

**REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD
NATIONAL CAPITAL REGION**

WAGE ORDER NO. NCR-07

**PROVIDING AN INCREASE IN THE DAILY MINIMUM W AGE IN THE
NATIONAL CAPITAL REGION**

WHEREAS, the Regional Tripartite Wages and Productivity Board- National Capital Region, has its mandate to conduct continuing studies of wage rates, unemployment and other conditions in the region in the light of the recent series of oil price and transportation fare increases;

WHEREAS, as a result of its consultations and deliberations, this Board finds a need to restore the real wage as of the last Wage Order issued in February 6,1998;

NOW THEREFORE, by virtue of the power and authority vested under Republic Act No.6727 otherwise known as the Wage Rationalization Act, the Regional Tripartite Wages and Productivity Board -National Capital Region hereby issues this Wage Order:

Section 1. Upon the effectivity of this Wage Order, all private sector workers and employees in the National Capital Region receiving the minimum wage shall receive an increase of **TWENTY FIVE PESOS and 50/100 CENTAVOS** (P25.50) per day. The prescribed minimum wage rate in the National Capital Region shall be **TWO HUNDRED TWENTY THREE PESOS AND FIFTY CENTAVOS** (P223.50) per day.

Section 2. The adjustment in this Order does not cover the following:

A. Workers in the following sectors, which were granted corresponding wage: increases on January 1, 1999 - as prescribed by Wage Order No. NCR-O6:

a.1 Agriculture

- | | |
|------------------|--------|
| - Plantation | P12.00 |
| - Non-Plantation | 18.50 |

a.2 Cottage/Handicraft 16.00

a.3 Private hospitals with bed capacity of 100 or less 12.00

a.4 Retail/Service

- | | |
|--------------------------------------|-------|
| - Employing 11 to 15 workers | 12.00 |
| - Employing not more than 10 workers | 19.00 |

B. Workers in small establishments employing less than ten (10) workers.

Section 3. The new minimum wage rate prescribed under this Order shall apply to all non-agricultural workers in the private sector receiving the prescribed minimum wage regardless of their position, designation or status and irrespective of the method by which their wages are paid.

Section 4. Exempted from the provisions of this Order are household or domestic helpers and persons in the personal service of another, including family drivers.

Section 5. In the case of private educational institutions, the share of covered workers

and employees in the increase in tuition fees for School Year 1999-2000 shall be considered as compliance with the wage increase prescribed herein. However, payment of any shortfall in the wage increase set forth herein shall be covered starting School Year 2000-2001.

Private educational institutions which did not increase their tuition fees for the School Year 1999-2000 may defer compliance with the provisions of this Wage Order until School Year 2000-2001.

In any case, all private educational institutions shall implement the increase in the daily minimum wage rate prescribed herein starting School Year 2000-2001.

Section 6. In the case of workers covered by contracts for works and services, the prescribed increase in wage set forth herein shall be borne by the principal and the contract previously forged between the principal and the contractor is deemed amended accordingly. In the event that the principal fails to pay the prescribed increase, the contractor shall be jointly and severally liable with the principal.

Section 7. All workers paid by result, including those who are paid on piecework, "takay", "pakyaw" or task basis, shall be entitled to receive the prescribed minimum wage increase per eight (8) hours work a day, or a proportion thereof for working less than eight (8) hours.

Section 8. Wages of apprentices, learners, and handicapped workers shall in no case be less than seventy-five percent (75%) of the minimum wage rate prescribed in this Order.

Section 9. Upon application with and as determined by the Board, based on documentation and other requirements in accordance with applicable rules and regulations issued by the Commission, the following may be exempt from the applicability of this Order:

1. Distressed establishments as defined in the NWPC Guidelines No. 01, series of 1996;
2. Exporters, including indirect exporters with at least 50% export sales and with forward contracts with their foreign buyers/principals entered into on or twelve (12) months before the date of publication of this Order may be exempt during the lifetime of the said contact but not to exceed twelve (12) months from the effectivity of this Order.

Section 10. All applications for exemption from compliance with this Order shall be filed within sixty (60) days from the date of the publication of the Rules Implementing this Order. The Board has the discretion to grant full or partial exemption to such employer with respect to the amount or period of exemption but in no case shall it exceed one (1) year from the effectivity of this Order.

Section 11. Whenever an application for exemption has been duly filed with the Board, action on any complaint for alleged non-compliance with this Wage Order shall be deferred pending its resolution.

Section 12. In the event that the application for exemption is not granted, the employees of the applicant firm shall receive the appropriate compensation due them as provided for in this Order, together with the payment of interest amounting to one percent (1%) per month retroactive to the effectivity of this Order.

Section 13. Wage increases granted by an employer in an organized establishment within three (3) months prior to the effectivity of this Order shall be credited as compliance with the prescribed increase set forth herein, provided an agreement to this effect has been forged between the parties or a collective bargaining agreement provision allowing creditability exists. In the absence of such an agreement or provision in the CBA, any increase granted by the employer shall not be credited as compliance with the increase prescribed in this Order.

In unorganized establishments, wage increases granted by the employer within six (6) months prior to the effectivity of this Order shall be credited as compliance therewith.

In case the increases given are less than the prescribed adjustment, the employer shall pay the difference. Such increases shall not include anniversary increases, merit wage increases and those resulting from the regularization or promotion of employees.

Section 14. Where the application of the wage increase prescribed in this Order results in distortions in the wage structure within the establishment, the wage distortions may be resolved- using the following formula:

$$\frac{\text{Minimum Wage under WO-NCR-06}}{\text{Present Salary}} \times \text{Amt of Min. Wage Adjustment in W .0. NCR-()7} = \text{Amount of adjustment due to distortion}$$

Section 15. Any employer who refuses or fails to pay the regional minimum wage increase provided under this Wage Order shall be subject to the penalties specified under R.A. 6727, as amended by R.A. 8188.

Section 16. The Regional Tripartite Wages and Productivity Board - National Capital Region shall prepare the necessary rules and regulations to implement this Order.

Section 17. If any provision or part of this Wage Order is declared unconstitutional, or illegal, the other provisions or parts thereof shall remain valid. Nothing in this Order shall be construed to reduce any existing wage rate, allowance or other benefit under existing laws, decrees, issuance, and executive orders or under any contract or agreement between workers and employers

Section 18. This Order shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

Approved.

Manila, Philippines, 14 October 1999.

Abstain

Concurring with reservations in a separate opinion

DANIEL R. ANG
Labor Representative

GERMAN N. PASCUA JR.
Labor Representative

LUWINA S. ENECIO
Vice-Chairman

MA. SOCORRO V. ZINGAPAN
Vice-Chairman

MAXIMO B. LIM
Chairman

We dissent.

The Employers Confederation of the Philippines was amenable to the grant of a P25.00 increase in the minimum wage rate on a staggered basis, P15.00 effective immediately and P10.00 effective May 1, 2000, to cushion the impact on unemployment, which stands at more than 15% in Metro Manila, and on inflation.

VICENTE LEOGARDO, JR.
Employers' Representative

CLETO T. VILLATUYA
Employers' Representative

CONCURRING WITH RESERVATION IN A SEPARATE OPINION

Stripped of non-essentials, I would like to reiterate my separate opinion embodied in the RTWPB-Wage Order No. NCR-05 dated 21 January 1997, to explain fully the rationale why I concurred in the majority decision, with reservation.

I anticipate severe criticism from my superiors and even from my brothers and sisters in the labor movement. I believe that my concurrence with this decision is deemed to be unacceptable in all fronts. It could be used to malign the reputation of the labor organization, which I represent, given the highly political nature of such decision.

Let it be known, however, that little has been provided for me to arrive at a more acceptable conclusion of this issue. I was forced to choose between the lesser evil.

The representatives of management to this Board stood firm on giving no more than P25.00 on staggered basis, P15.00 upon effectivity of this Order and P10.00 effective May 1, 2000. We, from labor, is pushing for P30.00. The Government side stuck to their position of P25.00.

Thus, I have to vote for the P25.00 increases to break the impasse or make the issue continue to drag and which may result in no increase in wages at all. The workers need immediate relief from the skyrocketing prices of commodities and services as a result of the continuous increases in the prices of oil and other petroleum products, and increased in transport fares.

This decision is not meant to ensure the other side of victory. Not even a compromise. It is a result of the urgent desire to immediately give the workers relief from the persistent attacks on their economic well-being. However, this is not to concede that the amount of P25.00 is enough to cushion them, not even a mere semblance of it.

Again, may I respectfully appeal to all the gifted men and women of the august chambers of Congress to carefully consider and understand the plight of the workers and their families. I am appealing, in behalf of my organization, the Trade Union Congress of the Philippines, to Congress. Legislate an appropriate across-the-board wage increase. It has been more than a decade since the last legislated wage increase, it is about time the workers receive their fair due.

14 October 1999

GERMAN N. PASUA, JR.

REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD NATIONAL CAPITAL REGION

Rules Implementing WAGE ORDER No. NCR-07

Pursuant to RA 6727 otherwise known as Wage Rationalization Act and Section 16 of Wage Order No. NCR-07, the following rules are hereby issued for guidance and compliance by all concerned:

RULE I

GENERAL PROVISIONS

SECTION 1. Title. This Rule shall be known as "The Rules Implementing Wage Order No. NCR-07";

SECTION 2. Definition of Terms - As used in this Rules,

- a. "Order" means Wage Order No. NCR-07;
- b. "Department" means the Department of Labor and Employment;
- c. "Commission" means the National Wages and Productivity Commission;
- d. "Board" means the Regional Tripartite Wages and Productivity Board -National Capital Region;
- e. "Regional Office" refers to the regional office of the Department of Labor and Employment in the National Capital Region;
- f. "National Capital Region" covers the cities of Caloocan, Las Piraas, -5 Makati, Mandaluyong, Manila, Marikina, Muntinlupa, Parariaque, V Pasay, Pasig, Quezon, Valenzuela and the municipalities of \ Malabon, Navotas, Pateros, San Juan, and Taguig;
- g. "Agriculture" refers to farming in all its branches and among others, includes the cultivation an tillage of the soil, production, cultivation, growing and harvesting of any agricultural or horticultural, commodities, dairying, raising of livestock or poultry, the culture of fish and other aquatic products in farms or ponds, and any activity performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, but does not include the manufacturing and/or processing of sugar, coconut, abaca, tobacco, pineapple, aquatic or other farm products;
- h. "Plantation Agricultural Enterprise" is one engaged in agriculture with an area of more than 24 hectares in a locality or which employs at least twenty (20) workers. Any other agricultural enterprise shall be considered as "Non-Plantation Agricultural Enterprise"
- i. "Establishment" refers to an economic unit, which engages in one or predominantly one kind of economic activity at a single fixed location.

For purposes of determining eligibility for exemption, establishments under the same owner/s but separately registered with the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) or Cooperative Development Authority (CDA) as the case may be, irrespective of their location, shall be treated as individual and distinct establishments.

- j. "Retail Establishment" is one principally engaged in the sale of goods to end-users for personal or household use.

A retail establishment that regularly engages in wholesale activities loses its retail character.

- k. "Service Establishment" is one principally engaged in the sale of service to individuals for their own or household use and is generally recognized as such;

- l. "Cottage/Handicraft Establishment" is one engaged in an economic endeavor in which the products are primarily done in the home or such other places for profit which requires manual dexterity and craftsmanship and whose capitalization does not exceed 1.5 million;

- m. "Distressed Establishments" refer to establishments which meet the criteria enumerated in Section 3A of the National Wages and Productivity Commission (NWPC) Guidelines No.01 Series of 1996, known as Rules on Exemption from Compliance with the Prescribed Wage Increases/Cost of Living Allowances Granted By the Regional Tripartite Wages and Productivity Board;

- n. "Capital" refers to paid-up capital at the end of the last full V accounting period, in the case of corporations or total invested capital at the beginning of the period under review, in the case of partnerships and single proprietorships;

- o. "Full Accounting Period" refers to a period of twelve (12) months of business operations;

- p. "Deficit" refers to the negative balance of the retained earnings account of a corporation. Retained earnings represent the cumulative balance of periodic earnings, dividend distributions, prior period adjustments and other capital adjustments;

- q. "Stock Corporation" refers to one organized for profit and issues shares of stock to its members;

- r. "Non-stock, Non-profit Organization" refers to one organized principally for public purposes such as charitable, educational, cultural or similar purposes and does not issue shares of stock to its members;
- s. "Partnership" refers to an association of two or more persons who bind themselves to contribute money, property, or industry to a common fund with the intention of dividing the profits among: themselves or for the exercise of a profession;
- t. "Single Proprietorship" refers to a business unit owned and controlled by only one person;
- u. "Cooperative" refers to a duly registered association of persons with the Cooperative Development Authority (CDA) who voluntarily join together to form a business establishment which they themselves own, control and patronize, and which may fall under any of the following types: credit, consumers, producers, marketing, service or multi-purpose;
- v. "Exporter" means any person, natural or juridical, licensed to do business in the Philippines, engaged directly or indirectly in production, manufacture or trade of products or services which earns at least fifty percent (50%) of its normal operating revenues from the sale of its products or services abroad for foreign currency. In the case of indirect exporters, the requirement that products or services be sold "abroad for foreign currency" shall not apply as, by the very nature of their business, the sale of their products or services takes place in the Philippines, and such indirect exporters are usually paid in Philippine currency;
- w. "Indirect exporter" means a person, firm or corporation who performs any production process for a manufacturer or exporter;
- x. "Forward Contracts" refer to any written agreement entered into by an exporter as defined herein and its foreign buyer or principal on or twelve (12) months before 16 October 1999, the date of publication of this Order;

- y. "Prescribed Daily Minimum Wage Rates" refer to the minimum wage rates prescribed by the Board for all private sector workers and employees in the National Capital Region;
- z. "Wage Distortion" refers to a situation where an increase in the prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.

RULE II

WAGE INCREASE

SECTION 1. Amount and Effectivity of Increase - Effective 31 October, private sector workers and employees in the National Capital Region receiving the minimum wage shall receive a minimum wage increase of **TWENTY-FIVE PESOS AND FIFTY CENTAVOS (P25.50)** per day. The prescribed minimum wage rate in the region shall be **TWO HUNDRED TWENTY THREE PESOS AND FIFTY CENTAVOS (P23.50)** per day.

SECTION 2. Coverage - The wage increase prescribed in the Order shall apply to private sector workers and employees in the National Capital Region receiving the previous prescribed daily minimum wage rate of **one hundred ninety eight pesos (P198.00)** regardless of their position, designation or status, and irrespective of the method by which their wages are paid, except household or domestic helpers and workers employed in the personal service of another, including family drivers.

SECTION 3. Application to Other Categories of Workers - The adjustment in the minimum wage rate prescribed in the Order shall not include the following workers:

A. Workers in the following sector/industry who were granted wage increases on 01 January 1999, in accordance with Wage Order No. NCR- 06:

Sector/Industry	Amount of wage adjustments given on 01 January 1999
a.1 Agriculture	
- Plantation	P12.00
- Non-Plantation	18.50
a.2 Cottage/Handicraft	
- Employing more than 30 workers	16.00
- Employing not more than 30 workers	16.00
a.3 Private Hospitals	
- With bed capacity of 100 or less	12.00
a.4 Retail/Service	

- Employing 11 to 15 workers 12.00
- Employing not more than 10 workers 19.00

B. Workers in small establishments employing less than ten (10) workers.

The prescribed minimum wage rate for the foregoing workers shall continue to be **ONE HUNDRED NINETY EIGHT PESOS (P198.00)** per day.

SECTION 4. EQUIVALENT MONTHLY WAGE RATES - Without prejudice to existing company practices, agreements or policies, the suggested formula indicated below may be used as a guide in determining the equivalent monthly minimum wage rates.

Recommended Computation of Equivalent Monthly Rates

For those who are required to work everyday including Sundays or rest days, special days and holidays

$$\begin{aligned}
 \text{Equivalent Monthly Rate (EMR)} &= \text{Applicable Daily Wage Rate} \\
 &\quad \text{or } \text{ADR} \times \frac{391.5}{12} \\
 &= 302.0 - \text{ordinary days} \\
 &\quad 18.0 - 9 \text{ regular holidays} \times 200\% \\
 &\quad 2.6 - 1 \text{ regular holiday falling on} \\
 &\quad \quad \text{last Sunday of August} \times 200\% + (30\% \text{ of } 200\%) \\
 &\quad 66.3 - 51 \text{ rest days} \times 130\% \\
 &\quad 2.6 - 2 \text{ special days} \times 130\% \\
 &\quad \quad \quad 391.5 \text{ days}
 \end{aligned}$$

For those who do not work but are considered paid on rest days and holidays

$$\text{Equivalent Monthly Rate (EMR)} = \text{ADR} \times 365$$

12

= 302 – ordinary working days
2 – special days
51 – rest days
10 – regular holidays
365 days

For those who do not work and are not considered paid on Sundays or rest days

$$\begin{aligned} \text{Equivalent Monthly Rate (EMR)} &= \frac{\text{ADR X } 314.6}{12} \\ &= 302.0 - \text{ordinary working days} \\ &\quad 2.6 - 2 \text{ special days} \\ &\quad \text{(if worked) x 130\%} \\ &\quad 10.0 - \text{regular holidays} \\ &= 314.6 \text{ days} \end{aligned}$$

For those who do not work and are not considered paid on Saturdays and Sundays or rest days

$$\begin{aligned} \text{Equivalent Monthly Rate (EMR)} &= \frac{\text{ADR X } 262.6}{12} \\ &= 250.0 - \text{ordinary days} \\ &\quad 2.6 - 2 \text{ special days} \\ &\quad \text{(if worked) x 130\%} \\ &\quad 10.0 - \text{regular holidays} \\ &= 314.6 \text{ days} \end{aligned}$$

Note: Using the above-indicated factors (a factor representing number of days as multiplier), the basic wage for the worked days and the holiday pay for the ten regular days are included in the monthly rates to be derived. Thirty percent (30%) rest day premium pay has been integrated in factor 391.5 for all the Sundays/rest days in a year including the last Sunday of August and in factors 314.6 and 262.6 for the two special days (November 1 and December 31) under Executive Order No.203.

SECTION 5. Basis of Minimum Wage Rates -The minimum wage rates prescribed herein shall be for the normal working hours, which shall not exceed eight (8) hours work a day

SECTION 6. Application to Private Educational Institutions - In the case of private educational institutions, the share of covered workers and employees in the increase in tuition fees for School Year 1999-2000 shall be considered as compliance with the wage increase prescribed in this Order. However, payment of any shortfall in the wage increase set forth in the Order shall be covered starting School Year 2000-2001.

Private educational institutions, which did not increase their tuition fees for the School Year 1999-2000, may defer compliance with the provisions of the Order until School Year 2000-2001.

In any case, all private educational institutions shall implement the increase in the daily minimum wage rate prescribed in the Order starting School Year 2000-2001.

SECTION 7. Application to Workers Covered by Contracts for Works and Services - In the case of workers covered by contracts for works and services, including but not limited to construction projects, security, janitorial, and other similar services, the prescribed increase in wage set forth in the Order shall be borne by the principal of the construction/service contractors and the contract

previously forged between them is deemed amended accordingly. In the event that the principal fails to pay the prescribed increase, the contractor shall be jointly and severally liable with the principal.

SECTION 8. Workers Paid by Results - All workers paid by results including those who are paid on piece work, "takay", "pakyaw", or task basis, shall receive not less than the prescribed minimum wage rate under the Order for the normal working hours which shall not exceed eight (8) hours work a day, or a proportion thereof for work of less than the normal working hours. The adjusted minimum wage rate for workers paid by results shall be computed in accordance with the following steps:

1. $\frac{\text{Amount of increase in AMW}^*}{\text{Previous AMW}} \times 100 = \% \text{ increase}$
2. Existing rate/pc. \times % increase = increase in rate/pc.
3. Existing rate/pc $+$ increase in rate/pc. = adjusted rate/pc.

*AMW is the applicable minimum wage rate.

The wage rates of workers who are paid by results shall continue to be established by the Department through time and motion studies, an individual/collective bargaining agreement between the employer and its workers as approved by the Secretary, and consultation with the representative of employers and workers organization in tripartite conference called by the Secretary.

The rate fixed in accordance with this Section shall apply in the establishment or industry covered, subject to review by the Secretary from time to time.

Where the output rates established by the employer do not conform with the standards set under the foregoing methods for establishing output rates, the employee shall be entitled to the difference between the amounts they are entitled to receive and the amounts paid by the employer.

SECTION 9. Wages of Social Groups of Persons - Wages of apprentices and learners shall in no case be less than seventy-five percent (75%) of the minimum wage rates prescribed in the Order. Pursuant to Section 5, Title II of Republic Act No.7277 I otherwise known as the Magna Carta for Disabled Persons, all handicapped employees shall receive the full minimum wage prescribed in the Order.

All recognized learnership and apprenticeship agreements entered into before 16 October 1999 shall be considered as automatically modified insofar as their wage clauses are concerned to reflect the increase prescribed under the Order.

SECTION 10. Mobile and Branch Workers -The statutory minimum wage rates of workers, who by the nature of their work have to travel, shall be those applicable in the domicile or head office of the employer.

SECTION 11. Transfer of Personnel - The transfer of personnel to areas outside the Region shall not be a valid ground for the reduction of the wage rates being enjoyed by the workers prior to such transfer. The workers transferred to the other Regions with higher wage rates shall be entitled to the minimum wage rate applicable therein.

RULE III EXEMPTIONS

SECTION 1. Who May Be Exempted - Upon application with and as determined by the Board, based on documentation and other requirements in the applicable rules and regulations issued by the Commission, the following may be exempt from the applicability of this Order:

1. Distressed establishment in accordance with the criteria enumerated in the National Wages and Productivity Commission (NWPC) Guidelines No.01, series of 1996.
2. Exporters, including indirect exporters, with at least fifty percent (50%) export sales and with existing forward contracts with their foreign buyers/principals on or twelve (12) months before 16 October 1999 may be exempt during the lifetime of the said contract but not to exceed twelve (12) months from the effectivity of the Order.

SECTION 2. Application for Exemption - Within seventy-five (75) days from the date of publication of this Rules, pursuant to Resolution No. 01, series of 1999 issued by the Commission, an application for exemption shall be filed with the Board in two (2) typewritten copies by the owner/manager or duly authorized representative of an establishment, either through personal service or by registered mail.

The date of mailing shall be deemed as the date of filing.

All applications for exemption shall be under oath and must be supported by a proof of notice to the Union/s or if there is no union, a copy of the circular giving general notice to all workers that an application for exemption from compliance with the Order has been filed with the Board. The proof of notice, which may be translated in the vernacular, shall state that the workers' representative was furnished a copy of the application with all the supporting documents. The notice shall be posted in a conspicuous place in the establishment.

SECTION 3. Supporting Documents - Aside from those prescribed in the preceding Section, and in accordance with the applicable rules, the following supporting documents shall be submitted with the application:

A. For distressed establishments:

1. For corporations, cooperatives, single proprietorship, partnerships, non-stock, non-profit organizations:
 - a. Audited financial statements (together with the Auditor's opinion and notes thereto) for the last two full accounting periods immediately preceding the effectivity of the Order, filed with and stamped "received" by the Bureau of Internal Revenue (BIR) and the Securities and Exchange Commission (SEC), or any appropriate government agency;
 - b. Audited interim quarterly financial statements (together with the Auditor's opinion and notes thereto) for the period immediately, preceding the effectivity of the Order;
 - c. Annual Income tax returns for the last two taxable periods filed with and stamped "received" by the BIR;
 - d. Quarterly income tax returns immediately preceding the effectivity of the Order, filed with and stamped "received" by the BIR.
2. For Banks and Quasi-Banks
 - a. Certification from the Bangko Sentral ng Pilipinas that it is under receivership/liquidation

For exporters, including indirect exporters:

1. Affidavit from the employer stating the following:

- 1 .a. principal economic activity, number of workers employed in the establishment and their corresponding wage rates/structure, and existing union/s if any;
- 1.b. list of forward contracts entered into stating the following:
 1. b.1. name of foreign buyers or principals and their addresses or in the case of indirect exporters, the name of foreign buyers or principals of the direct exporter;
 - 1.b.2. date of contracts
 - 1.b.3. delivery or shipping dates
 - 1.b.4. amount and volume of orders
2. Certificate of accreditation from the Bureau of Export Trade Promotion and other deputized agencies identified under Department of Trade and Industry Department Administrative Order No.3, Series of 1995;

In the case of new exporters, certification from BETP or its deputized agencies that fifty percent (50%) of its total sales have been derived from exports.
3. Business permit for the current year from the Office of the City/Municipal Mayor, and certificate of registration from DTI I CDA, or articles of incorporation from SEC or other governmental agencies;
4. Certified true copies of the forward contracts;
5. Irrevocable letters of credit/Proof of payment from the principal;
6. Purchase orders;
7. Proof of acceptance of the purchase order;
8. Bills of lading/Delivery Receipts

The Board may require the submission of other pertinent commercial documents to support the application for exemption.

SECTION 4. Criteria For Exemption - In order to determine whether an applicant establishment is qualified for exemption, the following criteria shall be used:

- a. In the case of distressed establishment:
 - i. For stock corporations/cooperatives, deficit as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Order amounts to 20% or more of the paid-up capital for the same period; or registers a capital deficiency i.e. negative stockholders' equity as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Order;
 - ii. For single proprietorships/partnerships operating for at least two (2) years, the net accumulated losses for the last two (2) full accounting periods and interim period, if any, preceding the effectivity of the Order amounts to 20% or more of the total invested capital at the beginning of the period under review; or the establishment registers a capital deficiency i.e. negative net worth as of the last full accounting period or interim period, if any immediately preceding the effectivity of the Order.

Single proprietorships/partnerships operating for less than two (2)

years may be granted exemption when the net accumulated losses for the period immediately preceding the effectivity of the Order amounts to 20% or more of the total invested capital at the beginning of the period under review.

- iii. For non-stock, non-profit organizations operating for at least two (2) years, when the net accumulated losses for the last two full accounting periods and interim period, if any, immediately preceding the effectivity of the Order amounts to 20% or more of the fund balance/members' contribution at the beginning of the period; or when an organization registers capital deficiency, i.e. negative fund balance/members' contribution as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Order.

Non-stock, non-profit organizations operating for less than M (2) years may be granted exemption when the net accumulated losses for the period immediately preceding the effectivity of the Order amounts to 20% or more of the fund balance/members' contribution at the beginning of the period under review.

- iv. For banks and quasi-banks under receivership/liquidation, a certification from the Bangko Sentral ng Pilipinas (BSP) that it is under receivership or liquidation on account of insolvency as provided in Section 30, R.A. 7653, otherwise known as the New Central Bank Act.

Banks under controllership/conservatorship may apply for exemption as a distressed establishment under Section 5 (b) hereof.

- b. In the case of exporters or indirect exporters,
 - i. The applicant must have at least fifty percent (50%) export sales in 1998;
 - ii. The applicant must have forward contracts executed on or twelve (12) months before 16 October 1999;

SECTION 5. Extent of Exemption - The Board has the discretion to grant full or partial exemption with respect to the amount and the period of exemption but in no case shall it exceed one (1) year from the effectivity of the Order.

SECTION 6. Effect of filing of an Application for Exemption - Whenever an application for exemption has been filed with the Board, the Regional Office of the Department shall be notified. Pending resolution of the said application, action on any complaint for alleged non-compliance with the Order shall be deferred by the Regional Office of the Department.

SECTION 7. Application for Projects/Branches/Divisions - Where the exemption being sought for is for a particular project/branches/division not separately registered and licensed, the consolidated audited financial statements of the establishment shall be used as basis for determining its distressed condition.

SECTION 8. Distressed Principal. - Exemption granted to a distressed principal shall not extend to its contractor in case of contract(s) for construction, security, janitorial and/or similar services with respect to the employees of the latter assigned to the former.

SECTION 9. Effect of Disapproved Application - In the event that the application for exemption is not granted, the workers and employees shall receive the appropriate compensation due them as provided for under the Order plus an interest of one percent (1%) per month retroactive to 31 October 1999.

SECTION 10. Motion for Reconsideration - An aggrieved party may file with the Board, a motion for reconsideration of the decision on the application for exemption, within ten (10) days from receipt of the decision, stating the particular grounds upon which the motion is based, copy furnished the other party and the Regional Office of the Department.

SECTION 11. Appeal - Any party aggrieved by the decision of the Board may file an appeal to the Commission, through the Board, in two (2) legible copies, not later than ten (10) days from receipt of the decision. The appeal must be filed in the manner prescribed by the Commission and must be based on any of the following grounds:

- a. non-conformity with the prescribed guidelines/procedures on exemption;
- b. prima facie evidence of grave abuse of discretion on the part of the Board; or
- c. questions of law

RULE IV

CREDIT ABLE INCREASE

SECTION 1. Organized Establishment - Wage increases granted by an employer in an organized establishment within three (3) months prior to the effectivity of the Order shall be credited as compliance with the prescribed increase set forth therein, provided that an agreement to this effect has been forged between the parties or a provision in the collective bargaining agreement allowing creditability exists.

In case the increases given are less than the prescribed adjustment, the employer shall pay the difference. Such increases shall not include anniversary increases, merit wage increases, and those resulting from the regularization or promotion of employees.

SECTION 2. Unorganized Establishments - In unorganized establishments, wage increases granted by the employer within six (6) months prior to the effectivity of the Order shall be credited as compliance.

In case the increases given are less than the prescribed adjustment, the provisions of the last paragraph of the preceding Section shall be applied.

RULE V WAGE DISTORTION

Section 1. Effect on Existing Wage Structure - Should any dispute arise as a result of wage distortion, the employer and the union shall negotiate to correct the distortions through the grievance procedure under their collective bargaining agreement, and if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, such dispute shall be decided by the voluntary arbitrator or panel of voluntary arbitrators within ten (10) calendar days from the time said dispute was referred to voluntary arbitration.

In cases where there are no collective bargaining agreements or recognized labor unions, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and if it remains unresolved after ten (10) calendar days of conciliation, the same shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). The NLRC shall conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration.

Where the application of the wage increase prescribed in the Order results in distortion in the

wage structure within the establishment, the wage distortion may be resolved using the following formula:

$$\frac{\text{Minimum Wage Under WO-NCR-O6 IP198.00}}{\text{Present Salary}} \times \text{Minimum wage adjustment in WO-NCR-O1 (P25.50)} = \text{Amount of wage adjustment due to distortion}$$

SECTION 2. Effect of Dispute - The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of the wage increase prescribed in the Order.

RULE VI SPECIAL PROVISIONS

SECTION 1. Complaints for Non-Compliance - Complaints for non-compliance with the wage increase set forth in the Order shall be filed with the Regional Office of the Department and shall be the subject of enforcement proceedings under Articles 128 and 129 of the Labor Code, as amended.

SECTION 2. Conduct of Inspection by the Department - The Department shall conduct inspections of establishments, as often as necessary, to determine whether the workers are paid the prescribed wage rates and other benefits granted by law or any Wage Order. In the conduct of inspection in unionized companies, Department inspectors shall always be accompanied by the president or other responsible officer of the recognized bargaining unit or of any interested union. In the case of non-unionized establishments, a worker representing the workers in the said company will accompany the inspector.

The workers' representative shall have the right to submit his own findings to the Department and to testify on the same if he does not concur with the findings of the labor inspector.

SECTION 3. Non-Diminution of Benefits - Nothing in the Order, and this Rules shall be construed as authorizing the reduction of any existing wage rates, allowances and benefits of any form under existing laws, decrees, issuances, executive orders, and/or under any contract or agreement between the workers and employers or employer practices or policies.

SECTION 4. Penal Provision - Pursuant to the provisions of Section 12 of Republic Act No.6727, as amended by Republic Act No.8188, any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay the prescribed increase in the Order shall be punished by a fine not less than Twenty-five thousand pesos (P25, 000.00) nor more than One hundred thousand pesos (P100, 000.00) or imprisonment of not less than two (2) years nor more than four (4) years or both such fine and imprisonment at the discretion of the court. Provided, that any person convicted under the Order shall not be entitled to the benefits provided under the Probation Law.

The employer concerned shall be ordered to pay an amount equivalent to double the unpaid benefits owing to the employees; Provided, that payment of indemnity shall not absolve the employer from the criminal liability imposable under this Act.

If the violation is committed by a corporation, trust or firm, partnership, association or any other entity, the penalty of imprisonment shall be imposed upon the entity's responsible officers, including but not limited to the president, vice-president, chief executive officer, general manager, managing director or partner.

SECTION 5. Prohibition Against Injunction - No preliminary or permanent injunction or temporary restraining order may be issued by any court, tribunal or other entity against any

proceeding before the Board.

SECTION 6. Freedom to Bargain -The Order shall not be construed to prevent workers in particular firms or enterprises of industries from bargaining for higher wages and flexible working arrangements with their respective employers.

SECTION 7. Reporting Requirement - Any person, company, corporation, partnership or any entity engaged in business shall submit a verified itemized listing of their labor component to the Board not later than January 31 I 2000 and every year thereafter in accordance with the form prescribed by the Commission.

SECTION 8. Effect on Other Issuance - The provisions of existing laws and decrees on wages and their implementing rules and regulations and issuances not otherwise repealed, modified or inconsistent with the Order, and this Rules shall continue to have full force and effect.

SECTION 9. Separability Clause -If any provision or part of the Order and this Rules, or the application thereof to any person or circumstance, is held invalid or unconstitutional, the remainder of the Order and this Rules or the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

Effectivity. This Rules shall take effect on 31 October 1999.

Done in Manila, Republic of the Philippines this 26th day of October 1999.

DANIEL R. ANG
Labor Representative

VICENTE LEOGARDO, JR.
Employers' Representative

GERMAN N. PASCUA JR.
Labor Representative

CLETO T. VILLATUYA
Employers' Representative

LUWINA S. ENECIO
Vice-Chairman

MA. SOCORRO V. ZINGAPAN
Vice-Chairman

MAXIMO B. LIM
Chairman

Approved this 1st day of December 1999.

BIENVENIDO E. LAGUESMA
Secretary
Department of Labor and Employment