*INCLUDE SECTION 109 ON ALL PROJECTS WITH CLAUSES $$109.08A, $$109.08B, AND $$109.08C AS A MINIMUM*

*REMOVE ITALICS AND PARENTHESES FROM INSERT FIELDS BUT KEEP THE HIGHLIGHTING*

$$109.00A

**Section 109. — MEASUREMENT AND PAYMENT**

Revised 16 September 2024

*INCLUDE THE FOLLOWING FOR PROJECTS WITH 414 ASPHALT PAVEMENT CRACK SEALING PAY ITEMS PAID BY THE MILE*

$$109.02A

109.02(m). Add the following:

Calculate miles in parking areas based on an 11-foot lane width. Convert the square footage of a parking area into miles using the following equation:

Parking Area Miles = parking area square feet / (11 feet x 5,280 feet/mile)

*INCLUDE THE FUEL PRICE ADJUSTMENT PROVISION FOR PROJECTS WITH PAY ITEMS LISTED IN TABLE 109-2 BELOW - VERIFY WITH CONSTRUCTION IF THE PROVISION IS APPROPRIATE FOR THE PROJECT AND IF THE ITEMS WITH LOW QUANTITIES SHOULD BE INCLUDED.*

$$109.06A

Add the following after Subsection 109.06:

**109.06A Fuel Price Adjustment Provision.** This provision provides for a price adjustment in the form of payment to the Contractor or a rebate to the Government for fluctuations in the cost of diesel fuel consumed in the performance of applicable construction work.

This price adjustment provision is intended to reduce but not eliminate the cost effects of price uncertainty to the Contractor and the Government for diesel fuel consumed in the construction of this contract. It provides for sharing by the Government in a portion of the Contractor’s risk, which could result from unusual price fluctuations. The provision is not intended to compensate the Contractor for normal day-to-day fluctuations and seasonal changes or to serve as a guarantee of full compensation for diesel fuel price fluctuations.

This price adjustment provision is applicable only to contract items listed as eligible pay items in Table 109-2. This price adjustment provision is also applicable to eligible pay items when the Government adds extra work to the contract.

The Fuel Price Adjustment Provision will remain in effect throughout the duration of the contract. Enactment of this provision will only be considered when the increase or decrease in the price of diesel fuel as defined herein exceeds 10 percent.

No price adjustments will be made for work performed beyond the contract completion date.

**(a) Price indexes.** The Government will determine price indexes for diesel fuel using price data obtained from the Oil Price Information Service (OPIS), which publishes a weekly newsletter on the distillate wholesale rack prices for major cities throughout the United States. The OPIS 5-day newsletter average rack price of Gross Ultra Low Sulfur, No. 2 Diesel Fuel reported for *(insert the nearest applicable rack city - consult with Construction)* will be averaged and used to establish a base price index (BPI) and a monthly performance price index (MPPI). These diesel fuel indexes are defined as follows:

* **Base price index (BPI).** The BPI is the price index determined by arithmetic average as specified above, shown in the four weekly publications immediately preceding the contract award. It is as follows:

BASE PRICE INDEX (BPI) FOR GROSS ULTRA LOW SULFUR, NO. 2 DIESEL FUEL

PER GALLON = $ See Note (1) .

Note (1): BPI is calculated by the Government and inserted here immediately before contract award.

* **Monthly performance price index (MPPI).** The MPPI is the monthly price index at the time of performance of applicable work as determined by arithmetic average as specified above, shown in the four weekly publications issued before the last Wednesday of the month in which the work was performed.

The diesel fuel BPI and MPPI will be posted at [https://highways.dot.gov/federal‑lands/business/escalation‑factors](https://highways.dot.gov/federallands/business/escalationfactors).

**(b) Price adjustments.** Price adjustments calculated by the Government are not intended to reflect the Contractor’s actual purchase price. The ratio of the monthly performance price index and the base price index (MPPI/BPI) is calculated and used to determine price adjustments for eligible pay items as follows:

* **No price adjustment.** when the MPPI/BPI ratio falls within the range of 0.90 to 1.10, no price adjustment will be made for any diesel fuel consumed in construction work performed during the relevant month.
* **Government rebate.** When the MPPI/BPI ratio is calculated to be less than 0.90, the Government is due a rebate determined in accordance with the following formula:

Government rebate = [0.90 – (MPPI/BPI)] (BPI) (Q) (FUF)

* **Contractor payment.** When the MPPI/BPI ratio is calculated to be greater than 1.10, the Contractor is due additional payment determined in accordance with the following formula:

Contractor payment = [(MPPI/BPI) – 1.10] (BPI) (Q) (FUF)

The following definitions are applicable to both the Government rebate and the Contractor payment formulas:

MPPI = Monthly Performance Price Index for the month during which diesel fuel is consumed in the performance of applicable construction work.

BPI = Base Price Index that is established immediately preceding the contract award.

Q = Quantity of work on the project during the progress payment period for eligible pay items shown in Table 109-2.

FUF = Fuel Usage Factor shown in Table 109-2 applicable to No. 2 diesel fuel.

*EDIT THIS TABLE TO ONLY INCLUDE ITEMS THAT APPLY TO THE PROJECT - VERIFY WITH CONSTRUCTION IF THE ITEMS WITH LOW QUANTITIES SHOULD BE INCLUDED*

|  |
| --- |
| **Table 109-2****Eligible Pay Items for Price Adjustments and Associated Fuel Usage Factors** |
| **Eligible Pay Items** | **Fuel Usage Factor** |
| **Earthwork** |
| **Section 204 – Excavation and Embankment** 20401 Roadway Excavation 20402 Subexcavation 20403 Unclassified Borrow 20404 Unclassified Borrow(1) 20410 Select Borrow 20411 Select Borrow(1) 20420 Embankment Construction 20421 Rock Excavation | 0.30 gallons per cubic yard |
| **Aggregate and Base Courses** |
| **Section 301 – Untreated Aggregate Courses** 30101 Aggregate Base 30102 Aggregate Base(1) 30103 Aggregate Base(1) 30105 Subbase 30106 Subbase(1) 30107 Subbase(1) 30110 Aggregate Surface Course 30111 Aggregate Surface Course(1) 30112 Aggregate Surface Course(1)  | 0.70 gallons per ton |
| **Section 305 – Full Depth Reclamation with Cement** 30501 Full Depth Reclamation with Cement(1) 30502 Full Depth Reclamation with Cement | 0.30 gallons per square yard |
| **Section 306 – Full Depth Reclamation with Asphalt** 30601 Full Depth Reclamation with Emulsified Asphalt(1) 30602 Full Depth Reclamation with Emulsified Asphalt 30603 Full Depth Reclamation with Foamed Asphalt(1) 30604 Full Depth Reclamation with Foamed Asphalt | 0.30 gallons per square yard |
| **Section 308 – Emulsified Asphalt-Treated Base Course** 30801 Emulsified Asphalt-Treated Aggregate Base 30802 Emulsified Asphalt-Treated Aggregate Base(1) 30803 Emulsified Asphalt-Treated Aggregate Base(1)  | 0.70 gallons per ton |
| **Section 309 – Cold Central Plant Recycled Asphalt Base Course** 30901 Cold Recycled Asphalt Base Course 30902 Cold Recycled Asphalt Base Course(1)  | 0.70 gallons per ton |
| **Section 310 – Cold In-Place Recycled Asphalt Base Course** 31001 Cold In-Place Recycled Asphalt Base Course(1) 31002 Cold In-Place Recycled Asphalt Base Course | 0.15 gallons per square yard |
| **Section 311 – Stabilized Aggregate Surface Course** 31101 Stabilized Aggregate Surface Course(1) 31102 Stabilized Aggregate Surface Course(1) 31103 Stabilized Aggregate Surface Course | 0.70 gallons per ton |
| **Asphalt Pavements and Surface Treatments** |
| **Section 401 – Asphalt Concrete Pavement By Gyratory Mix Design Method** 40101 Asphalt Concrete Pavement, Gyratory Mix 40102 Asphalt Concrete Pavement, Gyratory Mix, Wedge and Leveling Course | 2.40 gallons per ton |
| **Section 402 – Asphalt Concrete Pavement by Hveem or Marshall Mix Design Method** 40201 Asphalt Concrete Pavement, Marshall Mix 40201 Asphalt Concrete Pavement, Hveem Mix 40202 Asphalt Concrete Pavement, Marshall Mix, Wedge and Leveling Course 40202 Asphalt Concrete Pavement, Hveem Mix, Wedge and Leveling Course | 2.40 gallons per ton |
| **Section 403 – Asphalt Concrete** 40301 Asphalt Concrete Pavement 40302 Asphalt Concrete Pavement(1) 40303 Asphalt Concrete Pavement, Wedge and Leveling Course | 2.40 gallons per ton |
| **Section 404 – Thin Lift Asphalt Concrete** **Pavement** 40401 Thin Lift Asphalt Concrete Pavement 40402 Thin Lift Asphalt Concrete Pavement (1)  | 2.40 gallons per ton |
| **Section 405 – Open-Graded Asphalt Friction Course** 40501 Open-Graded Asphalt Friction Course | 2.40 gallons per ton |
| **Section 407 – Chip Seal** 40701 Chip Seal 40702 Chip Seal(1)  | 2.40 gallons per ton |
| **Section 408 – Ultrathin Bonded Wearing Course** 40801 Ultrathin Bonded Wearing Course 40802 Ultrathin Bonded Wearing Course(1)  | 2.40 gallons per ton |
| (1) The Government will convert work quantities as necessary to match the units associated with the applicable Fuel Usage Factor.*DELETE THIS FOOTNOTE IF ALL OF THE CORRESPONDING PAY ITEMS HAVE ALSO BEEN DELETED* |

**(c) Price adjustment compensation.** Monthly adjustments will be accrued. The final price adjustment will be paid, or rebated, after completion of all work for each eligible pay item. The Contractor may request a partial price adjustment payment once every 12 months, or when the unpaid accrued increase exceeds $10,000. The Government will take a rebate when the deductive accrual exceeds $10,000.

The maximum allowable monthly and final price adjustment to the Contractor or rebate to the Government for fluctuations in the cost of diesel fuel is limited to a MPPI/BPI ratio of 1.6 and 0.4, respectively.

*ADDITIONAL INSTRUCTIONS FOR THE FUEL PRICE ADJUSTMENT PROVISION*

*FOR EACH CONTRACT PAY ITEM USED IN TABLE 109-2, INSERT THE FOLLOWING STATEMENT IN THE APPLICABLE PAYMENT SUBSECTION(S) OF THE CORRESPONDING WORK SECTION(S):*

204.17. 301.10. 305.17. 306.15. 308.10. 309.13. 310.14. 311.10. 401.20. 402.19. 403.14. 404.19. 405.15. 407.15. 408.17. Add the following:

A price adjustment will be made for fluctuations in the cost of diesel fuel used in the performance of applicable construction work according to Subsection 109.06A.

*ALSO NOTE THAT THE ABOVE SPEC IS WRITTEN IN HIDDEN TEXT AND THAT IT NEEDS TO BE UN-HIDDEN AFTER INSERTED IN THE CORRECT LOCATION(S)*

*INCLUDE THE* *ASPHALT BINDER PRICE ADJUSTMENT PROVISION FOR PROJECTS WITH A TOTAL ASPHALT QUANTITY OVER 1000 TONS (SEE BULLETED LIST BELOW FOR ELIGIBLE ASPHALT-RELATED PAY ITEMS). ALSO INCLUDE FOR ASPHALT PROJECTS WITH A CONSTRUCTION DURATION OF MORE THAN 1 YEAR.*

$$109.06B

**109.06B Asphalt Binder Price Adjustment Provision.** This provision provides for a price adjustment in the form of payment to the Contractor or a rebate to the Government for fluctuations in the cost of asphalt binder used in the performance of applicable construction work.

This price adjustment provision is intended to reduce but not eliminate the cost effects of price uncertainty to the Contractor and the Government for asphalt binder used in the construction of this contract. It provides for sharing by the Government in a portion of the Contractor’s risk, which could result from unusual price fluctuations. The provision is not intended to compensate the Contractor for normal day-to-day fluctuations and seasonal changes or to serve as a guarantee of full compensation for asphalt binder price fluctuations.

This price adjustment provision is applicable only to the asphalt binder, as defined in Subsection 702.01, and incorporated in the following contract pay items:

*EDIT THIS LIST TO ONLY INCLUDE ITEMS THAT APPLY TO THE PROJECT (COMPLETE THE BID ITEM NUMBER BY UPDATING THE “xxxx” PORTION)*

* 40101-xxxx Asphalt Concrete Pavement, Gyratory Mix
* 40102-xxxx Asphalt Concrete Pavement, Gyratory Mix, Wedge and Leveling Course
* 40201-xxxx Asphalt Concrete Pavement, Marshall Mix
* 40201-xxxx Asphalt Concrete Pavement, Hveem Mix
* 40202-xxxx Asphalt Concrete Pavement, Marshall Mix, Wedge and Leveling Course
* 40202-xxxx Asphalt Concrete Pavement, Hveem Mix, Wedge and Leveling Course
* 40301-xxxx Asphalt Concrete Pavement
* 40302-xxxx Asphalt Concrete Pavement
* 40303-xxxx Asphalt Concrete Pavement, Wedge and Leveling Course
* 40401-xxxx Thin Lift Asphalt Concrete Pavement
* 40402-xxxx Thin Lift Asphalt Concrete Pavement
* 40501-xxxx Open-Graded Asphalt Friction Course
* 40801-xxxx Ultrathin Bonded Wearing Course
* 40802-xxxx Ultrathin Bonded Wearing Course

This price adjustment provision is also applicable to eligible pay items when the Government adds extra work to the contract.

The Asphalt Binder Price Adjustment Provision will remain in effect throughout the duration of the contract. Enactment of this provision will only be considered when the increase or decrease in the price of asphalt binder exceeds 10 percent.

No price adjustments will be made for work performed beyond the contract completion date.

**(a) Price indexes.** The Government will determine price indexes for asphalt binder using price data obtained from Poten and Partners, Inc., which publishes a weekly report (*Asphalt Weekly Monitor*®) on high and low selling prices for states in five regions throughout the United States.

The weekly high and low selling price data reported for *(select the applicable region from this list and delete the others* East Coast/Northeast Mid-Continent/Midwest Gulf Coast/Mid-South Rocky Mountains  West Coast/Northwest *delete the parentheses and remove any italics)* will be averaged and used to establish a base price index (BPI) and a monthly performance price index (MPPI). These asphalt binder indexes are defined as follows:

* **Base price index (BPI).** The BPI is the price index determined by arithmetic average as specified above, shown in the four weekly publications immediately preceding the contract award. It is as follows:

BASE PRICE INDEX (BPI) FOR ASPHALT BINDER

PER SHORT TON (TON) = $ See Note (1) .

Note (1): BPI is calculated by the Government and inserted here immediately before contract award.

* **Monthly performance price index (MPPI).** The MPPI is the monthly price index at the time of performance of applicable work as determined by arithmetic average as specified above, shown in the four weekly publications issued before the last Wednesday of the month in which the work was performed.

The asphalt binder BPI and MPPI will be posted at [https://highways.dot.gov/federal‑lands/business/escalation‑factors](https://highways.dot.gov/federallands/business/escalationfactors).

**(b) Price adjustments.** Price adjustments calculated by the Government are not intended to reflect the Contractor’s actual purchase price. The ratio of the monthly performance price index and the base price index (MPPI/BPI) is calculated and used to determine price adjustments for eligible pay items as follows:

* **No price adjustment.** when the MPPI/BPI ratio falls within the range of 0.90 to 1.10, no price adjustment will be made for any asphalt binder used in construction work performed during the relevant month.
* **Government rebate.** When the MPPI/BPI ratio is calculated to be less than 0.90, the Government is due a rebate determined in accordance with the following formula:

Government rebate = [0.90 – (MPPI/BPI)] (BPI) (Q)

* **Contractor payment.** When the MPPI/BPI ratio is calculated to be greater than 1.10, the Contractor is due additional payment determined in accordance with the following formula:

Contractor payment = [(MPPI/BPI) – 1.10] (BPI) (Q)

The following definitions are applicable to both the Government rebate and the Contractor payment formulas:

MPPI = Monthly Performance Price Index for the month during which asphalt binder is used in the performance of applicable construction work.

BPI = Base Price Index that is established immediately preceding the contract award.

Q = Quantity in tons of asphalt binder for each pay item that was used on the project during the progress payment period. The quantity will be calculated using the asphalt content of the approved mix design and the following formula:

Q = Asphalt Concrete Pavement tons placed x (% Asphalt/100)

**(c) Price adjustment compensation.** Monthly adjustments will be accrued. The final price adjustment will be paid, or rebated, after completion of all work for each eligible pay item. The Contractor may request a partial price adjustment payment once every 12 months, or when the unpaid accrued increase exceeds $10,000. The Government will take a rebate when the deductive accrual exceeds $10,000.

The maximum allowable monthly and final price adjustment to the Contractor or rebate to the Government for fluctuations in the cost of asphalt binder is limited to a MPPI/BPI ratio of 1.6 and 0.4, respectively.

*ADDITIONAL INSTRUCTIONS FOR THE ASPHALT BINDER PRICE ADJUSTMENT PROVISION*

*FOR EACH CONTRACT PAY ITEM USED IN THE BULLETED LIST ABOVE, INSERT THE FOLLOWING STATEMENT IN THE APPLICABLE PAYMENT SUBSECTION(S) OF THE CORRESPONDING WORK SECTION(S):*

401.20. 402.19. 403.14. 404.19. 405.15. 408.17. Add the following:

A price adjustment will be made for fluctuations in the cost of asphalt binder used in the performance of applicable construction work according to Subsection 109.06B.

*ALSO NOTE THAT THE ABOVE SPEC IS WRITTEN IN HIDDEN TEXT AND THAT IT NEEDS TO BE UN-HIDDEN AFTER INSERTED IN THE CORRECT LOCATION(S)*

*INCLUDE CLAUSES $$109.08A, $$109.08B, AND $$109.08C ON ALL PROJECTS*

$$109.08A

109.08(a). Add the following:

Submit invoices electronically to EFLConstructionInvoices@dot.gov with email copy to the CO and the project engineer.

$$109.08B

109.08(b)(3). Add the following:

Include an electronic or wet signature on the certification; facsimiles will not be accepted.

$$109.08C

109.08(d). Add the following after the first sentence of the second paragraph:

Invoices received after 3:00 p.m. Eastern Time will be marked as received the following business day.

*INCLUDE THE FOLLOWING WHEN A SWPPP IS REQUIRED (TYPICALLY WHEN THE TOTAL DISTURBED AREA IS GREATER THAN 1 ACRE) - VERIFY WITH ENVIRONMENT (IF USING THIS CLAUSE, INCLUDE ALL APPLICABLE SECTION 157 CLAUSES AND PAY ITEM 15720-0000 STORM WATER POLLUTION PREVENTION PLAN)*

$$109.08D

109.08(h)(1). Add the following:

The CO may withhold full or partial progress payment until the SWPPP is brought into compliance according to Section 157.