

Republic of the Philippines
Department of Labor and Employment
National Wages and Productivity Commission
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD
Caraga Region
Butuan City

Wage Order No. RXIII-05

**PROVIDING FOR NEW MINIMUM WAGE
RATES IN CARAGA REGION**

WHEREAS, The Regional Tripartite Wages and Productivity Board under Republic Act No. 6727 is mandated to review the prevailing wage rates applicable in the region, provinces or industries therein;

WHEREAS, The Board in response to the nationwide clamor for salary adjustment has resolved to conduct motu proprio a public consultation to review the present wage rates provided under Wage Order No. RXIII-04.

WHEREAS, public consultations were conducted in Surigao City, San Francisco Agusan del Sur, Bislig City, Tandag Surigao del Sur and Butuan City on May 14, May 25, May 27, May 28 and June 3, 2004, respectively, and as a result thereto position papers from labor and management sectors were submitted urging the Board for a wage increase from a low 10.00 to a high of 121.00 and for the management, to a high of 6.00 to a no increase at all;

WHEREAS, The Board taking into consideration the economic situation of the region, the issues and concerns raised by the different sectors during the wage consultation, the position papers submitted and the application of the wage setting model based on ILO framework for determining minimum wage adjustment, has felt the need to increase the minimum wage rates in order to cushion the impact of the rising cost of living without impairing the business viability of the region;

NOW THEREFORE, by virtue of the power and authority vested under Republic Act 6727, otherwise known as the Wage Rationalization Act, the Regional Tripartite Wages and Productivity Board, Caraga Region hereby issues Wage Order No. RXIII-05.

Section 1. COVERAGE

The rates prescribed under this Order shall apply to the MINIMUM WAGE EARNERS in the private sector in Caraga Region, regardless of their position, designation or status and irrespective of the method by which their wages are paid.

Not covered by the provisions of this Order are household or domestic helpers and persons employed in the personal service of another, including family drivers.

Also excluded from the coverage of this Order are workers in registered Barangay Micro Business Enterprises with Certificates of Authority in accordance with RA 9178.

Section 2. COST OF LIVING ALLOWANCE

The COST OF LIVING ALLOWANCE provided to all minimum wage earners under Wage Order No. RXIII-04 in the amount of TWELVE PESOS (P12.00) shall continue to be given.

Section 3. NEW MINIMUM WAGE RATES

Upon the effectivity of this Order, the daily minimum wage rates applicable to workers and employees in the private sector in Caraga Region shall be as follows:

INDUSTRY/ SECTOR	BASIC WAGE	COLA
AGRICULTURE		
Plantation	167.00	12.00

Non-plantation	147.00	12.00
NON AGRICULTURE	177.00	12.00
RETAIL & SERVICE		
Employing 10 workers or less	147.00	12.00
Employing more than 10 workers	177.00	12.00

Section 4. BASIS OF PAYING MINIMUM WAGE

The minimum wage rates prescribed under this Order shall be for the normal working hours, which shall not exceed eight (8) hours work a day.

Section 5. APPLICATION TO INDUSTRIES WHOSE REVENUES ARE REGULATED BY LAW

Industries whose revenues are regulated by law (such as transportation, utilities, etc.) are required to comply with this Order immediately upon approval of adjustment in their rates by the concerned government agency but not later than six (6) months from the effectivity of this Order.

Section 6. APPLICATION TO PRIVATE EDUCATION INSTITUTIONS

In the case of private educational institutions, the wage rates provided under this Order shall take effect not earlier than the date the school actually increases tuition fees for SY 2004-2005. However, beginning School Year 2005-2006, all schools shall implement the new rates whether or not they have actually increased the tuition fees.

Section 7. APPLICATION TO CONTRACTORS

In the case of contracts for construction projects and for security, janitorial and similar services, the prescribed increases in the wage rates of the workers shall be borne by the principals of the construction/service contractors and the contract shall be deemed amended accordingly. In the event however, that the principals fail to pay the prescribed minimum wage, the construction/service contractors shall be jointly and severally liable with the principals.

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 be entitled to receive the prescribed daily minimum wage for eight (8) hours work day, or a proportion thereof for working less than eight (8) hours.

Section 9. WAGES OF SPECIAL GROUPS OF WORKERS

Wage of apprentices and learners shall in no case be less than seventy five percent (75%) of the applicable minimum wage rates. All recognized learnership and apprenticeship agreements entered into before the effectivity of this Order shall be considered automatically modified insofar as their wage provisions are concerned to reflect the prescribed wage rates.

Section 10. EXEMPTIONS

- A. The following may be exempted from the applicability of this Order upon application with and as determined by the Board in accordance with NWPC Guidelines No. 01, series of 1996.
 - i. Distressed establishments.
 - ii Retail / Service establishments regularly employing not more than 10.
 - iii. New business enterprises (NBEs).
 - iv. Establishments adversely affected by natural calamities.
- B. All applications for exemption from compliance of this Order shall be filed within 75 days from the date of the publication of the Rules Implementing this Order.

In the case of NBEs, application shall be filed not later than sixty (60) days from the date of registration.

- C. Whenever an application for exemption has been duly filed with the Board, action on any complaint for alleged non-compliance thereto shall be deferred pending its resolution.
- D. In the event that the application for exemption is not granted, the applicant firm shall pay the appropriate compensation due to the covered workers as provided for in this Order plus interest of one percent (1%) per month, retroactive from the effectivity of this Order.

Section 11. APPEAL TO THE COMMISSION

Any party aggrieved by the Order issued by the Board may file an appeal with the Commission within 10 calendar days from the publication of this Order.

Section 12. EFFECT OF FILING OF APPEAL

The filing of the appeal shall not suspend the effectivity of the Order unless the party appealing such Order files with the Commission an undertaking with a surety or sureties in such as may be fixed by the Commission.

Section 13. EFFECTS ON EXISTING WAGE STRUCTURE

Where the application of the increases in the wage rates under Section 3 hereof, results in the distortion of the wage structure within an establishment, the same shall be corrected in accordance with the procedure provided for under Art. 124 of the Labor Code as amended.

The pendency of a dispute arising from wage distortion shall not in any way delay the applicability of any increase prescribed in this Order.

Section 14. FREEDOM TO BARGAIN

This Order shall not be construed to prevent workers in particular firms or enterprises of industries from bargaining for higher wages with their respective employers.

Section 15. COMPLAINTS FOR NON-COMPLIANCE

Complaints for non-compliance with the wage increase prescribed under this Order may be filed with the Provincial/Regional Office of the Department of Labor and Employment (DOLE) and shall be the subject of enforcement proceedings under Art. 128 of the Labor Code, as amended, without prejudice to criminal prosecution which may be undertaken against those who fail to comply.

Section 16. NON-DIMINUTION CLAUSE

Nothing in this Order shall be construed to reduce any existing wage rates, allowances and benefits of any form under existing laws, decrees, issuances, executive orders and/or any contract or agreement between the workers and employers.

Section 17. 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, 2005 and every year thereafter in accordance with the form prescribed by the Commission.

Section 18. PROHIBITION AGAINST INJUNCTION

No preliminary or permanent injunction or temporary restraining order may be issued by the court, tribunal or other entity against any proceeding before the Board as provided for under RA 6727.

Section 19. PENAL PROVISIONS

Any person, corporation, trust firm, partnership, association or entity which refuses or fails to pay the prescribed adjustments in the wage rates prescribed in accordance with this Order shall be subject to the penal provisions under RA 6727 as amended by RA 8188.

Section 20. IMPLEMENTING RULES

The Board shall prepare the necessary rules and regulations to implement this Order, subject to the approval of the Secretary of Labor and Employment.

Section 21. REPEALING CLAUSE

All laws, orders, issuances, rules and regulations or parts thereof inconsistent with this Order are hereby repealed, amended or modified accordingly.

Section 22. SEPARABILITY CLAUSE

If any provisions or part of this Order, or the application thereof to any person or circumstance, is held invalid or unconstitutional, the remainder of the Order or the application of such provision or part thereof to other persons or circumstance shall not be affected thereby.

Section 23. EFFECTIVITY

This Order shall take effect fifteen (15) days after its publication in at least one (1) newspaper of general circulation in Caraga Region.

APPROVED. Butuan City, Philippines, July 1, 2004.

(SGD) ANSELMO L. SANG TIAN
Member, Employers' Representative

(SGD) SIMPLICIO E. QUINDICA
Member, Labor Representative

**(SGD) CARMENCITA S.
COCHINGCO**
Vice-Chairman, NEDA

(SGD) BRIELGO O. PAGARAN
Vice-Chairman, DTI

(SGD) PONCIANO M. LIGUTOM
Chairman, DOLE

Republic of the Philippines
Department of Labor and Employment
National Wages and Productivity Commission
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD
Caraga Region
Butuan City

**RULES AND REGULATIONS IMPLEMENTING
WAGE ORDER NO. RXIII-05**

Pursuant to R. A. 6727, otherwise known as the Wage Rationalization Act, and Section 20 of Wage Order No. RXIII-05, the following Rules are hereby issued for the guidance and compliance by all concerned in Caraga Region.

**RULE 1
GENERAL PROVISIONS**

Section 1. TITLE

This Rule shall be known as "The Rules and Regulations Implementing Wage Order No. RXIII-05".

Section 2. DEFINITION OF TERMS - as used in this Rules.

- a. **RA 6727** - refers to the "Wage Rationalization Act".
- b. **RA 8188** - refers to the "Act Increasing the Penalty and Imposing Double Indemnity for Violation of the Prescribed Increases or Adjustment in the Wage Rates".
- c. **RA 9178** - refers to the " Act that Promotes the Establishment of Barangay Micro Business Enterprise (BMBE)".
- d. **DEPARTMENT** - refers to the Department of Labor and Employment, Region XIII.
- e. **COMMISSION** - means the National Wages and Productivity Commission.
- f. **BOARD** - means the Regional Tripartite Wages and Productivity Board No. XIII.
- g. **REGION XIII** - covers the provinces of Agusan del Norte, Agusan del Sur, Surigao del Norte, Surigao del Sur and the Cities of Butuan, Surigao and Bislig.
- h. **CERTIFICATE OF AUTHORITY** - is the Certificate issued by the city or municipal treasurer granting the authority to the registered BMBE to operate and be entitled to the benefits and privileges accorded thereto.
- i. **AGRICULTURE** - refers to farming in all its branches, including cultivation and tillage of soil, production, cultivation, growing and harvesting of agricultural and horticultural commodities, dairying, raising of livestock or poultry, the culture of fish and other aquatic products in farms or ponds, and any activities performed by a farmer in a farm as an incident to or in conjunction with such farming operations. This does not include the manufacturing and/or processing of sugar, coconut, abaca, tobacco, pineapple, aquatic or other farm products.
- j. **PLANTATION AGRICULTURE** - 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 non- plantation.
- k. **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, establishment under the same owner/s but separately registered with the Securities and Exchange Commission (SEC), Office of the City/Municipal Mayor, 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 establishment.

l. **MULTI PURPOSE COOPERATIVE**- is one that combines two or more of the business activities of the different types of cooperative defined under RA 6938 otherwise known as Cooperative Code of the Philippines.

m. **BARANGAY MICRO BUSINESS ENTERPRISE** - refers to any registered entity or enterprise granted a Certificate of Authority under RA 9178."

n. **DISTRESSED ESTABLISHMENT** - refers to establishment, which meets the criteria enumerated in Sec. 3 (A) of NWPC Guidelines No. 01 series of 1996.

o. **RETAIL ESTABLISHMENT** - is one principally engaged in the sale of goods to the end users for personal or household use.

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

p. **SERVICE ESTABLISHMENT** - is one principally engaged in the sale of services to individuals for their own or household use and is generally recognized as such.

q. **NEW BUSINESS ENTERPRISES** - refers to establishments including non-profit institutions, newly registered with the appropriate government agency such as Securities and Exchange Commission, Department of Trade and Industry, Cooperative Development Authority and Mayors' Office within 2 years from the effectivity of the Wage Order.

r. **BASIC WAGE** - means all remuneration or earnings paid by an employer to a worker for services rendered on normal working days and hours but does not include Cost of Living Allowances, profit-sharing payments, premium payments, 13th month pay, or other monetary benefits which are not considered as part of or integrated into the regular salary of the workers on the date the Wage increase became effective.

s. **MINIMUM WAGE RATE** - is the lowest wage rate that an employer can pay his worker as fixed by the Board.

t. **WAGE DISTORTION** - means a situation where an increase in 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 distinction embodied in such wage structure based on skills, length of service or other logical basis of differentiation.

u. **ORDER** - means Wage Order No. RXIII-05.

RULE II

NEW MINIMUM WAGE RATES

Section 1. COVERAGE

a. The minimum wage rates prescribed under the Order shall apply to the minimum wage earners in the private sector regardless of their position, designation or status and irrespective of the method by which their wages are paid.

b. Not covered by the provision of the Order are household or domestic helpers or persons employed in the personal service of another including family drivers.

c. Also excluded from the coverage of the Order are workers in the registered Barangay Micro Business Enterprise with Certificates of Authority in accordance with RA 9178.

d. Workers and employees who, prior to the effectivity of the Order were receiving a basic wage rate per day or its monthly equivalent of more than those prescribed under the Order, may receive wage increases through the correction of wage distortions in accordance with Section 1, Rule IV of this Rules.

e. The applicability of the new wage rate shall be determined on the basis of the employee's workplace. Should the employee be relocated to a region with a higher minimum wage rate, he shall receive such rate. Should he be relocated to a region with a lower minimum wage rate, he shall continue to receive his rate without any diminution.

f. The 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. The minimum wage rates of workers working in branches outside the Caraga region shall be those applicable in the place where they are stationed.

Section 2. COST OF LIVING ALLOWANCE (COLA)

The TWELVE PESOS (P 12.00) Cost of Living Allowance provided to all minimum wage earners in the private sector under Wage No. RXIII-04 shall continue to be given.

Section 3. NEW MINIMUM WAGE RATES

Effective July 23, 2004, the daily minimum wage rates applicable to covered workers and employees in the private sector in Caraga Region shall be as follows: (tabulated comparison between WAGE ORDER NO. RXIII-04 and WAGE ORDER NO. RXIII-05 is shown in Annex A).

(Annex A)
**COMPARATIVE DAILY MINIMUM WAGE RATES UNDER
 WAGE ORDER NO. RXIII-04 AND RXIII-05**

INDUSTRY/SECTOR	WAGE ORDER NO. RXIII-04		WAGE ORDER NO. RXIII-05	
	BASIC WAGE	COLA	BASIC WAGE	COLA
AGRICULTURE				
Plantation	157	12	167	12
Non-Plantation	137	12	147	12
NON-AGRICULTURE	167	12	177	12
RETAIL AND SERVICE ESTABLISHMENTS				
Employing 10 workers or less	137	12	147	12
Employing more than 10 workers	167	12	177	12

DAILY MINIMUM WAGE RATES under WAGE ORDER NO. RXIII-05

INDUSTRY/SECTOR	BASIC WAGE	COLA
AGRICULTURE		
Plantation	167	12
Non-Plantation	147	12
NON-AGRICULTURE	177	12
RETAIL AND SERVICE		
Employing 10 workers or less	147	12
Employing more than 10 workers	177	12

Section 4. BASIS OF PAYING MINIMUM WAGE

The statutory minimum wage rates prescribed under this Order shall be for the normal working hours, which shall not exceed eight (8) hours work a day.

Section 5. APPLICATION TO INDUSTRIES WHOSE REVENUES ARE REGULATED BY LAW

Industries whose revenues are regulated by law (such as transportation, electric cooperatives, utilities, etc.) are required to comply with the Order immediately upon approval of adjustment in their rates by the concerned government agency but not later than six(6) months from the effectivity of the Order.

Section 6. APPLICATION TO PRIVATE EDUCATIONAL INSTITUTIONS

In the case of private educational institutions, the new wage rates provided under this Order shall take effect not earlier than the date the school actually increases tuition fees for SY 2004-2005. However, beginning School Year 2005-2006, all schools shall implement the new rates whether or not they have actually increased tuition fees.

Section 7. APPLICATION TO CONTRACTORS

In the case of contracts for construction projects and for security, janitorial and similar services, the prescribed increases in the wage rates of the workers provided under this Order, shall be borne by the principals of the construction/service contractors. Any contract to this effect entered into before the effectivity of this Order shall be considered automatically modified insofar as their wage provision is concerned. In the event however, that the principals fail to pay the prescribed minimum wage, the construction/service contractors shall be jointly and severally liable with the principals.

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 applicable minimum wage rates prescribed 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 rates for workers paid by results shall be computed in accordance with the following steps:

- a. Amount of increase in AMW \div Previous AMW \times 100 = % increase;
- b. Existing rate/piece \times % increase = increase in rate/piece;
- c. Existing rate/piece + increase in rate/piece = Adjusted rate/piece

· where AMW is the Applicable Minimum Wage rate

The wage rates for workers who are paid by results shall continue to be established in accordance with Article 101 of the Labor Code, as amended and its implementing regulations.

Section 9. WAGES OF SPECIAL GROUP OF WORKERS

Wages of apprentices and learners shall in no case be less than seventy five percent (75%) of the applicable minimum wage rates prescribed in this Order. All recognized learnership and apprenticeship agreements entered into before the effectivity of the Order shall be considered automatically modified insofar as their wage provisions are concerned to reflect the increase prescribed under the Order.

Section 10. SUGGESTED FORMULA IN DETERMINING THE EQUIVALENT MONTHLY REGIONAL MINIMUM WAGE RATES

Without prejudice to existing company practices, agreements or policies, the following formula may be used as guides in determining the equivalent monthly minimum wage rates:

- a. For those who are required to work everyday including Sundays or rest days, special days and regular holidays:

Equivalent Monthly Rate (EMR) = Applicable Daily Wage Rate (ADR) x 392.8 days/12

Where 392.8 days are:

300 days - ordinary working days
20 days - 10 regular holidays x 200%
2.6 days - 1 regular holiday falling on last Sunday of August
x 200% + (30% of 200%)
66.3 days - 51 rest days x 130%
3.9 days - 3 special days x 130%
392.8 days - Total equivalent number of days

b. For those who do not work but considered paid on rest days, special days and regular holidays:

EMR = ADR x 365 days / 12

Where 365 days

300 days - ordinary working days
51 days - rest days
11 days - regular holidays
3 days - special days
365 days - Total equivalent number of days

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

EMR = ADR x 314 days / 12

Where 314 days:

300 days - ordinary working days
11 days - regular holidays
3 days - 3 special days (if worked) x 130%
314 days - Total equivalent number of days

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

EMR = ADR x 262 days / 12

Where 262 days:

248 days - ordinary working days
11 days - regular days
3 days - 3 special days (if worked) x 130%
262 days - Total equivalent number of days

Note: For workers whose rest days fall on Sundays, the number of rest days in a year is reduced from 52 to 51 days, the last Sunday of August being regular holiday under Executive Order No. 203.

For purposes of computation, said holiday, although still a rest day for them, is included in the eleven regular holidays. For workers whose rest day does not fall on Sundays, the number of rest day is fifty two (52) days as there are fifty two (52) weeks in a year.

Nothing herein shall be construed as authorizing the reduction of benefits granted under the existing agreements or employer practices/policies.

Section 11. APPEAL TO THE COMMISSION

Any party aggrieved by the Order issued by the Board may file an appeal with the Commission within ten (10) calendar days from the publication of the Order. The Commission shall decide the appeal within sixty (60) calendar days from the date of filing.

Section 12. EFFECT OF APPEAL

The filing of the appeal shall not suspend the effectivity of the Order unless the person appealing such Order files with the Commission an undertaking with a surety or sureties in such amount as may be fixed by the Commission.

RULE III EXEMPTIONS

Section 1. EXEMPTIBLE CATEGORIES

Upon application with and as determined by the Board and in accordance with the NWPC Guidelines No. 01 series of 1996 (Rules on Exemption) and NWPC Resolution No. 01 series of 1999, the following may be exempted from applicability of the Order.

- a. Distressed Establishments
- b. New Business Enterprises (NBEs)
- c. Retail/Service establishments employing not more than 10 workers
- d. Establishments adversely affected by natural calamities

Excluded from the availment of wage exemption are services rendered by one who is duly licensed by the government after having passed a government licensure examination in connection with the exercise of one's profession.

Multi purpose cooperative employing ten workers or less, shall, for all intents and purposes favorable to it, and subject to the requirements set forth under this Rule, is qualified to apply for wage exemption under the category of Retail/Service Establishments employing 10 workers or less.

Section 2. FILING OF APPLICATION FOR EXEMPTION

All applications for exemption shall be filed under oath and with complete supporting documents within seventy five (75) days from the date of the publication of this Rules. No extension of time for filing and submission of the required documents shall be allowed.

Applications filed through fax bearing the sender's fax number, or through internet, for purposes of counting the seventy five day period shall be considered. However the applicant within a period of seven calendar days from filing must prove ownership/origin of the faxed or emailed application, in accordance with the procedure set forth under e-commerce law, on top of the submission of the hard copy of the application and other required documents.

Applications filed before the DOLE regional or provincial satellite offices shall be deemed filed before the proper RTWPB.

In the case of NBEs, applications shall be filed not later than sixty (60) days from the date of registration.

Section 3. DOCUMENTS REQUIRED

The following supporting documents shall be submitted together with the application letter:

For all Categories of Exemption

Proof of notice of filing of the application to the President of the union/contracting party if one is organized in the establishment, or if there is no union, a copy of a circular giving general notice of the filing of the application to all workers in the establishment. 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.

Further, applicants are required to execute an affidavit under oath, as to the nature of its business, list of employees with corresponding wage rates and an undertaking that it has complied with the previous wage order.

A. For Distressed Establishments

1. For corporations, cooperatives including multi-purpose cooperatives, single proprietorships, partnerships, non-stock and non-profit organizations:

a. Audited Financial Statements (together with the Auditor's opinion and the note thereto) for the last two (2) full accounting periods preceding the effectivity of the Order filed with and stamped "received" by the BIR, SEC, CDA or appropriate government agency.

b. Audited interim quarterly financial statement (together with the Auditor's opinion and the notes thereto) for the period immediately preceding, if any, the effectivity of the Order.

Submission of audited interim financial statements shall be in accordance with the following schedule:

**Effectivity Date of Interim Statements Required
The Wage Order**

First Quarter of the Year No interim statements required: only the audited statement for the last two (2) full accounting periods.

Second Quarter of the Year

Month 1	None,	same as first quarter
Month 2	None,	same as first quarter
Month 3		First quarter audited statement

Third quarter of the Year

Month 1		First quarter audited statement
Month 2		First quarter audited statement
Month 3		1st & 2nd quarters audited statements

Fourth quarter of the Year

Month 1		Second quarter audited statement
Month 2		Second quarter audited statement
Month 3		1st, 2nd, 3rd quarter audited statements

2. For Banks and Quasi-Banks

A. Certification from the Bangko Sentral ng Pilipinas that it is under receivership/liquidation.

B. For New Business Enterprises (NBEs)

1. Affidavit from employer regarding the following:

- a. Principal economic activity;
- b. Date of registration with appropriate government agency;
- c. Amount of total assets

2. Certificate of registration from the appropriate government agency

C. For Retail/Service Establishments Employing not more than ten (10) Workers

1. Affidavit from employer stating the following:

- a. It is a retail/service establishment;
- b. It is regularly employing not more than ten (10) workers for at least six months in any calendar year.

2. Business Permit for the current year from the appropriate government agency.

D. For Establishments Adversely Affected by Natural Calamities

1. Affidavit from the General Manager or Chief Executive Officer of the establishment regarding the following:
 - a. Date and type of calamity;
 - b. Amount of losses/damages suffered as a direct result of the calamity;
 - c. List of properties damaged/lost together with estimated valuation;
 - d. For properties that are not insured, a statement that the same are not covered by the insurance.
2. Copies of insurance policy contracts covering the properties damaged, if any;
3. Adjuster's report for insured properties;
4. Audited financial statements for the last full accounting period preceding the effectivity of the Order stamped "received" by the appropriate government agency.

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

Section 4. DURATION AND EXTENT OF EXEMPTION

A full exemption of one (1) year from the date of effectivity of the Order shall be granted to all categories of establishments that meet the applicable criteria for exemption under Section 3 of NWPC Guidelines No. 01 series of 1996.

However, a partial exemption of 50% with respect to the amount or period of exemption shall be granted only in the case of distressed establishments.

Section 5. EFFECT OF FILING OF APPLICATION FOR EXEMPTION

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

Section 6. DISTRESSED PRINCIPAL

Exemption granted to a distressed principal shall not extend to his 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 7. EFFECT OF DISAPPROVED APPLICATION FOR EXEMPTION

In the event that the application for exemption is not approved, covered workers shall be paid the mandated wage increase as provided for under the Order retroactive to the date of effectivity of the Order plus simple interest of one (1%) percent per month.

Section 8. 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 which the motion is based, copy furnished the other party and the Regional Office of the Department.

No second motion for reconsideration shall be entertained in any case. The decision of the Board shall be final and executory unless appealed to the Commission.

RULE IV SPECIAL PROVISIONS

Section 1. EFFECTS ON EXISTING WAGE STRUCTURE

a. Should any dispute arise as a result of wage distortion, the employer and the union shall negotiate to correct the distortion 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 arbitrators within ten (10) calendar days from the time such dispute was referred to voluntary arbitration.

b. In cases where there are no collective bargaining agreements or recognized labor unions, the employers and workers shall endeavor to correct the distortion. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board (NCMB) and if it remains unresolved within 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 on the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration.

c. The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of the increase prescribed under the Order and such issue shall not be ground for strike/lockout.

d. Suggested formula for correcting Distortion.

Previous min. wage rate x amount of minimum wage

Present salary Adjustment under WO RXIII-05 = Amount of adjustment due to Distortion

Section 2. COMPLAINTS FOR NON-COMPLIANCE

Complaints for non-compliance with the wage increase prescribed under the Order shall be filed with the Regional Office of the Department having jurisdiction over the workplace and shall be the subject of enforcement proceedings under Articles 128 and 129 of the Labor Code as amended.

Section 3. 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 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 shall 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 4. NON-DIMINUTION CLAUSE

Nothing in the Order and in this Rules shall be construed to reduce any existing wage rates, allowances and benefits of any form under existing laws, decrees, issuances, executive orders, and or any contract or agreement between the workers and employers.

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 proceedings before the Commission or Board.

Section 6. PENAL PROVISIONS

a. Pursuant to the provisions of Section 12 of RA 6727 as amended by RA 8188, any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay any of the prescribed increases 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 for under the Probation Law.

b. 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 7. 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 8. REPORTING REQUIREMENTS

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, 2005 and every year thereafter in accordance with the form prescribed by the Commission.

Section 9. SEPARABILITY CLAUSE

If any provisions 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.

Section 10. EFFECT ON OTHER ISSUANCES

The provision 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 11. EFFECTIVITY

This Rules shall take effect on July 23, 2004.

APPROVED.

Butuan City, Philippines, July 22, 2004.

(Sgd) **ANSELMO L. SANG TIAN**
Member, Employers' Representative

(Sgd) **SIMPLICIO E. QUINDICA**
Member, Labor Representative

(Sgd) **CARMENCITA S. COCHINGCO**
Vice-Chairman, NEDA

(Sgd) **BRIELGO O. PAGARAN**
Vice-Chairman, DTI

(Sgd) **PONCIANO M. LIGUTOM**
Chairman, DOLE

Approved this __31st__ day of August 2004, subject to the notations on page 13 hereof.

(Sgd.) **PATRICIA A. STO. TOMAS**
Secretary

NOTATIONS TO THE RULES IMPLEMENTING WAGE ORDER NO. RXIII-05

1. On the Definition of Terms (Section 2, Rule 1)

- d) The words "Region XIII" should be deleted.
- g) The word "provinces" should start with a capital letter.
- h) The definition of this term should be revised to read as follows:

"CERTIFICATE OF AUTHORITY is the Certificate issued by the city or municipal treasurer to registered BMBEs pursuant to RA 9178"

2. On Coverage (Section 1, Rule II)

a. Letters "a, b & c" should be consolidated to read as follows:

"The minimum wage rates prescribed under the Order shall apply to the minimum wage earners in the private sector regardless of their position, designation or status and irrespective of the method by which their wages are paid except household or domestic helpers, persons employed in the personal service of another including family drivers, and workers in the registered Barangay Micro Business Enterprises with Certificates of Authority in accordance with R.A. 9178"

b. Letter "d" should be deleted as this is already covered by Section 1, Rule IV hereof

c. Letters "e and f" should have separate provisions.

3. On Basis of Paying Minimum Wage (Section 4, Rule II)

The word "statutory" should be deleted.

4. On Exemptible Categories

The second paragraph on this provision should be deleted.

On the third and last paragraph of this provision regarding multi-purpose cooperative, the phrase "provided it qualifies as retail/service establishment" should be placed after the word "less".

5. On filing on Application for Exemption (Section 2, 2nd and 3rd paragraphs, Rule III)

The second and third paragraphs in this provision should be deleted for the reason that under NWPC Guidelines No. 1, series of 1996, the following applications are not allowed:

- a. Applications filed through fax, text or internet even justification is submitted;
- b. Applications for exemption or extension filed before the DOLE Regional or Provincial satellite offices. However, this may be allowed after the rules shall have been amended by the commission.

(Sgd) **PATRICIA A. STO. TOMAS**
Secretary