Fertilizer units, and others would be issued an enforceable Letter of Assurance for supply of coal and thereafter they would be entitled to enter into FSA within a stipulated time subject to fulfillment of certain conditions to be stipulated therein. For Power Utilities including Independent Power Producers (IPPs) and Captive Power Plants (CPPs), cement sector and sponge iron sector, the present system of linkage committee at the level of Government would continue. CIL will issue LoA after approval of applications by the Standing Linkage Committee (Long-term). However, for other sectors the task of issuing letter of assurance, will be the responsibility of CIL.

In order to meet the domestic requirement of coal, CIL may have to import coal as may be required from time to time, if feasible. CIL may adjust its overall price accordingly. Thus, it will be the responsibility of CIL/Coal companies to meet full requirement of coal under FSAs even by resorting to imports, if necessary.

6. Letter of Assurance for New Consumers

6.1 New consumers from State/Central power utilities, CPPs, Independent Power Producers (IPPs), Fertilizer, Cement and Sponge Iron units may be issued LOA, based on prevailing norms and recommendation of Administrative Ministry, which may inter alia have regard to LoA/Linkage already granted

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to the consumer of specific sector, existing capacity, requirement for capacity addition during a plan period etc.

6.2 All other consumers may be issued LOA by CIL, based on the prevailing norms and on the recommendation of the administrative ministry. CIL may also engage an independent Govt. or recognized agency/ institution, if required, for the purpose of processing/certification of coal requirement of individual consumers, if there is no prevailing norm for such category of consumers/sector.

6.3 LOA will be issued by the CIL to the applicant consumers consequent upon payment of EMD to the coal company. The amount of EMD could be initially kept at 5% of the value of annual coal requirement. However, CIL may decide a different level, based on the various facts, with the approval of Board of Directors of Coal India Limited.

6.4 LOA will be valid for a period of 12/24 months as applicable, during which the applicant consumer will be required to achieve the milestones pertaining to his projects/ plant as stipulated in the LOA, failing which LOA will stand terminated automatically and the EMD would be forfeited.

7. FSAs with New Consumers

7.1 On successfully achieving the milestones stipulated in LOA coal companies would execute FSA with the applicant consumer covering commercial arrangement for supply of coal. FSAs would be, inter-alia, based on 'Take or Pay' principle.

7.2 The FSAs would cover 100% of normative coal requirements of the Power Utilities, including Independent Power Producers (IPPs) and Captive Power Plants (CPPs), Fertilizer units and 75% of normative coal requirement of other consumers.

7.3 As and when Fuel Supply Agreements come into existence, both parties viz. coal companies and consumers would endeavour to enter into Fuel Supply and Transport Agreement (FSTA) which would be a tripartite agreement involving the coal supplier, the coal consumer and the logistic provider i.e. railways. The FSTA may firstly be made applicable to major consumers like power, cement and steel sector and could be extended to other consumers in a phased manner.

8. Role of Standing Linkage Committee

The existing SLC (LT) will continue to recommend issuing of LoA in respect of Power Utilities including CPPs & IPPs, Cement and Sponge iron

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including steel, as is being done at present. It may also perform other functions as per its terms of reference for coal sector as a whole. The issuance of LoA to consumers of other sectors will be directly dealt with by CIL on the basis of recommendation of nodal Ministry.

9. Discipline and economy in coal use

Coal is no longer an essential commodity but it is still considered a scarce fuel and hence it must be used efficiently and economically. The consumers getting coal through FSA would be expected to use it efficiently so as not to waste this scarce resource and hence norms and efficiency compliance should be carried out diligently by the concerned designated authority/agencies. This would also require that coal supplied should not be misused or diverted by FSA holder to others. The existing norms, wherever being made applicable for deciding linkage quantity etc., would be reviewed in consultation with the nodal Ministry concerned, and revised norms would be made applicable for working out the satisfaction level, wherever applicable.

10. E-auction of Coal

Coal distribution through e-auction was introduced with a view to provide access to coal for such consumers who are not able to source coal through the available institutional mechanisms for reasons like the seasonality of coal requirement, limited requirement of coal not warranting long-term linkage etc. In the long run, it is expected that e-auction may help in creating spot as well as future market of coal in the country.

Thus, a fresh scheme of E-auction will be introduced subject to, inter-alia, following conditions:-

- (i) Any buyer will be entitled to buy coal under e-auction
- (ii) There shall not be any "Floor Price" in e-auction. However, coal companies may be allowed to fix an undisclosed Reserve Price not below the notified price.
- (iii) Programme of e-auction should be announced well in advance and be given wide publicity to all consumers who intend to participate.
- (iv) At the beginning of the financial year, CIL shall declare a programme on sale of coal through e-auction indicating the quantity and quality of coal to be made available through auction during all the four quarters from different coal companies/coalfields.

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 (v) In order to address the concerns of such industrial consumers who wish to have an assured supply over a long period, say one year, under e-auction so as to plan their annual production etc., CIL will earmark a fixed quantity which will be provided to highest bidder/bidders as per bidder's requirement over the period of the bid.

Based upon above guidelines and modalities, a revised e auction scheme would be introduced by CIL within one month. Around 10% of estimated annual production of CIL would initially be offered under e-auction and the quantity to be offered under e-auction would be reviewed from time to time by Ministry of Coal.

11. Transitional provisions and implementation schedule

The new distribution policy envisages implementation of revised distribution policy in which there will be departure from the existing policy of distribution based on inter-alia norms, FSAs, price, distribution mechanism, administrative allocation etc. As these modalities will have to be tailor made accordingly to the new distribution policy, transitional provisions have been made for implementing new coal distribution policy and to avoid any disruption in coal distribution to various categories of consumers, as under:

Para Number	Implementation schedule	Transitional provisions
Para 2	Upto Six months	Distribution as per existing FSA/SLC(ST). For non core linked consumers the present system of offer by CIL.
Para 3	Upto Six months	The existing system of allocation of coal to State nominated agencies and NCCF to continue. However, recommendations regarding enhancement of cap to 4200 tonnes per annum will be given immediate effect.
Para 4	Six months	Allocation in terms of existing FSA/SLC(ST). For non core linked consumers the present system of offer by CIL.

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Para 5 & 6	a) Two months	For power utilities/IPPs LoA to be recommended by SLC(LT) subject to deposit of applicable EMD and modified LoA containing stipulated terms and conditions. For other categories similar interim/conditional LoA can be issued by CIL, if required.
	b) One Year (For meeting the requirement of FSA commitment through import, if required.)	Existing system of meeting the FSA quantity would continue.
Para 7.1	Two months	
Paras 10	One month	E-booking to be extended in the interim.

Verification of erstwhile non core sector consumers

CIL would undertake verification of such consumers of erstwhile non-core sector consumers, in a time bound manner, either directly or through an agency, so as to check the veracity of their claim of being bonafide consumers of coal and thereafter act accordingly. This exercise should be carried out keeping in view the observations and directions of Hon'ble Supreme Court in the case of M/s. Ashoka Smokeless Coal India Limited and Ors. In respect of those consumers who are not found to be bonafide, Coal companies can cancel their allocation.

The above policy guidelines will also be applicable to distribution of coal from Singareni Collieries Company Limited (SCCL).

CIL/SCCL/Coal Companies are advised to take further appropriate action for implementation of this policy in respect of provisions relevant to them.

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To

1. Shri Ashok Khurana, Addl. Secy., Ministry of Power, Shram Shakti Bhawan, New Delhi.

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2. Dr. Surya Sethi, Principal Advisor, Planning Commission, Yojana Bhawan, New Delhi.
3. Shri Arvind Mayaram, Joint Secretary, Ministry of Economic Affairs, Ministry of Finance, North Block, New Delhi.
4. Shri K.A. Singh Deo, Joint Secretary, Ministry of Steel, Udyog Bhawan, New Delhi.
5. Shri Shashi Ranjan Kumar, Director, Deptt. Of Industrial Policy and Promotion, Ministry of Commerce & Industry, Udyog Bhawan, New Delhi.
6. Shri P.K.Malhotra, Joint Secretary & Govt. Counsel, Deptt. Of Legal Affairs, Ministry of Law, Shastri Bhawan, New Delhi.
7. Shri Chandan Saha, Director, O/o Development Commissioner, Ministry of Small Scale Industries, Udyog Bhawan, New Delhi.
8. Shri P.S. Bhattacharyya, Chairman, CIL, 10-NS Road, Kolkata.
9. Shri S. Ghoshdury, CMD, CMPDIL, Ranchi.
10. Shri K. Ranganath, Director (Marketing), 15-Park Street, Kolkata.
11. Shri Narsing Rao, CMD, SCCL, Kothagudem, Hyderabad (AP).

Copy for information to:

- a) CMDs of BCCL, ECL, CCL, SECL, MCL, WCL, NCL.
- b) PS to MoS (Coal) (c) Sr. PPS to Secretary (Coal)
- (d) PS to AS (Coal) (e) PS to AS (LA)

Copy also for information and necessary action to : All Chief Secretaries of all State Governments/Union Territories

Copy also for information to: Shri Ashish Gupta, Director, PMO, South Block, New Delhi.

Copy to NIC, Ministry of Coal with a request to place this on the website of Ministry of Coal for wide publicity.

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