Chapter 4 - Implementation of the Policy by DoF

4.1 Avoidable payment of subsidy

As per NBS Policy, IMC had to recommend subsidy per nutrient for 'N', 'P', 'K' and 'S' before the start of each financial year for decision by DoF. IMC decided (August 2010) that NBS rates for 2011-12 would be recommended by November 2010 for ensuring availability and timely supply of fertilizers.

On the basis of recommendation of benchmark price[19] by IMC, DoF notified NBS rate of DAP based on benchmark price of US$ 450 cfr[20] per MT (PMT) on 19 November 2010 for 2011-12. Fertilizer companies, however, did not enter into contracts for import of DAP till 10 February 2011. A meeting was held between DoF and representatives of the Fertilizer Industry on 10 February 2011, wherein representatives of the Fertilizer Industry suggested reconsideration of benchmark prices on the basis of prevailing international price. While considering the request, IMC, in February 2011, felt that due to extraordinary situation and need for reconsideration of benchmark price, GoM may consider the issue and give suitable directions. GoM approved enhanced rates of US$ 580 PMT on 15 February 2011 and DoF notified these revised rates on 9 March 2011. Considering the wide gap between the then international price and the above notified rates, Fertilizer Industry again requested DoF, on 28 March 2011, to revise the benchmark price. IMC, in its meeting held on 30 March 2011, brought on record that M/s Zuari Industries Ltd. had finalized a contract for import of DAP with OCP, Morocco at US$ 612 cfr PMT. After deliberations, IMC recommended the rate of DAP at US$ 612 PMT. The Cabinet approved further revised rates on 28 April 2011 and DoF notified the same on 5 May 2011 for 2011-2012. Fixation of benchmark price and its effect on subsidy is shown in Table 7:-

Table 7 : Movement of the Benchmark price of DAP for 2011-12

IMC meeting date	Date of notification of NBS rates	DAP (Benchmark price in US$ cfr PMT)	Subsidy for DAP (PMT in ₹)
8 November 2010	19 November 2010	450	12960
14 February 2011[21]	9 March 2011	580	18474
30 March 2011	5 May 2011	612	19763

[19] 'Benchmark Price' means purchase price considered for fixation of subsidy rates. The initial benchmark price was based on the weighted average price of last one year (October 2009 to September 2010) or last six months (April 2010 to September 2010), whichever was lower.

[20] cfr – Cost and Freight.

[21] The 5th Meeting of IMC was held on 11 and 14 February 2011.

Recommended benchmark price for DAP in November 2010 was US$ 450 PMT. This was reportedly based on the weighted average prices of the fertilizers for the last one year/six months whichever was lower. NBS rate for DAP for 2011-12, based on the benchmark price of US$ 450 PMT, was notified on 19 November 2010.

Majority of the fertilizer companies were, however, importing/procuring DAP, at rates ranging between US$ 495 PMT - US$ 498 PMT during May 2010 to November 2010. Evidently, as the benchmark price considered for fixation of subsidy for DAP was lower than the prevailing import/procurement rates, none of the fertilizer companies were able to finalize contracts with international fertilizer companies.

A series of negotiations took place between DoF and Fertilizer Industry during February and March 2011. During the intervening period, the landed price for DAP rose. Finally, the benchmark price for fixation of subsidy for DAP for 2011-12 was notified at US$ 612 PMT in May 2011 by DoF. This was more than 35 per cent higher than the benchmark rate fixed initially.

Audit observed that fixation of benchmark price by IMC/DoF after taking into consideration the then prevailing procurement rates of DAP for fixation of subsidy would have enabled the fertilizer companies to finalise contracts with international suppliers immediately after such notification[22]. By not fixing the benchmark price at reasonable level in November 2010, GoI lost an opportunity of saving subsidy of ₹5555 [23] crore **(Annexure V)**

DoF in its reply stated (June 2014) that the subsidy rates of P&K fertilizers announced on 19 November 2010 were fixed by IMC taking into account several factors. However, it was reported that no company could finalize import contract for 2011-12 even by mid February due to increase in fertilizer prices globally. The Industry requested DoF to reconsider NBS rates and revise the benchmark prices upward or allow adjustment in MRPs. In order to protect the farmers it was decided to revise the benchmark prices upward and accordingly NBS rates were revised twice, with the approval of Cabinet. DoF also contended (October 2014) that the audit observations were imaginary conclusions and not based on true analysis of international price trends. A number of factors in combination or isolation influence the international prices. India being one of the major importers of P&K fertilizers in the world, cartelisation of major suppliers/producers of phosphate and potash also affects the international price. Adequate availability of inventory levels in the country, good monsoon conditions, international availability of fertilizers etc. also influence the import price of P&K fertilizers. Hence, the conclusion drawn by the audit that delay in finalisation of such contract by fertilizer companies resulted in fixation of benchmark rates at higher rates and additional subsidy burden was not correct. Moreover, procedural requirement in finalisation of NBS rates such as inter-ministerial consultation, consideration by Cabinet etc. also contributed to these delays. DoF further added that it seems that audit while giving their

[22] The fertilizer companies imported DAP at the average rate ranging from US$ 497 to US$ 500 PMT from December 2010 to February 2011. There were no purchases in March 2011.

[23] Impact on subsidy has been worked out by comparing subsidy actually paid with subsidy that would have been paid if benchmark price would have been fixed at US$ 500 cfr PMT (factors considered for working subsidy at the benchmark price of US$ 500 are given in Annexure V) .

observations on the issue, had not analysed the availability of fertilizers in the country. Failure of the companies in entering into contract for import of P&K fertilizers would lead to scarcity of fertilizers in the country as most of the P&K fertilizers were imported. Audit also did not seem to have gone into details of reasons for non-entering contracts for import. IMC before recommending revision of NBS rates had detailed consultations on the issue and hence, there was no loss of subsidy or excess payment of subsidy.

The reply of DoF needs to be viewed against the following facts:

- In November 2010, IMC recommended the benchmark price reportedly based on the weighted average price of (i) last one year i.e. October 2009-September 2010 or (ii) last six months i.e. April 2010-September 2010, whichever was lower. The weighted average price during the previous year was US$ 449.73 PMT and for previous six months was US$ 499.58 PMT. IMC, therefore, recommended the benchmark price of DAP at the rate of US$ 450 PMT for 2011-12 (being lower of the two) which was notified by DoF on 19 November 2010. As stated by DoF, global prices for fertilizers were increasing. In the times of increasing prices, parameter of 'lower of weighted average price of last one year or last six months' led to fixation of benchmark price at the weighted average price of last one year that ignored the then prevailing prices. Due to non-consideration of impact of rising prices by DoF, benchmark price of DAP for 2011-12 got fixed at lower level in comparison to the prevailing prices and the fertilizer companies could not enter into contracts for import of DAP.
- Even during the period December 2010 to February 2011, international price ranged between US$ 497 PMT to US$ 500 PMT.
- So far as contention of DoF that Audit has not gone into details of reasons for non-entering contracts for import, it was observed that in the meeting held on 10 February 2011 between the Secretary (Fertilizers) and representative of the Fertilizer Industry, the latter had informed that benchmark price fixed for 2011-12 announced in November 2010 had proved to be inadequate in the wake of rising prices of fertilizers/fertilizer inputs.
- Contention of Audit is that fixation of benchmark price at an unreasonable level in November 2010 delayed the finalization of contracts and by the time the contracts could be finalized (by end of March 2011) the international import prices had gone up considerably.

The fact, therefore, remains that fixation of benchmark price at an unreasonable level delayed finalization of such contracts leading to additional subsidy burden of ₹5555 crore on GoI.

Recommendation 5: DoF may factor in the impact of movement of international prices, while fixing benchmark price before start of financial year, which would enable fertilizer companies to enter into contracts with international suppliers for timely procurement of their requirements.

4.2 Pending Proformae 'B'

As per the procedure for payment of subsidy for P&K fertilizers (except SSP) under NBS, DoF releases 85 per cent (90 per cent with Bank Guarantee) 'On Account' payment of subsidy month-wise to manufacturers/importers of P&K fertilizers based on receipt of fertilizers in the districts/states. The manufacturers/importers claim 'On Account' payment in prescribed Proforma 'A' duly certified by the authorised signatory as well as the statutory auditor of the company. The balance payment (10-15 per cent) of subsidy is claimed by the fertilizer company based on information in prescribed Proforma 'D' duly certified by the authorised signatory as well as the statutory auditor of the company. The State Governments were required to submit a certificate to DoF for receipt of the fertilizers in prescribed Proformae 'B'.

With the introduction of Mobile Fertilizer Monitoring System (m-FMS) on 25 October 2012, the balance payment would be released subject to certification of quantity by State Governments in m-FMS. Such certification of quantity would be given within a period of 30 days from the date of receipt, otherwise it would be deemed to have been received. Certification of quality would be given within 180 days. These certificates in respect of quantity and quality would be given in Proforma B1 and B2 respectively.

It was observed in Audit that as of 31 October 2014, 4112 Proformae 'B' in respect of P&K fertilizers, pertaining to the period 2007-08 to 2013-14 were pending. Of these, 213 Proformae 'B' pertained to 'Concession Scheme' while remaining 3899 related to the period of implementation of NBS Policy. Year-wise details are mentioned in Table 8:-

Table 8 : Pending Proformae 'B'

(₹ in crore)

Period	Year	Number of Proformae 'B' outstanding
Pre-NBS	2007-08	91
	2008-09	98
	2009-10	24
	Total	**213**
During NBS	2010-11	59
	2011-12	268
	2012-13	1079
	2013-14	2493
	Total	**3899**
	Grand Total	**4112**

Public Accounts Committee (PAC) of the year 2012-13 (15th Lok Sabha) in its 81st Report on 'Performance Audit of Fertilizer Subsidy' had recommended that *"in view of the magnitude of the problem and the underlying consequences on the subsidy burden due to the malpractices, it is imperative that a strict verification regime with stringent enforcement of deterrent punitive/financial penalties based on real time information/data be put in place. The Committee also desires that DoF should urgently come out with a more robust monitoring* mechanism and inspection regime with foolproof procedure for verification of stocks/sales so as to curb the menace of pilferage, diversion and leakages of subsidized fertilizers".

DoF in its reply stated (October 2014) that as per modified procedure circulated vide No.F.No.D (FA)/ CCE/2011 dated 25 October 2012 the balance 10-15 per cent claim would be released subject to State Government's certification of quantity in m-FMS as well as fertilizer receipt confirmation by retailers through m-FMS. Certification of quantity would be given by the States within a period of 30 days from the date of receipt otherwise, it would be deemed to have been received. State certification of quality would be given within 180 days. Although, quantity certificate was deemed to have been received (if not received within 30 days) the quality certificate was required for balance claim payment. Further, States continued to upload Proforma 'B' on FMS certifying the quantity received in the State. DoF also regularly followed it up with State Government for timely submission of Proforma 'B'. As and when there was any short quantity reported by State Government through Proforma 'B', DoF would recover the subsidy paid on that quantity along with penal interest.

The fact remains that there is a need for DoF to address the issue of long pendency of Proformae 'B' and frame a time-bound action plan to clear pendency, as the measures taken so far had not yielded satisfactory results.

Recommendation 6: DoF may critically review the existing monitoring mechanism of receipt and pendency of Proformae 'B' and consider periodical review of the status at Regional or State level to bring the sense of urgency/importance to the issue and arrest pendency.

4.3 Excess payment of ₹25.74 crore on lump sum freight subsidy for SSP

Single Super Phosphate (SSP) is a localized fertilizer, indigenously produced in the country by small scale industries. It is sold in nearby States where SSP manufacturing units are located. While P&K fertilizers were eligible for primary freight (rail freight and/or direct road movement), there was no such provision for SSP.

The initial rates of P&K fertilizers, under NBS for the year 2010-11 were recommended by IMC in its 1st meeting held in March 2010 and were implemented by DoF from 1 April 2010. SSP was included in NBS Policy w.e.f 1 May 2010. In the 2nd Meeting held on 19 August 2010, IMC was informed that to compensate for the freight for secondary movement (Secondary Freight) of the fertilizers, ₹300 PMT had been added as part of the computation of NBS cost of DAP & MOP. As such, the Secondary Freight was subsumed under NBS. However, while deliberating on the issue of Secondary Freight, in its 3rd Meeting held on 8 November 2010, IMC concluded that ₹300 PMT towards Secondary Freight, included as part of NBS computation, appeared to be an anomaly as it had not facilitated transfer of the said freight to the farm gate and therefore, the same should be excluded from NBS rates. IMC, hence, recommended reduction of NBS rate to this extent for all P&K fertilizers for the year 2010-11 w.e.f. January 2011. IMC concluded that, in respect of SSP, this reduction would have an impact of reduction of ₹104 PMT in subsidy. IMC further recommended that 'since no freight is explicitly paid for SSP, ₹200 PMT lump sum may be provided with effect from 1 January 2011 as freight to manufacturers'.

In pursuance thereof, DoF notified payment of lump sum freight of ₹200 PMT for SSP in December 2010, though no approval in this regard was obtained from the Cabinet. In the meantime, DoF, on the recommendation of IMC, withdrew the restriction on MRP of SSP w.e.f. 1 April 2011 and the SSP manufacturers/marketers were allowed to fix their own MRP.

DoF on 6 June 2011 prepared a draft note to CCEA for obtaining *ex post-facto* approval for granting lump sum freight subsidy of ₹200 PMT and forwarded it (7 June 2011) to DoE and other Departments for their comments. DoE vide its notes dated 22 June 2011 and 23 August 2011 did not support the proposal. DoF again represented to DoE on 2 September 2011 stating that freight subsidy of ₹200 PMT was provided to SSP industry in lieu of reduction of ₹104 PMT in NBS and instead of discontinuing the payment of ₹200 PMT, ₹96 PMT, being excess paid over ₹104, could be stopped. Further, DoF requested DoE to suggest the date from which recoveries on account of such excess payment could be made. In reply, DoE on 8 December 2011 reiterated its earlier stand stating that "this Department is of the considered view that there is no case for making payments of any freight subsidy on SSP w.e.f 1 April 2011 i.e the day from which MRP of SSP was left open and subsidy was increased from ₹4296 PMT to ₹5359 PMT". In the meanwhile, DoF announced the suspension of freight subsidy on SSP in August 2011.

The issue was again discussed in the 9th IMC meeting held on 23 December 2011 and it was decided that since DoF had announced suspension of freight subsidy on SSP in August 2011, lump sum freight subsidy at the rate of ₹200 PMT may be paid on the sales of SSP up to August 2011. A draft CCEA note, in line with the above decision, was prepared and circulated on 30 March 2012. Despite having rejected the proposal of payment of any lump sum freight subsidy for SSP on three earlier occasions, DoE concurred with this proposal of DoF. Subsequently, ex-post facto sanction was accorded by the Cabinet for payment of lump sum freight subsidy at the rate of ₹200 PMT to SSP from 1 January 2011 to 31 August 2011.

In this connection, Audit observed that prior to introduction of NBS policy for SSP, no freight subsidy was being paid for movement of SSP reportedly due to the fact that SSP was basically a localized product, catering to the local needs. However, after marketing of the product by large P&K/Urea fertilizer manufacturers/importers in different States, SSP had started moving from one State to another. Resultantly, in NBS Policy, SSP was made eligible for Secondary Freight subsidy. The element of Secondary Freight subsidy inbuilt in NBS rates of SSP was ₹104 PMT which was being paid from May 2010 to December 2010. However, after removal of the Secondary Freight element from NBS Policy, on the recommendation of IMC, a lump sum freight subsidy at the rate of ₹200 PMT was introduced for SSP.

Audit feels that when the implication of removal of Secondary Freight subsidy was only ₹104 PMT, additional payment of ₹96 PMT (₹200-₹104) was not justified and resulted in excess payment of **₹25.74 crore**[24].

DoF in its reply stated (October 2014) that*:*

- SSP has been always treated differently from other P&K fertilizers in the matter of freight. While P&K fertilizers were eligible for primary freight and freight for direct road movement, there was no provision of primary freight for SSP, which was indigenously produced in the country by small scale industries. The secondary freight was initially subsumed in the fixation of subsidy for P&K fertilizers including SSP. When it was brought to the notice of IMC that there appears to be non-passing of the secondary freight component to farmers in the form of reduced prices, IMC decided to exclude the secondary freight component from NBS rates. Accordingly, the rates of NBS were corrected by excluding the secondary freight component w.e.f. 1 January 2011 but the primary freight and secondary freight have been paid as per uniform freight Policy as applicable for Urea to all P&K fertilizers except SSP. As a result the secondary freight available to SSP in NBS rates got withdrawn.
- However, since no primary freight was being paid to SSP and the secondary freight was also withdrawn subsequently w.e.f. 1 January 2011, IMC recommended a lump sum freight of ₹200 PMT in lieu of both primary and secondary freight w.e.f. 1 January 2011 and not in place of secondary freight excluded from the NBS calculation. Even after decontrol of prices of SSP w.e.f. 1 April 2011, this lump sum subsidy of ₹200 PMT was continued to be paid to compensate for movement of SSP from plant to rake points and then to district headquarters (dealer points). Since the lump sum freight subsidy of ₹200 PMT was not in lieu of secondary freight excluded from the computation of NBS rates w.e.f. 1 January 2011, there has been neither additional subsidy burden nor loss of freight expenditure to Government. As regards approval of Cabinet of the freight rates, though DoF was competent to take a decision for fixation of subsidy rates, in the case of freight subsidy rates, the Department decided to take approval of the Cabinet. Since the proposal for ex-post facto approval for the lump sum freight on SSP has the approval of CCEA, there is no case for any disagreement on the issue. There has also been no belated decision.
- DoF reiterated (November 2014) during the Exit Conference that the lump sum freight of ₹200 PMT allowed for movement of SSP w.e.f. 1 January 2011 and upto 31 August 2011 was not in lieu of the Secondary Freight component removed from the calculation of NBS rates from 1 January 2011. After removal of Secondary Freight component from the calculation of NBS rates from 1 January 2011, Secondary Freight was allowed to all P&K fertilizers except SSP as per the Uniform Freight Subsidy Policy. The Department has taken approval of the Cabinet for payment of freight subsidy on SSP from January to August 2011. The Department of Expenditure,

[24] ₹96 X 2680767.88 MT being quantity of SSP sold during 1 January 2011 to 31 August 2011.

though initially did not agree to the proposal, but later on during inter ministerial consultation of the draft Cabinet Note on the proposal agreed to the proposal.

The replies of DoF have to be viewed in the light of the facts that:

- IMC recommended a lump sum freight subsidy at the rate of ₹200 PMT, although the effect of removal of Secondary Freight subsidy element from the existing subsidy of SSP was ₹104 PMT only. Further, in the context of the contention of DoF that freight subsidy was not in lieu of Secondary Freight, it was observed that DoF, while seeking views of DoE (September 2011) on the date from which recovery at the rate of ₹96 PMT may be made, had stated clearly that this subsidy was in lieu of removal of Secondary Freight.
- Moreover, the lump sum freight subsidy for SSP at the rate of ₹200 PMT was provided only for eight months i.e. from 1 January 2011 to 31 August 2011 for which DoF had taken *ex-post facto* approval from CCEA on 3 July 2012. One of the reasons for according approval to above payment by CCEA was that lump sum freight subsidy payments had already been made to SSP industry till 31 August 2011.
- Further, removal of freight subsidy in August 2011 itself (Secondary Freight in respect of other NPK fertilizers was withdrawn w.e.f April 2012) and no payment on account of primary freight to SSP thereafter was indicative of the fact that the decision to make payment of lump sum subsidy at the rate of ₹200 PMT instead of ₹104 PMT, did not have a sound basis and hence, the reply of DoF appears to be an after-thought.

4.4 Non recovery of gains from P&K manufacturing companies for using cheaper domestic/APM (Administered Pricing Mechanism) gases

Nitrogen (‘N’), an NPK nutrient, is sourced directly from Ammonia. In some cases, it is also sourced from imported fertilizers, mainly, Urea and DAP.

DoF observed (September 2010) that the cost of indigenous Ammonia produced using cheaper domestic/APM gas was relatively cheaper for companies as compared to imported Ammonia for production of complex fertilizers. Three companies, namely Rashtriya Chemicals and Fertilizers Ltd (RCF), Deepak Fertilizers and Petrochemicals Corporation Ltd (DFCL) and Gujarat State Fertilizers and Chemicals Company (GSFC) were using APM/domestic gas.

In NBS Policy, a fixed subsidy was announced on annual basis which did not depend on the feedstock for production of Ammonia. Further, MRPs of P&K fertilizers had been opened up and manufacturers/importers were allowed to fix MRPs at reasonable level. Therefore, the manufacturers who used cheaper domestic gas, allocated by Ministry of Petroleum and Natural Gas (MoPNG), were unduly benefitted, as MRP of NPK fertilizers produced by them was at par with other manufacturers, who used imported Ammonia.

MoPNG, therefore, proposed (December 2011) discontinuation of supply of KGD6 gas to P&K fertilizer plants and supply it only to Urea plants as it had an impact on GoI subsidy burden. DoF, however, suggested continuing supply to such plants and assured that specific guidelines would be framed to effect recovery from fertilizer units, manufacturing products other than Urea, on the basis of differential price from either imported Ammonia or any other benchmark.

The Empowered Group of Ministers (EGoM) in its meeting held on 24 February 2012, considered proposals of MoPNG, alongwith suggestions of DoF, and decided that the proposal to suspend supply of KGD6 gas to P&K plants using such cheaper gas (RCF, DFCL and GSFC) including the proposal to restrict future supply only to Urea plants, be kept in abeyance till 24 May 2012. During this period, DoF was required to finalize guidelines for effecting recovery of undue benefits which had accrued to fertilizer companies due to use of cheaper domestic gas. DoF initiated the work of preparation of the draft guidelines in April 2012. Minister of State (MoS) for Chemicals & Fertilizers in his note (November 2013) directed that pending finalization of the guidelines, DoF should initiate adhoc recovery. This was again reiterated by MoS in December 2013. Accordingly, on 6 January 2014, DoF issued order to above three companies for such recovery.

Audit observed that despite the directions of EGoM in February 2012, DoF neither finalised guidelines to effect such recoveries nor did it make adhoc recoveries (November 2014). Resultantly, the said fertilizer companies kept on receiving cheaper APM gas for the production of P&K fertilizers and making additional gains.

In its reply, DoF stated (July 2014) that as per EGoM direction in its meeting held on 24 February 2012, the Department was in the process of finalization of guidelines for recovery of undue benefit on account of usage of cheap domestic gas for production of P&K fertilizers by DFCL, GSFC and RCF w.e.f. 24 May 2012.

It was also intimated by DoF that:

- GSFC had obtained stay order from Hon'ble High Court, Ahmadabad (30 January 2014) against DoF's order dated 6 January 2014. DFCL also challenged DoF's order in Hon'ble High Court, Delhi but no stay order was granted. RCF had not approached the court so far (July 2014).
- DoF further replied (October 2014) that due to various factors including, inter alia, the difficulty in calculating the quantity of ammonia used in Urea and P&K fertilizer production exactly, it has been decided to refer this issue to IMC under NBS Policy, co-opting members from MoPNG and Department of Legal Affairs to examine the issue in detail and submit recommendations. After recommendation of IMC, the issue would be placed before the Cabinet for decision. In the mean time, APM gas supply to one of the three companies, DFCL was discontinued w.e.f. 14 May 2014. The first meeting of IMC on this issue was held on 16 October 2014.

Reply needs to be viewed against the facts that:

- DoF had not finalized the guidelines for effecting recoveries, even after lapse of two years from directions of EGoM during which period the fertilizer manufacturing companies kept on making additional profits. Though supply of cheaper gas to DFCL was discontinued in May 2014, supply of such gas to GSFC/RCF was still continuing (October 2014).
- Further, despite the fact that Internal Finance Division of DoF had stressed that recovery should be made w.e.f. 1 April 2010, being the date of implementation of NBS Policy, DoF was still contemplating recovery w.e.f. 24 May 2012, though this date was only a target date given by EGoM to DoF for finalisation of guidelines for effecting such recoveries.

Financial impact on account of this non-recovery could not be worked out by Audit due to non-availability of data on use of Ammonia for production of Urea vis-à-vis P&K fertilizers.

4.5 Monthly Supply Plan (MSP) in respect of decontrolled P&K fertilizers

The month-wise and State-wise demand of fertilizers are assessed and projected by DAC in consultation with the State Governments. The same is conveyed to DoF as the Department is mandated to fulfill the requirement of the State from available resources. In order to fulfill the projected requirement of fertilizers, DoF prepares MSP for State/UTs/companies/Supplier on or before 25th of each month preceding the month for which the plan is applicable.

Audit, however, observed that the initial declared MSP as prepared by DoF for the fertilizer companies and issued to them before the commencement of a month was either 'Nil' or was fixed at a very minimum quantity. On the basis of the actual quantity supplied by the fertilizer company, which was invariably much higher than the planned quantity issued by DoF initially, the planned quantity was regularized on the grounds that (i) companies had produced excess fertilizers, (ii) they had to clear the stock at port, (iii) residual stock supplied, (iv) requirement of the State Government, (v) fertilizer imported had reached the port, (vi) to maintain the rake quantity, and (vii) supply made against the previous MSP etc. In some cases, higher quantities were regularized without even assigning any reason. In 101 cases, 447116 MT of P&K fertilizers were supplied/regularized during 2011-12 and 2012-13 against 'Nil' quantity mentioned in MSP. Instances where the initial planned quantities were revised to much higher quantities after the actual supply of the fertilizers in a month are given in **Annexure VI**. Notwithstanding the fact that the fertilizer companies and DAC intimated DoF regarding the availability and requirement of the fertilizers in advance, DoF did not work out a realistic MSP on the basis of the requirements in the field.

DoF replied (October 2014) that MSP was prepared in the preceding month as per the production and import estimates given by the companies. Therefore, MSP was basically a plan for estimated despatches that could be possible during the month. But in FMS, subsidy was paid on the basis of receipts. MSP as regularized thus reflected actual receipts in the States, which was true reflection of the real time (actual) demand in the State. Therefore, as the initial MSP basically covered despatches, there would always be requirement of regularization on the basis of actual receipts in the State. As per Fertilizer Control Order (FCO), P&K fertilizer could be controlled only up to 20 per cent and Urea up to 50 per cent. Therefore, to put MSP in straight jacket would have an adverse impact on availability in the States. DoF further replied (March 2015) that though DAC has taken various measures to ensure that the process of assessment of fertilizers is more rational, scientific and realistic, the actual consumption depends upon actual conditions prevailing during the season which changes the actual demand of fertilizers by farmers on real time basis. Supply to the field dispatch depends upon many variables, so it would always differ from MSP. MSP is issued by DoF keeping in view the stock position of the companies and requirement by States. Every effort is made to supply as per the requirement, at least. Higher availability of fertilizers in the districts is always better for the farmers since shortage results in black marketing.

The reply of the DoF has to be seen in the light of the fact that:

i. Initial MSP was based on estimated dispatches that were possible during the month and the regularized MSP was based on receipts in States. It was, thus, evident that there was no correlation between the quantities indicated in the two supply plans. Therefore, if the whole quantity supplied by fertilizer companies was to be regularized without having any link with the quantity mentioned in MSP prepared in advance, the objective of having a MSP framed in advance for projecting the requirement of the States for ensuing month, gets defeated.

ii. Chances of fertilizer companies supplying more than actual requirement and availing subsidy on it (due to the fact that 85 per cent 'On Account' subsidy was being released on receipt basis in the States i.e. supplies made by the fertilizer companies) could not be ruled out.

iii. Further, in the scenario of higher availability of fertilizers in the States than the actual requirement, the chances of diversion of subsidised fertilizers for non-agricultural purposes and illegal exports could not be ruled out.

Recommendation 7: DoF may establish a mechanism to ensure that requirement of fertilizers is assessed in advance based on month-wise and State-wise demand of fertilizers projected by DAC and co-ordinate the arrangements for supplying the required quantities of fertilizers.

4.6 Undue payment of subsidy due to import of DAP[25] in excess of requirement

As per procedure of subsidy payment under NBS, 85 per cent of subsidy is released upfront on the basis of receipt of fertilizers in the districts/States. Remaining 15 per cent of subsidy is claimed by fertilizer companies based on information in prescribed Proforma 'D' duly certified by the authorized signatory as well as the statutory auditor of the company.

[25] Including MAP/TSP/DAP Lite.

DoF, on the recommendations of IMC declares NBS rates every year, which remain applicable for the entire year. NBS rate for DAP for 2011-12 was ₹19763 PMT. IMC in its meeting held on 17 January 2012 decided to decrease the subsidy of DAP for 2012-13. Subsequently, IMC in its meeting on 7 February 2012, recommended the subsidy of ₹14350 PMT for DAP. These rates were notified on 29 March 2012.

Following decisions were taken by DoF vide notification dated 8 February 2012:

- DAP (MAP/TSP/DAP Lite), NPK (all grades) and MOP Fertilizers, except Urea, arriving during February 2012 and March 2012 would not be dispatched from ports to any State till further orders.
- The fertilizers already available as on 1 February 2012 (closing stock on 31 January 2012) would only be dispatched during the months of February and March.
- If the supply plan for the month of February 2012 had been indicated incorporating the imports during the month, the supply plan would stand reduced in proportion to the import during the month of February 2012.

Audit observed that as per MSP of DAP for the month of February 2012, which was issued to the various fertilizer companies as well as the concerned State Governments on 25 January 2012, the month's requirement for DAP was 4.08 lakh metric tonne (LMT) against which the estimated indigenous and imported supplies for the month were 5.30 LMT and 8.79 LMT respectively. Audit also observed that DoF had not mentioned any reasons for its decision to stop dispatch of fertilizers from ports in its notification dated 8 February 2012.

However, on 28 February 2012, DoF reversed its said decision and the then Joint Secretary noted that "as per discussions, orders for withholding the movement of February/March were issued due to port congestion due to old stocks. Now there are no reports of congestion so now we can release movement of February 2012 arrivals also by issuing a fresh order." The Secretary, DoF approved this on 28 February 2012. However, documents to support the claim of port congestion/absence of port congestion were not found on record.

Details of actual requirement, opening stock with States, quantities received, quantity sold in respect of DAP for the months of February 2012 and March 2012 were as under:

Table 9 : Requirement and availability of DAP in February and March 2012

(in LMT)

Month / Year (A)	Require-ment (B)	Opening Stock with States (C)	Receipt by States (Actual)			Availability with States (G=C+F)	Sales[26] (H)	Closing Stock (I=H-G)
			Indigenous (D)	Imported (E)	Total (F=D+E)			
February 2012	4.08	8.77	4.41	8.72	13.13	21.90	11.85	10.05
March 2012	2.99	10.05	3.76	4.76	8.52	18.57	14.57	4.00

[26] Indicates first point sale (i.e. sale to wholesaler, retailer etc) and not the end user sale.

Following was observed in this regard:-

- Requirement of DAP for February 2012 was 4.08 LMT. Against this, 8.77 LMT of DAP was already available in the fields/States as on 1 February 2012. Further, there was receipt of 4.41 LMT of indigenous DAP during the same month. Thus, for February 2012, DoF had 13.18 LMT of DAP. Therefore, there was no requirement of supplying imported DAP of 8.72 LMT to States during February 2012.

- Moreover, analysis of the actual figures for March 2012 also revealed a similar trend. Despite the monthly requirement of 2.99 LMT of DAP, which could have been fulfilled by the indigenous production of 3.76 LMT, 4.76 LMT of imported DAP was supplied to States.

- No records were available in DoF in respect of its decision of 8 February 2012, to not allow dispatch of imported DAP (along with other P&K fertilizer) arriving during February 2012 and March 2012. Keeping in view the available quantity, supply of indigenous DAP etc. rationale for above decision appears to be that the month's requirements could have been met through indigenous production and the carried over stock from previous months. However, the decision to reverse the said decision on 28 February 2012, after the subsidy rate for DAP was reduced for 2012-13 on 7 February 2012, enabled fertilizer companies to dispatch the imported fertilizers to district level and claim subsidies on such quantities at higher rates of 2011-12. Had the orders for revocation not been issued, fertilizer companies would have got subsidy on DAP, which had already been imported before March 2012, at lower rates of ₹14350 PMT fixed for 2012-13 instead of higher rates of ₹19763 PMT firmed up for 2011-12.

- Audit further observed that the orders of 8 February 2012, as depicted in the note of DoF on 28 February 2012, did not indicate that restrictions were imposed due to port congestion; none of the records furnished to Audit indicated that there was any port congestion during the said period; and in view of availability of DAP for February 2012 and March 2012, supply of imported DAP was not warranted.

Fertilizer companies were however, able to dispatch imported DAP to district headquarters and claim subsidy at higher rates of 2011-12. Resultantly, DoF had to bear additional subsidy burden of ₹653 crore[27], on additional quantity of imported fertilizers despite the fact that there was no immediate requirement.

DoF in its reply (July 2014) stated that the circumstances under which the decision was taken, was recorded in the relevant file and it had no further comments to offer. DoF further replied (October 2014) that import of P&K fertilizers was under Open General License and any company could import any quantity of these fertilizers as per their commercial consideration.

[27] Calculated on the basis of the lowest difference of subsidy rates amongst all DAP category fertilizers.
Total Excess Quantity= 8.72 LMT in February 2012 and 4.76 LMT in March 2012 (Total 13.48 LMT);
Lowest Difference in Subsidy rates (TSP) = ₹14875 PMT - ₹10030 PMT=₹4845 PMT
Additional Burden = total excess quantity X difference in subsidy rates = ₹653 crore.

Imports of P&K fertilizers did not materialize overnight. It took months to plan purchase and bring material to the country and there were obligatory imports under long-term contracts, which the companies could not stop. In view of the above and the fact that there was no such restriction imposed under NBS Policy for imports, it could not stop imports and declare any imported quantity non-transportable. Moreover, under NBS Policy, only 20 per cent of the P&K fertilizers were under Essential Commodities Act and liable for transport regulation. It is to be noted that the subsidy rates for 2012-13 were announced only on 29 March 2012 after the dispatch of fertilizers by importers. DoF stated during exit conference (November 2014) that movement of fertilizers was as per requirement decided in consultation with the DAC and the State Agriculture Departments.

The replies of DoF have to be viewed in the light of following facts:

- Order dated 8 February 2012 did not indicate any rationale for not allowing dispatch of imported DAP arriving during February and March 2012. Further, there was no documentary evidence to support the claim of DoF that the said orders were issued due to port congestion and revoked in the absence of the same.
- Further, Audit had not commented on either the timing of imports or the quantities imported. The observation is based on the revocation of the earlier decision despite the fact that the requirement could have been met through the opening stocks available and indigenous production.
- Further, it cannot be overlooked that the Fertilizer Industry was well aware that the rates of subsidy were going to be reduced w.e.f. April 2012 (for 2012-13) and the fertilizer companies had taken advantage of the prevailing higher subsidy rates of 2011-12, by offloading their entire stocks during February and March 2012.
- Analysis of the data of supplies of DAP during January-March 2012 vis-à-vis January-March 2011 revealed that monthly despatches/supplies to States/Districts during January-March 2012 stood at 4.72 LMT, 8.72 LMT and 4.76 LMT against 2.07 LMT, 1.98 LMT and 1.25 LMT respectively during January-March 2011. This shows significant increase in dispatches in comparison to same months of the previous year which supports the audit contention that higher dispatches were made by fertiliser companies to claim subsidy at higher rates.

Thus, the decision of DoF to revoke its earlier decision provided an opportunity to the fertilizer companies to keep on supplying imported fertilizers and claim subsidy at higher rates, resulting in additional avoidable subsidy burden of ₹653 crore on GoI.

4.7 Sale of SSP without assessing requirement during March 2012

As per payment procedure for SSP under NBS Policy, subsidy on SSP is released on first point sale[28] basis. Accordingly, the eligible units are allowed to claim 85 per cent 'On Account' payment of subsidy based on the information in respect of SSP duly certified by the

[28] For other P&K fertilizers, payments are based on receipt basis.

authorised signatory as well as statutory auditor of the company. The balance payment is released by DoF based on the certification of sales issued by the State Government in prescribed Proforma 'B'.

Audit observed that there was no monthly supply plan required to be prepared for SSP under the Policy. Resultantly, the movement of SSP is not monitored by DoF.

SSP sales during March 2012 were abnormally higher than the sales during January 2012 and February 2012. Sales in January 2012, February 2012 and March 2012 had been 2.99 LMT, 3.54 LMT and 6.34 LMT, respectively. The corresponding figures for January 2011, February 2011 and March 2011 were 3.36 LMT, 2.49 LMT and 1.69 LMT. Thus, the sale of SSP was higher in February 2012 and March 2012 as compared to those in same months of the previous year. Though in February 2012, the increase was marginal (40 per cent), in March 2012 the sale had exceeded that of March 2011 by 4.65 LMT, i.e. an increase of 275 per cent over March 2011 sale.

In the wake of the above scenario, DoF, in partial modification to the payment procedure being followed for SSP under NBS Policy, decided (July 2012) that:

- 50 per cent of the subsidy claims would be released to all SSP units as 'On Account' payment against the usual 85 per cent, for March 2012.
- Clarifications would need to be obtained from those SSP producing units which had exceeded the installed capacity during any one month of the last quarter of 2011-12.
- Specific inspection would be carried out by a third party in extreme cases viz. units which have exceeded their installed capacity by more than 10 per cent and those which have shown huge variation in sales in March 2012.

Accordingly, on the basis of inspection carried out by a third party, DoF decided (March 2013) to release the balance 50 per cent of subsidy for March 2012 in respect of all but 16 SSP companies, subject to receipt of Proforma 'B'. These 16 companies had exceeded both, sales in month of March 2012 as compared to maximum of previous five months and production in one or more months during the last quarter of 2011-12 as compared to the installed capacity. In respect of the said 16 companies, further inspections were carried out by third parties appointed by DoF, to verify claims of production and sales for the quarter October 2011 to March 2012. However, as no irregularities were reportedly found in the said inspections, the balance payments in respect of 15 companies were also released, except for one company, which was under examination as of 31 October 2014.

In this regard, Audit observed that:

- As no monthly supply plans for SSP were prepared, the actual field requirements for SSP could not be assessed. Therefore, there were no restrictions on production, supply and sale of SSP on the fertilizer manufacturing companies.
- DoF restricted its inquiry only to verification of claims of the fertilizer companies in respect of production and sale of SSP but made no efforts to determine whether there was actually an increase in the requirement of SSP during that period of the year.

DoF replied (July 2014) that the Cabinet had approved NBS rates for 2012-13 on 1 March 2012 and the rates for 2012-13 were notified by the Department on 29 March 2012 after taking requisite approval. As the notification of NBS rates for the year 2012-13 was under process, no communication in this regard were issued to any company. During the course of implementation of NBS Policy, it was observed from sales record that SSP sold during the month of March 2012 was higher than that of previous months in respect of 16 SSP units. As sales are certified by State Government under Proforma 'B', there was no occasion for comparison of sales of a particular month corresponding to same month of the previous year. Based on the examination of finding of Inspection Team, the 50 per cent withheld subsidy in respect of all the 16 units except M/s Mangalam Phosphate Limited (MPL) has been released. DoF further replied (October 2014) that there was no supply plan as SSP is normally a localized fertilizer. DAC also did not assess the requirement of SSP. Be that as it may, the Department had done what was appropriate to examine the subsidy claims. Verification of SSP production and sales and subsequent release of subsidy in respect of the 15 SSP units took more than one and half year. This clearly shows that adequate precautions were taken in release of subsidy, in the cases and subsidy was released to the 15 units after detailed verification and due diligence. SSP is a decontrolled fertilizer produced by about 100 units scattered all over the country with varying production capacity. On this product no primary or secondary freight was given. Producers of these units market their product in the nearby region only, as the consumption is mostly in the near vicinity. On account of the number of units being very large catering to demand in their vicinity and no freight subsidy being paid, it was not desirable to issue supply plan for regularization of SSP as sales were verified by the respective State Governments.

DoF stated (November 2014) during the Exit Conference that:

It is very difficult to set movement plans for SSP as the industry is basically a localized industry and many companies are struggling to achieve even the minimum capacity utilization set forth for these units due to working capital problems, limited marketing network, availability of raw material in the country etc. Many smaller SSP units enter marketing tie ups with bigger companies to market their product. Under the circumstances and given the large number of SSP units (at present 98), controlling 20 per cent of its movement will not achieve any purpose. Moreover, the purpose of controlling movement of fertilizers is to ensure availability and in respect of SSP there is no such availability issue as the SSP units are located all over the country.

The "On Account" subsidy on P&K fertilizers (except SSP) was paid based on the fertilizers received in the district, whereas in respect of SSP the "On Account" subsidy was paid based on first point sale. The Department has linked payment of balance subsidy to acknowledgement of sale by retailers in m-FMS, which proves that the fertilizer subsidy has been passed to farmers. However, DAC was being requested to assess the requirement of SSP as is done for other fertilizers. DoF also intimated that since November 2012, payments were being made only after the sales were certified by the retailer. DoF further replied (March 2015) that no freight subsidy is paid for movement of SSP. Hence, no Supply Plan is prepared for these products.

The reply of DoF has to be viewed in the light of the facts that:

- In the absence of a firm Monthly Supply Plan for SSP, there was no restriction on the fertilizer manufacturing companies on production and sale of SSP.
- The Cabinet had already approved, on 1 March 2012, NBS rates for 2012-13, which were ₹1686 per tonne lower than the existing NBS rates of 2011-12; hence the fact that NBS rates were going to be reduced was a known fact in the Fertilizer Industry which made it tempting for the fertilizer companies to artificially claim increased sales in March 2012.
- DoF made no efforts to verify from DAC the existence of actual field requirement during that period of time, and only restricted its inquiry to verification of production and sale of the fertilizer companies which did not bring to light the true picture of the whole situation.
- It is true that no primary or secondary freight is payable to SSP, but SSP is eligible for Nutrient Based Subsidy. Therefore, necessity of having some checks on the supply of SSP needs to be examined by DoF in co-ordination with DAC.

Recommendation 8: Necessity for having an MSP for SSP and modalities for same may be worked out by DoF in close co-ordination with DAC.