## Section 109. — MEASUREMENT AND PAYMENT

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| **ASPHALT Binder Price Adjustment Provision**31 August 2022**Before including this Provision on any project, coordinate with Acquisitions, Construction, and Materials.****Use the Asphalt Binder Price Adjustment Provision for all asphalt projects over 1,000 tons.**Use the Asphalt Binder Price Adjustment Provision on multiple season contracts/projects when:1) The contract involves significant costs incurred beyond one year2) The contract amount is subject to substantial adjustment3) Materials and supplies are too unstable to permit reasonable risk between the Government and the Contractor4) Suppliers are unable to provide price quotations for the usual term of the contract5) Price quotes are based on the date of delivery or spot market conditions6) Shortages are expected. |

Add the following after Subsection 109.06:

**109.06A 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. Price adjustment provisions are applicable only to the asphalt binder, as defined in Subsection 702.01, and incorporated in the following contract pay items:

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| Edit this list to include only items that apply to the contract. Be sure to enter the correct bid item number for the work being done. |

* 40101-xxxx Asphalt concrete pavement, gyratory mix
* 40102-xxxx Asphalt concrete pavement, gyratory mix, wedge and leveling course
* 40201-xxxx Asphalt concrete pavement, Hveem or Marshall mix
* 40202-xxxx Asphalt concrete pavement, Hveem or Marshall mix, wedge and leveling course
* 40301-xxxx Asphalt concrete pavement
* 40302-xxxx Asphalt concrete pavement
* 40303-xxxx Asphalt concrete pavement, wedge and leveling course
* 40501-xxxx Open-graded asphalt friction course

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| For each contract pay item from the list above, a corresponding statement should be added to the applicable payment section, which indicates:“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 109.06A Asphalt Binder Price Adjustment Provision.” |

The price adjustment provisions are also applicable to eligible pay items when the Government adds extra work to the contract.

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

The Asphalt Binder 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 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.

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| EFLHD will review the following policy/procedures.The Construction Branch is responsible for:1) purchasing the Asphalt Weekly Monitor (AWM) newsletter2) selecting the applicable region3) calculating and posting price indexes on an accessible website4) calculating and paying price adjustment compensations.In order to establish a reference for the base and monthly performance price indexes, the Poten and Partners, Inc newsletter (i.e. Asphalt Weekly Monitor) should be surveyed and an applicable region inserted below. A website address must also be inserted below where the Contractor and other interested parties can check Government postings of monthly price indexes. The Base and Monthly Performance Price Indexes for Asphalt Binder must also be calculated using weekly high and low selling price data obtained from the Asphalt Weekly Monitor. Weekly high and low selling price data from four consecutive reports will be averaged to obtain a Base Price Index as well as a Monthly Performance Price Index. **The Construction Branch will calculate and provide the Base Price Index (BPI). The BPI is not inserted during advertisement. It is inserted into the spec by Acqusitions immediately before contract award.** The Monthly Performance Price Index must be posted monthly by Acquistions on the website. |

**(a) Price indexes.** The Government will post a monthly performance price index at: <https://highways.dot.gov/federal-lands/business/escalation-factors>

Poten and Partners, Inc. (PPI) publishes a weekly report (Asphalt Weekly Monitor) on high and low selling prices for states in five regions throughout the United States including:

* East Coast/Northeast
* Mid-Continent/Midwest
* Gulf Coast/Mid South
* Rocky Mountains
* West Coast/Northwest

Weekly high and low selling price data reported for *(insert the applicable region from the list above)* will be averaged and used to establish a base price index (BPI) for this project and a monthly performance price index (MPPI) for the duration of the contract. These indexes are defined as follows:

* **Base price index.** The base price index (BPI) is the price index posted by the Government as 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) below

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

* **Monthly performance price index.** The monthly performance price index (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 prior to the last Wednesday of the month (i.e. the monthly performance price index during which asphalt binder is used in the performance of applicable construction work).

**(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 as follows:

* **No price adjustment** – when the ratio MPPI/BPI 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 ratio MPPI/BPI 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 ratio MPPI/BPI 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 bid opening.

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 in writing 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.

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

The maximum allowable monthly and final price adjustment to the Contractor or rebate to the Government is limited to a (MPPI/BPI) ratio of 1.6 and 0.4, respectively.

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| **FUeL Price Adjustment Provision**31 August 2022**Before including this Provision on any project, coordinate with Acquisitions, Construction, and Materials.****Use the Fuel Price Adjustment Provision for all projects.**Use the Fuel Price Adjustment Provision on multiple season contracts/projects when:(1) The contract involves an extended period of performance with significant costs to be incurred beyond one year after performance begins.(2) The contract amount subject to adjustment is substantial.(3) The economic variables for materials and supplies are too unstable to permit a reasonable division of risk between the Government and the Contractor.(4) Suppliers are unable to provide price quotations for the usual term of the contract.(5) Price quotes are based on the date of delivery or spot market conditions.(6) Shortages are expected.The price adjustment provision should only be applied to the specific price of volatile materials and/or supplies called out below. |

*(If the Asphalt Binder Price Adjustment Provision is included above, delete this instruction line.)*

Add the following after Subsection 109.06:

*(If the Asphalt Binder Price Adjustment Provision is NOT included above, change the “B” to a blue-highlighted “A”.)*

**109.06B 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. The price adjustment provisions are applicable only to contract items listed as eligible pay items in Table 109-2. The price adjustment provisions are also applicable to these eligible pay items when the Government adds extra work to the contract.

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

The Fuel 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 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 diesel fuel price fluctuations.

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| EFLHD will review the following policy/procedures.The Construction Branch is responsible for:(1) Purchasing the Oil Price Information Service (OPIS) newsletter;(2) Selecting the applicable rack city.(3) Calculating, preparing price indexes and sending completed indexes to Acquisitions for posting on the EFLHD website.(4) Calculating and paying price adjustment compensations. In order to establish a reference for the base and monthly performance price indexes, the Oil Price Information Service (OPIS) newsletter should be surveyed and an applicable rack city inserted below. A website address must also be inserted below where the Contractor and other interested parties can check Government postings of monthly price indexes. The Base and Monthly Performance Price Indexes for Gross Ultra Low Sulfur No. 2 Diesel Fuel must be calculated using weekly average rack price data obtained from OPIS for the applicable rack city. Weekly average rack price data from four consecutive reports will be averaged to obtain a Base Price Index as well as a Monthly Performance Price Index. **The Construction Branch will calculate and provide the Base Price Index (BPI). The Acquisitions will post the BPI on the EFLHD website before contract award.** The Monthly Performance Price Index must be posted monthly by Acquisitions on the website. |

**(a) Price indexes.** The Government will post a monthly performance price index at: <https://highways.dot.gov/federal-lands/business/escalation-factors>

Gross Ultra Low Sulfur, No. 2 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 reported for *(insert the applicable rack city)* will be averaged and used to establish a base price index (BPI) for this project and a monthly performance price index (MPPI) for the duration of the contract. These indexes are defined as follows:

* **Base price index.** The base price index (BPI) is the price index posted by the Government as 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) below

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

* **Monthly performance price index.** The monthly performance price index (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 prior to the last Wednesday of the month (i.e. the monthly performance price index during which diesel fuel is consumed in the performance of applicable construction work).

**(b) Price adjustments.** Price adjustments are 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 ratio MPPI/BPI 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 ratio MPPI/BPI 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 ratio MPPI/BPI 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 motor diesel fuel is consumed in the performance of applicable construction work.

BPI = Base Price Index that is established immediately preceding the bid opening.

Q = Quantity of work on the project during the progress payment period for eligible pay items shown in Table 109-2. The Government, to agree with the units associated with the applicable Fuel Usage Factor, will convert work quantities, as necessary.

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

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| Edit this table to include only items that apply to the contract. |

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| **Table 109-2****Eligible Pay Items for Price Adjustments and Associated Fuel Usage Factors** |
| **Eligible Pay Items** | **Fuel Usage Factor****U.S. Customary Units** | **Fuel Usage Factor****Metric Units** |
| **Earthwork** |
| **Section 204 – Excavation and Embankment** 20401 Roadway excavation 20402 Subexcavation 20403 Unclassified borrow 20404 Unclassified borrow\* 20410 Select borrow 20411 Select borrow\* 20415 Select topping 20416 Select topping\* 20419 Embankment construction\* 20420 Embankment construction 20421 Rock excavation | 0.30 gallons per cubic yard | 0.39 gallons per cubic meter |
| **Aggregate and Base Courses** |
| **Section 301 – Untreated Aggregate Courses** 30101 Aggregate base 30102 Aggregate base\* 30103 Aggregate base\* 30105 Subbase 30106 Subbase\* 30107 Subbase\* 30110 Aggregate surface course 30111 Aggregate surface course\* 30112 Aggregate surface course\* | 0.70 gallons per ton | 0.77 gallons per metric ton |
| **Section 305 – Full Depth Reclamation (FDR) with Cement** 30501 FDR with cement\* 30502 FDR with cement | 0.30 gallons per square yard | 0.36 gallons per square meter |
| **Section 306 – Full Depth Reclamation (FDR) with Asphalt** 30601 FDR with emulsified asphalt\* 30602 FDR with emulsified asphalt 30603 FDR with foamed asphalt\* 30604 FDR with foamed asphalt | 0.30 gallons per square yard | 0.36 gallons per square meter |
| **Section 309 – Emulsified Asphalt Treated Base Course** 30901 Emulsified asphalt treated aggregate base 30902 Emulsified asphalt treated aggregate base\* 30903 Emulsified asphalt treated aggregate base\* | 0.70 gallons per ton | 0.77 gallons per metric ton |
| **Section 310 – Cold In-Place (CIP) Recycled Asphalt Base Course** 31001 CIP Recycled asphalt base\* 31002 CIP Recycled asphalt base | 0.15 gallons per square yard | 0.18 gallons per square meter |
| **Section 311 – Stabilized Aggregate Surface Course** 31101 Stabilized aggregate surface course\* 31102 Stabilized aggregate surface course\* 31103 Stabilized aggregate surface course | 0.70 gallons per ton | 0.77 gallons per metric ton |
| **Asphalt Pavements** |
| **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 | 2.65 gallons per metric ton |
| **Section 402 – Asphalt Concrete Pavement by Hveem or Marshall Mix Design Method** 40201 Asphalt concrete pavement, Hveem or Marshall mix 40202 Asphalt concrete pavement, Hveem or Marshall mix, wedge and leveling course | 2.40 gallons per ton | 2.65 gallons per metric ton |
| **Section 403 – Asphalt Concrete** 40301 Asphalt concrete pavement 40302 Asphalt concrete pavement\* 40303 Asphalt concrete pavement, wedge and leveling course | 2.40 gallons per ton | 2.65 gallons per metric ton |
| **Section 405 – Open-Graded Asphalt Friction Course** 40501 Open-graded asphalt friction course | 2.40 gallons per ton | 2.65 gallons per metric ton |
| \* The Government, to agree with the units associated with the applicable Fuel Usage Factor, will convert work quantities as necessary. |

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| For each of the eligible contract pay items chosen above, a corresponding statement should be added to the applicable payment section, which indicates that “A price adjustment will be made for fluctuations in the cost of diesel fuel consumed in the performance of applicable construction work according to Subsection 109.06B Fuel Price Adjustment Provision.” |

**(c) Price adjustment compensation.** Monthly adjustments will be accrued. The final price adjustment will be paid, or rebated, after completion of all work for eligible pay items. The Contractor may request in writing 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.

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

The maximum allowable monthly and final price adjustment to the Contractor or rebate to the Government is limited to a (MPPI/BPI) ratio of 1.6 and 0.4, respectively.