

Summary of Pilot Cost of Living Adjustment Provisions

May 2021

ALABAMA

Alabama provides for an annual cost-of-living adjustment for pilots pursuant to Alabama Code § 33-4A-33(e) (The Board of Pilot Commissioners “shall adjust upward or downward the tariff rates to provide a cost-of-living adjustment to the applicable tariff rates” based on the Consumer Price Index for the previous calendar year). The Commission, at its discretion, may also “adjust tariff rates based on other economic consideration to an amount greater than increases based on changes in the Consumer Price Index for any given year” upon request by bar pilots or otherwise. Ala. Code § 33-4A-33(e).

ALASKA

Alaska Statute AS.08.62.046 (authorizing a pilot organization to “enter into agreements with the master, owner, operator, or agent of a master, owner, or operator, of a vessel for the provision of pilotage services at rates of compensation that are different from the rates adopted under this section.”).

Southeast Alaska Pilots’ Association (SEAPA): As was the case in previous years, in 2017, SEAPA negotiated a five-year COLA for pilotage rates with two of the three biggest cruise lines in their pilotage district (cruise ships represent a large majority of SEAPA’s pilotage assignments). The COLA is applied every year on January 1, with a guarantee of not less than zero percent. The CPI for the municipality of Anchorage is used as a benchmark, and is found at the following website: <http://live.laborstats.alaska.gov/cpi/index.cfm>

CALIFORNIA

Pilotage rates in California are set by statute codified in Chapter 5 of Division 5 of the Harbors and Navigation Code, beginning with § 1190. Any party directly affected by the pilotage rates may petition the Board of Pilot Commissioners for a rate hearing to develop recommendations for the legislature to adjust the rates, as set forth in 7 C.C.R. § 236. In preparing its recommendation to the legislature on an adjustment to pilotage rates, the Board shall consider, among other factors, “the change in the annual average, seasonally unadjusted consumer price indices between the last rate hearing and the most recent 12-month period for which data is available” from the Bureau of Labor Statistics and for “All Urban Consumers, San Francisco-Oakland-San Jose.” 7 C.C.R. § 236(f)(3). The most recent rate hearing that resulted in a change in pilotage rates was held in 2002 (See Cal. Harb. & Nav. Code § 1191).

FLORIDA

Upon application by a party for a change in pilotage rates, the Pilotage Rate Review Committee (Committee), as part of the Board of Pilot Commissioners is responsible for determining rates pursuant to Fla. Stat. Ann. § 310.151 (“The committee shall investigate and determine whether the requested rate change will result in fair, just, and reasonable rates of pilotage pursuant to the rules prescribed by the committee.”).

Port Everglades Pilots Association (PEP)— In a January 2019 order, the Committee modified the PEP pilotage rates based on its authority set forth in § 310.151. This order included an increase in rates by 2.5% for the first 5 years followed by 2.0% for the next 5 years beginning one year following the effective date of the setting of the rate.

GEORGIA

In accordance with Ga. Code Ann. § 52-6-11, the Board of Pilot Commissioners prescribes pilotage fees “and shall, from time to time, revise and grade pilotage fees when, in their judgment, it is necessary to do so.”

In accordance with a Resolution by the Board of Pilot Commissioners (Brunswick), the schedule of pilotage fees shall be adjusted annually by the Consumer Price Index for all Urban Users (CPI-U), U.S. City average. The new pilotage fee schedule shall be effective the first day of February and will be applied to both base charges and other fees included in the pilotage rate. In the unlikely event of a negative change in the CPI, no reduction to the schedule of pilotage fees shall be made.

HAWAII

Pilotage rates are set by the Director of the Department of Commerce and Consumer Affairs. See Haw. Rev. Stat. Ann. § 462A-11 (“The director shall establish the rates of pilotage for vessels”).

In December 2012, the Director issued a Final Order granting the Hawaii Pilots Association’s petition for changes in pilotage rates and charges. (Director’s Final Order, PTP 2012-1). This order provides for an annual adjustment to all pilotage fees and charges based on changes in the Honolulu Area Consumer Price Index as published by the Bureau of Labor Statistics. The annual adjustment on these fees and surcharges began on June 1, 2014 and are adjusted on every June 1 thereafter.

LOUISIANA

The Louisiana Pilotage Fee Commission (LPFC) is charged with establishing pilotage fees pursuant to La. Stat. Ann. § 34:1122 (giving the Commission the “exclusive authority to fix and establish reasonable and just fees and rates” for pilotage services).

Crescent River Port Pilots’ Association (CRPPA)—In December 2021, the LPFC issued a final order authorizing the implementation of a permanent cost of living adjustment mechanism applied to the newly estimated income per pilot for the previous calendar year. The order provides that rates and fees for the CRPPA will be adjusted annually by applying a five-year rolling average of

the CPI for the South region of the United States for the five most recently available calendar years, beginning on January 1, 2021, and on each September 1 thereafter.

MARYLAND

In Maryland, the Maryland Public Service Commission (PSC) sets pilotage rates, and the Maryland Legislature provides statutory guidance on factors the PSC must consider in setting pilotage rates. Md. Code Ann., Pub. Util. § 4-303 (“The Commission shall establish pilotage fees and charges for pilotage services to vessels at a just and reasonable rate”). Among the list of what the PSC must consider in setting rates is “other factors relevant to the determination of a just and reasonable rate.” One of the “other factors” the PSC must consider is the Consumer Price Index.

Association of Maryland Pilots—By Order No. 77555, issued January 16, 2002, the PSC accepted a Stipulation & Agreement settlement that provides an annual adjustment to pilotage rates in Maryland based on the most recent five-year preceding moving average change in the rate of general price inflation as measured by the Consumer Price Index (CPI-U) issued by the U.S. Department of Labor.

Each year, the PSC has accepted the Association of Maryland Pilots’ tariff revisions to increase pilot rates and charges due to the Annual CPI Inflation Adjustment authorized by Order No. 77555. The most recent tariff revisions based on this annual adjustment went into effect January 1, 2022.

MASSACHUSETTS

Pilotage rates in Massachusetts are determined by the Pilotage Rate Board. See Mass. Gen. Laws Ann. ch. 103, § 31A. The Board establishes rates based on “prevailing rates in other similar ports, the need to retain the services of the best qualified harbor pilots available and other economic conditions that may affect the quality of pilotage services in the ports.” § 31A(e).

In November 2017, the Board adopted an overall increase in pilotage fees for 2018, 2019, and 2020. The Board considered the projected annual inflation rate over the next five years as well as the CPI for the Northeast Region in its decision and noted that the “rate increases are in line with the CPI and projected inflation rates.” (See Massachusetts Pilot Rate Board Meeting, Nov. 17, 2017).

MISSISSIPPI

Miss. Code. Ann. § 59-1-39 (Pilotage fees “shall be determined and fixed by the port commissioners as may from time to time be considered reasonable and proper under existing conditions.”).

In accordance with a measure adopted by the Jackson County Port Authority Board of Commissioners (Pascagoula), all components of the pilotage fees will be adjusted annually based on the Consumer Price Index for all Urban Users (CPI-U), Southern Region. In the event there is a negative change to CPI, no negative change to the pilotage fees will be made. The cost-of-living adjustment to the pilotage rates will be rounded up to the nearest five cents (\$.05) to partially offset the negative impact of the unavoidable delay in implementing a COLA for the previous year. The

automatic annual CPI / COLA adjustment to the pilotage fees does not preclude requests by the Pascagoula Bar Pilots Association for a pilotage rate increase for reasons other than annual cost of living adjustments (e.g., infrastructure improvements, changes to the number of pilots, pilot boat rehabilitation or purchase, etc.).

NEW YORK

Pursuant to N.J.S.A. 12:8-24-1, the rates charged by all New Jersey pilots except ports south of Sandy Hook must be the same as those charged by New York pilots. While New York does not utilize a specific cost of living adjustment mechanism when setting pilotage rates, the legislature sets rates based on a five-year cycle that increases rates each year, with the most recent cycle enacted in 2018. See N.Y. Nav. Law §§ 88-89 (describing rate tables for five-year period). In addition, the Board of Commissioners of Pilots advises the governor and legislature regarding pilotage fees and must give due consideration to various factors including economic factors affecting pilot services in the area, the methods of establishing pilotage rates in other states, as well as any other information deemed pertinent by the Board. See N.Y. Nav. Law § 87(6)(a)(1)-(10).

NORTH CAROLINA

N.C. Gen. Stat. Ann. § 76A-17 (Pilotage rates are set by the Pilotage Commission and “may be based on the method chosen by the Commission and may be varied on a geographic or other basis which the Commission deems appropriate.”).

Morehead City Pilots Association (MCPA) – The MCPA are not subject to an automatic COLA adjustment. However, by order of the Pilot Commission, the MCPA does submit a rate comparison every other year and the rate is generally adjusted by applicable local/regional CPI.

OREGON

Pursuant to ORS 776.115, the Oregon Board of Maritime Pilots is responsible for fixing pilotage rates.

The Columbia River Bar Pilots (CRBP), the Columbia River Pilots (COLRIP), and the Coos Bay Pilots (CBP) – The CRBP, COLRIP, and CBP have had a COLA applied to their pilotage tariff annually since 1994.

The Oregon Pilotage Tariff No. A-10 (effective date September 1, 2017), which governs the rates charged by the CRBP and COLRIP, states: “*Inflation*: Board Orders 09-02, 10-01, and 10-02 continue an annual automatic rate adjustment that started September 1993, to reflect changes in the Consumer Price Index (CPI).” Each September 1st tariff items are adjusted (COLA) based on changes in the Portland-Vancouver Consumer Price Index (CPI) for All Urban Consumers (CPI-U) as calculated by the Bureau of Labor Statistics. The pilotage tariff is calculated by the Oregon Board of Maritime Pilots, and the CPI adjusted rate is effective on September 1 each year.

SOUTH CAROLINA

The Commissioners of Pilotage for the Lower Coastal Area and Upper Coastal Area fix pilotage rates and fees in South Carolina. S.C. Code Ann. § 54-15-290; see also S.C. Code Ann. Regs. 136-045 (Lower Coastal Area); S.C. Code Ann. Regs. 136-745 (Upper Coastal Area).

The Charleston Branch Pilots Association (CBPA) – The Lower Coastal Area (Commission) is the oversight and rate-setting body for the CBPA. Chapter 3.C. of the Commissioners “Policy and Procedures Manual” discusses the process by which the CBPA can request rate changes and sets forth the “[p]rocedures for pilotage rate increases limited to a cost of living adjustment for a single calendar year” that is fixed to the national average Consumer Price Index (CPI).

Pursuant to Chapter 3.C., each year the CBPA submits a letter to the Commission requesting the adjustment (for a single calendar year) and reports information including the national average Consumer Price Index (CPI) for the calendar year for which the rate adjustment is requested. The Commissioners then vote on the proposed CPI adjusted pilotage rate.

Another important component of the COLA mechanism outlined in Chapter 3.C.3 of the Commissioners’ Policy and Procedures Manual is a rounding process whereby an approved rate increase based on the annual CPI is rounded upwards to the nearest five cents (\$0.05).

The most recent cost-of-living adjustment was approved by the Commission on May 11, 2021 based on the published CPI of 1.4 percent and rounded upwards to the next \$0.05 increment as set forth in the Policy and Procedures Manual.

ALSO OF INTEREST:

MAINE

The Maine State Pilotage Commission makes and establishes rates for all Maine ports other than Portland. See Me. Rev. Stat. tit. 38, § 90.

Portland Pilots – The Portland Pilots do not have an automatic COLA adjustment. In March 2017, however, the Portland Pilots submitted a letter to the Board of Harbor Commissioners for the Port of Portland (the oversight and ratemaking authority for the Portland Pilots) seeking a rate adjustment equal to the 5-year sliding average of the Northeast urban CPI (1.2%). The Pilots asked that their unit rate be simply increased by 1.2% (from \$7.09 to \$7.18 per unit) and submitted only a one-page copy of the relevant Bureau of Labor Statistics’ CPI table in support of the request. The Commissioners granted the request in May after no party objected to it.

The Pilots’ March letter also requested an increase in the minimum piloting fee from \$709 to \$1,200. That increase is now the subject of a lawsuit filed on August 24, 2017 by Bay Ferries, Ltd., the operator of a ferry service between Portland and Yarmouth, Nova Scotia. The operator alleges that the public notice of the Pilots’ request did not mention the proposed increase in the minimum fees – only the CPI increase. In an affidavit filed with the lawsuit, the operator explained that it failed to make timely objection to the rate increase request because it had no knowledge that the request was for anything other than a CPI increase: “Bay Ferries chose not to challenge this

proposal because **cost of living rate increases are generally small and standard practice.**” (Emphasis added).

GREAT LAKES

The Great Lakes region is divided into three pilotage districts, encompassing over 100 ports across eight states (Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania, and New York).

“Ratemaking step 4: Determine target pilot compensation benchmark” as set forth in 46 CFR § 404.104 (effective: April 12, 2021) establishes a cost-of-living adjustment mechanism for the target pilot compensation of the U.S. Registered Pilots (USRP) on the Great Lakes, who are regulated by the U.S. Coast Guard Office of Great Lakes Pilotage.

The regulation states that “the Director [of the Office of Great Lakes Pilotage] determines base individual target pilot using a compensation benchmark, set after considering the most relevant available non-proprietary information.” In years in which a base compensation benchmark is not set, target pilot compensation will be adjusted for inflation using “the difference between the previous year’s Bureau of Labor Statistics’ Employment Cost Index for the Transportation and Materials sector and the Federal Open Market Committee median economic projections for Personal Consumption Expenditures inflation value used to inflate the previous year’s target pilot compensation.” Then, the Director “adjusts that value by the Federal Open Market Committee median economic projections for Personal Consumption Expenditures inflation for the upcoming year.”

Below is the most recent application of this target pilot compensation COLA to the USRPs:

- In 2020, the U.S. Coast Guard established a target pilot compensation for the USRPs of \$367,085
- In 2021, based on the difference between the Q1 2020 ECI Inflation Rate (3.5%) and the 2020 PCE Predicted Inflation Rate (2.0%) as well as the 2020 to 2021 Inflation Factor, the target pilot compensation was increased to \$378,925.
- To calculate 2022 compensation, the Coast Guard adjusted the 2021 target compensation benchmark by 3.1% for an adjusted value of \$390,672. That accounts for the difference in actual fourth quarter 2021 Employment Cost Index inflation, which was 4.8 percent, and the 2021 Predicted Inflation Rate of 1.7%. Next, they accounted for projected inflation from 2021 to 2022 (2.2%) and reached a value of \$399,266 per pilot.