

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-08

**PROVIDING FOR ADDITIONAL COST OF LIVING ALLOWANCE
IN CARAGA REGION**

WHEREAS, under R.A. No. 6727, the Regional Tripartite Wages and Productivity Board-Caraga Region (RTWPB-Caraga), is mandated to periodically review and assess the prevailing wage rates, and to conduct continuing studies in the determination of the minimum wage rates applicable in the region, provinces or industries;

WHEREAS, after a thorough evaluation of the socio-economic factors in the region in accordance with the provisions set forth under NWPC Guidelines No. 01, Series of 2007, the Board has resolved to review motu proprio Wage Order No. RXIII-07;

WHEREAS, the Board, after giving due notice to all concerned sectors, conducted public consultations in San Francisco, Agusan del Sur, Tandag City, Surigao del Sur, Surigao City, Surigao del Norte, and Butuan City on September 18, 2007, September 19, 2007, September 25, 2007, and September 27, 2007 respectively, to determine the propriety of issuing a new wage order;

WHEREAS, the Board felt the need to restore the purchasing power of wages of the workers by providing them with immediate relief to enable them to cope with the rising cost of living without impairing the viability of businesses and industry;

WHEREAS, consistent with the government's policy of achieving higher level of productivity to preserve and generate jobs and to augment the income of workers, there is a need to build the capacity of business enterprises to be competitive through productivity improvement and gain sharing programs;

NOW THEREFORE, by virtue of the power and authority vested under Republic Act 6727, as amended, otherwise known as the Wage Rationalization Act, the Regional Tripartite Wages and Productivity Board-Caraga Region hereby issues Wage Order No. RXIII-08.

Section 1. COST OF LIVING ALLOWANCE

The COST OF LIVING ALLOWANCE provided for under Wage Order No. RXIII-07 shall be increased to the amount of EIGHTEEN (Php18.00) PESOS.

Section 2. 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	Total DMWR*
AGRICULTURE			
Plantation	P 192.00	P 18.00	P 210.00
Non-Plantation	172.00	18.00	190.00
NON-AGRICULTURE	202.00	18.00	220.00
RETAIL AND SERVICE			
Employing 10 or less	172.00	18.00	190.00
Employing more than 10 workers	202.00	18.00	220.00

*Total Daily Minimum Wage Rate

Section 3. COVERAGE

The wage increase 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, persons employed in the personal service of another, including family drivers and workers in registered Barangay Micro Business Enterprises (BMBE) with Certificates of Authority in accordance with RA 9178.

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 PRIVATE EDUCATIONAL INSTITUTIONS

In the case of private educational institutions, the share of covered workers and employees in the increase in tuition fees for SY 2007-2008 shall be considered compliance with the increase set forth herein; provided that if such increase is less than the prescribed adjustment, the employer shall pay the difference in the School Year 2008-2009.

Private educational institutions, which have not increased their tuition fees for the School Year 2007-2008 may defer compliance with the provisions of this Order until the beginning of School Year 2008-2009.

In any case, all private educational institutions shall implement the wage rates prescribed herein starting School Year 2008-2009.

Section 6. APPLICATION TO CONTRACTORS

In the case of contracts for construction projects and for security, janitorial and similar services, the prescribed increases 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 7. 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 not less than the prescribed daily minimum wage for eight (8) hours work day, or a proportion thereof for working less than eight (8) hours.

Section 8. 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 9. PRODUCTIVITY-BASED WAGES

To attain higher levels of productivity for competitiveness, to preserve and generate gainful employment and to augment the wages of workers, business enterprises are encouraged to adopt productivity improvement and gainsharing programs.

Section 10. EXEMPTIONS

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. 02, Series of 2007 (The Rules on Exemption).

1. Distressed Establishments
2. Retail/Service establishments regularly employing
Not more than 10
3. New Business enterprises (NBEs)
4. Establishments adversely affected by natural calamities

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 does not operate to stay the Order unless the party appealing such Order shall file with the Commission an undertaking with a surety or sureties satisfactory to the commission for payment of the corresponding increase to employees affected by the Order in the event such Order is affirmed.

Section 13. EFFECTS ON EXISTING WAGE STRUCTURE

Where the application of the increases in the wage rates under Section 2 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 and 129 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, 2008 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 any 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 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 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, September 27, 2007.

(Sgd.) Mr. JOSELITO V. SORIANO
Labor Sector Representative

(Sgd.) Mr. JORGE G. UY
Management Sector Representative

(Sgd.) Mr. ROLANDO C. DAHANG
Labor Sector Representative

Vacant
Management Sector Representative

(Sgd.) Dir. CARMENCITA S. COCHINGCO
Vice Chairperson – NEDA

(sgd.) Dir. BRIELGO O. PAGARAN
Vice Chairperson – DTI

(Sgd.) Dir. CHONA M. MANTILLA
Chairperson - DOLE

Date of Publication: October 23, 2007
The Mindanao Gold Star Daily

Date of Effectivity: November 7, 2007

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-08**

Pursuant to Section 6, Rule IV of the Amended Rules of Procedure On Minimum Wage Fixing, and Section 20 of Wage Order No. RXIII-08, the following Rules are hereby issued for the guidance and compliance by all concerned in the Caraga Region.

**RULE 1
GENERAL PROVISIONS**

Section 1. TITLE. This Rule shall be known as “The Rules and Regulations Implementing Wage Order No. RXIII-08.

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

- a. 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.
- e. COMMISSION – means the National Wages and Productivity Commission.
- f. BOARD – means the Regional Tripartite Wages and Productivity Board No. XIII.
- g. CARAGA REGION – covers the Provinces of Agusan del Norte, Agusan del Sur, Surigao del Norte, Surigao del Sur, Dinagat Island, and the Cities of Butuan, Surigao, Bislig, Cabadbaran, Bayugan, and Tandag.
- h. CERTIFICATE OF AUTHORITY - is the Certificate issued by the city or municipal treasurer to registered BMBEs pursuant to RA 9178.
- i. AGRICULTURE – refers to farming in all its branches, including cultivation and tillage of soil, production, 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 or on 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. 02, series of 2007.
- o. RETAIL ESTABLISHMENT – refers to an entity principally engaged in the sale of goods to end user for personal or household use. A retail establishment that regularly engages in wholesale activities loses its retail character. For purposes of these Guidelines, retail establishment must be regularly employing not more than 10 workers.
- p. SERVICE ESTABLISHMENT – refers to an entity principally engaged in the sale of services to individuals for their own or household use and is generally recognized as such. For purposes of these Guidelines, service establishment must be regularly employing not more than 10 workers.
- q. 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 basic salary of the workers on the date the Wage increase became effective.
- r. MINIMUM WAGE RATE – is the lowest wage rate that an employer can pay his worker as fixed by the Board.
- s. 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.
- t. ORDER – means Wage Order No. RXIII-08.
- u. CAPITAL IMPAIRMENT- refers to the diminution of capital due to accumulated losses.
- v. STOCKHOLDER'S EQUITY – refers to the residual interest in the assets of an entity that remains after deducting its liabilities. It is total assets minus total liabilities. It is the same as equity and net worth.

- w. FULL ACCOUNTING PERIOD - refers to a period of twelve (12) months or one year of business operations.
 - x. INTERIM PERIOD - refers to a financial reporting shorter than a full financial year (most typically a quarter or half-year).
 - y. DEFICIT- refers to the negative balance of the retained earnings account of a corporation. Retained earnings represent the accumulative balance of periodic earnings, dividend distributions, prior period adjustments and other capital adjustments.
 - z. TOTAL ASSETS - refer to things of value owned by the business such as cash, machines, building and land which can be measured or expressed in money terms.
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- aa. NET LOSS – refers to actual loss suffered by a company after deducting expenditures including overhead and interest charges from revenues.
 - bb. FINANCIAL STATEMENT – refers to a written report which quantitatively describes the financial health of the company. This includes the following: balance sheet, income statement, statement of changes in equity, cash flow statement and notes to financial statement.
 - cc. STOCK CORPORATION – refers to one organized for profit and issues shares of stock to its members.
 - dd. NON-STOCK NON-PROFIT CORPORATION – 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.
 - ee. 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.
 - ff. SINGLE PROPRIETORSHIP – refers to a business unit owned and controlled by only one person.
 - gg. COOPERATIVE – refers to a duly registered association pursuant to R.A. 6938 (Cooperative Code of the Philippines) and other laws.
 - hh. NEW BUSINESS ENTERPRISES – refer to establishments, including non-profit institutions, established with two (2) years from effectivity of the Wage Order based on the latest registration with the appropriate government agency such as SEC, DTI, CDA and Mayor’s Office.
 - ii. QUASI-BANKS – refer to institutions such as investment houses and financing companies performing quasi-banking functions as defined by the Bangko Sentral ng Pilipinas.
 - jj. CONSERVATORSHIP – refers to a remedy resorted to by the monetary board in case a Bank or quasi-bank is in state of continuing inability or unwillingness to maintain condition of liquidity deemed adequate to protect the interests of the depositors and creditors. A conservator is appointed to manage the establishment in order to restore its viability.
 - kk. RECEIVERSHIP/LIQUIDATION – refers to a remedy resorted by the Monetary Board in case a bank or quasi-bank is (a) unable to pay its liabilities as they become due in the ordinary course of business; (b) has insufficient realizable assets as determined by the Bangko Sentral ng Pilipinas to meet its liabilities; (c) cannot continue in business without involving probable losses to its depositors or creditors; (d) has willfully violated a cease and desist order under Sec. 37 that has become final involving acts or transactions which amount to fraud or dissipation of the assets of the institution.

II. UNDER CORPORATE REHABILITATION – refers to establishment that is placed under a rehabilitation receiver by a court of competent jurisdiction.

RULE II
NEW MINIMUM WAGE RATES

Section 1. COST OF LIVING ALLOWANCE (COLA)

Effective November 07, 2007, the TWELVE PESOS (Php12.00) daily Cost of Living Allowance granted under Wage Order No. RXIII-07, shall be increased by SIX PESOS (Php 6.00) per day.

Section 2. MINIMUM WAGE RATES

Effective November 07, 2007, the daily minimum wage rates applicable to covered workers and employees in the private sector in Caraga Region shall be as follows:

DAILY MINIMUM WAGE RATES (DMWR) under WAGE ORDER NO. RXIII-08

INDUSTRY/SECTOR	BASIC WAGE	COLA	Total DMWR*
AGRICULTURE			
Plantation	P 192.00	P 18.00	P 210.00
Non-Plantation	172.00	18.00	190.00
NON-AGRICULTURE	202.00	18.00	220.00
RETAIL AND SERVICE			
Employing 10 or less	172.00	18.00	190.00
Employing more than 10 workers	202.00	18.00	220.00

Section 3. COVERAGE

The wage increase prescribed under the Order shall apply to the minimum wage earners in the private sector in the region 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 RA 9178.

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 PRIVATE EDUCATIONAL INSTITUTIONS

In the case of private educational institutions, the share of covered workers in the increase in tuition fees for School Year 2007-2008 shall be considered as compliance with the increase prescribed herein. However, payment of any shortfall shall be covered starting School Year 2008-2009.

Those which have not increased their tuition fees for the School Year 2007-2008 may defer compliance with the provisions of this Wage Order until the beginning of School Year 2008-2009.

In any event, all private educational institutions shall implement the minimum wage rate prescribed herein starting School Year 2008-2009.

Section 6. 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 7. 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 8. 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 9. PRODUCTIVITY-BASED WAGES

In order to sustain rising levels of wages and enhance competitiveness, businesses are encouraged to adopt productivity improvement schemes such as time and motion studies, good housekeeping, quality circles, labor management cooperation, as well as implement productivity gain-sharing programs. Accordingly, the Board shall provide the necessary studies and technical assistance pursuant to Republic Act No. 6971 or the Productivity Incentives Act of 1990.

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

Without prejudice to existing company practices, agreements or policies, the following formulae 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:

$$\begin{aligned} &\text{Estimated Equivalent} \\ &\text{Monthly} \\ &\text{Rate (EEMR)} \end{aligned} = \text{Applicable Daily Wage Rate (ADR)} \times 392.5 \text{ days}/12$$

Where 392.5 days are:

299.0	days - ordinary working days
22.0	days - regular holidays
67.6	days - 52 rest days x 130%
3.9	days - 3 special days x 130%
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392.5	days - Total no. of days / year

b. For those who do not work and are not considered paid on Sundays or rest days, the factor is 313 days.

EEMR = ADR x 313 days / 12 months

$$\begin{aligned} &\text{Estimated Equivalent} \\ &\text{Monthly} \\ &\text{Rate (EEMR)} \end{aligned} = \text{Applicable Daily Wage Rate (ADR)} \times 313 \text{ days}/12$$

Where 313 days/year

299	days - ordinary working days
1	days - regular holidays
3	days - special days
<hr style="width: 10%; margin: 0 auto;"/>	

313 days - Total no. of days / year

c. For those who do not work and are not considered paid on Saturdays and Sundays or rest days, the factor is 261 days.

$EEMR = ADR \times 261 \text{ days} / 12 \text{ months}$

Where 261 days/year	247 days - ordinary working days
	11 days - regular holidays
	3 days - special days
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	261 days - Total no. of days / year

d. The breakdown of factor 365 days / year is as follows:

$EEMR = ADR \times 365 \text{ days} / 12 \text{ months}$

Where 392.5 days are:	299 days - ordinary working days
	52 Sundays / rest days
	11 regular holidays
	3.9 special days
	<hr/>
	365 days - Total no. of days / year

Note:The above-suggested formulae is by reason of the passage of R.A. 9492 (An Act Rationalizing the Celebration of National Holidays Amending for the Purpose Section 26, Chapter 7, Book I of Executive Order No. 292, as amended, otherwise known as the Administrative Code of 1987).

Section 11. APPEAL TO THE COMMISSION

Any party aggrieved by the Order issued by the Board may file an appeal with the Commission through the Board 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 does not operate to stay the Order unless the party appealing such Order shall file with the Commission an undertaking with a surety or sureties satisfactory to the Commission for payment of the corresponding increase to employees affected by the Order in the event such Order is affirmed.

RULE III EXEMPTIONS

Section 1. EXEMPTIBLE CATEGORIES

Upon application with and as determined by the Board and in accordance with the NWPC Guidelines No. 02, series of 2007 (Amended Rules on Exemption), 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; and
- d. Establishments adversely affected by natural calamities

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.

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

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

Section 3. CRITERIA FOR EXEMPTION

The following criteria shall be used to determine whether the applicant-establishment is qualified for exemption:

A. Distressed Establishment

1. For Corporation/ Cooperatives

a. Full Exemption:

- a.1 When the deficit, as defined in Section 2 (Z), Rule I as of the last full accounting period preceding the effectivity of the Order amounts to 20% or more of the paid-up capital for the same period; or
- a.2 When an establishment registers capital deficiency i.e., negative stockholder's equity, as of the last full accounting period immediately preceding the effectivity of the Order.

b. Partial Exemption

b.1 When the deficit, as defined in Section 2 (Z), Rule I, as of the last full accounting period immediately preceding the effectivity of the Order amounts to at least 10% but less than 20% of the paid-up capital for the same period.

c. Conditional Exemption

c.1 When the actual net loss as of the interim period immediately preceding the effectivity of the Order amounts to at least 25% of total assets.

2. For Single Proprietorships/ Partnerships

a. Full Exemption:

a.1 When the accumulated net losses for the last two (2) full accounting periods 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; or

a.2 When an establishment registers capital deficiency i.e. negative net worth as of the last full accounting period immediately preceding the effectivity of the Order.

b. Partial Exemption:

b.1 When the accumulated net losses for the last two (2) full accounting periods immediately preceding the effectivity of the Order amounts to at least 10% but less than 20% of the total invested capital at the beginning of the period under review.

c. Conditional Exemption:

c.1 When the actual net loss of the interim period immediately preceding the effectivity of the Order amounts to at least 25% of the total assets.

3. For Non-stock, Non-profit Organizations

a. Full Exemptions:

a.1 When the accumulated net losses for the last two (2) full accounting periods immediately preceding the effectivity of the Order amounts to 20% or more of the fund balance/member's contribution at the beginning of the period; or

a.2 When an establishment registers capital deficiency i.e. negative fund

balance/member's contribution as of the last full accounting period or interim period, immediately preceding the effectivity of the Order.

b. Partial Exemption:

b.1 When the accumulated net losses for the last two (2) full accounting periods immediately preceding the effectivity of the Order amounts to at least 10% but less than 20% of the fund Balance/member's contribution at the beginning of the period.

c. Conditional Exemption:

c.1 When the actual net loss of the interim period immediately preceding the effectivity of the Order amounts to at least 25% of the total assets.

4. For Banks and Quasi-banks

a. Under receivership/liquidation

Exemption may be granted to a bank or quasi-bank under receivership or liquidation when there is a certification from the Bangko Sentral ng Pilipinas that it is under receivership or liquidation as provided in Section 30 of RA 7653, otherwise known as the New Central Bank Act.

b. Under controllership/conservatorship

A bank or quasi-bank under controllership/ conservatorship may apply for exemption as a distressed establishment under Section 3 A of this Rules.

5. Establishment Under Corporate Rehabilitation

Exemption may be granted to corporations, partnership and associations under corporate rehabilitation when there is an order from the court of competent jurisdiction that it is under rehabilitation as provided in Section 6 Rule IV of the Interim Rules of Procedure on Corporate Rehabilitation (2000).

B. New Business Enterprises

Exemption may be granted to New Business Enterprises located outside the Export Processing Zones and established within two (2) years from the effectivity of the Order, classified under any of the following:

1. Agricultural establishment whether plantation or non-plantation;
2. Establishment with total assets after financing of five million pesos (P5,000,000.00) and below.

C. Retail/Service Establishment Regularly Employing Not More than Ten (10) Workers

Exemption may be granted to a retail/service establishment when:

1. It is engaged in the retail sale of goods and/or services to end users for personal or household use.
2. It is regularly employing not more than ten (10) workers regardless of status, except the owner's, for at least six (6) months in any calendar year.

D. Establishments Adversely Affected by Natural Calamities

1. The establishment must be located in an area declared by a competent authority under a state of calamity.
2. The natural calamities, such as earthquakes lahar flow, typhoons, volcanic eruptions, fire, floods and similar occurrences, must have occurred within 6 months prior to the effectivity of the Order.
3. Losses suffered by the establishment as a result of the calamity that exceed the insurance coverage should amount to 20% of the stockholder's equity as of the last full accounting period in the case of corporations and cooperatives, total invested capital in the case of partnerships and single proprietorships and fund balance/member's contribution in the case of non-stock non-profit organizations.

Only losses or damage to properties directly resulting from the calamity and not incurred as a result of normal business operations shall be considered.

4. Where necessary, the Board or its duly authorized representative shall conduct an ocular inspection of the establishment or engage the services of experts to validate the extent of damages suffered.

Section 4. 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, single proprietorships, partnerships, non-stock and non-profit organizations:

a. Full or Partial Exemption

a.1 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 appropriate government agency.

b. Conditional Exemption

b.1 Audited Financial Statements (together with the Auditor's opinion and the note thereto) for the last full accounting period and interim quarterly financial statement's for the period immediately preceding the effectivity of the Order.

b.2 To confirm the grant of conditional exemption, audited financial statements for the last full accounting period, stamped received by the appropriate government agency, to be submitted within 30 days from the lapse of the one-year period.

2. For Banks and Quasi-Banks

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

3. For Establishments under Corporate Rehabilitation

Order from the court of competent jurisdiction that the establishment is under rehabilitation.

B. For New Business Enterprises (NBEs)

i. Affidavit from employer regarding the following:

a. Principal economic activity;

b. Date of registration with appropriate government agency;

c. Amount of total assets.

- ii. Certificate of registration from the appropriate government agency.

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

- i. 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.
- ii. Business Permit for the current year from the appropriate government agency.

D. For Establishments Adversely Affected by Natural Calamities

- i. 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.
- ii. Copies of insurance policy contracts covering the properties damaged, if any;
- iii. Adjuster's report for insured properties;
- iv. 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 5. 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 NWPC Guidelines No. 02, series of 2007.

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.

A conditional exemption of one (1) year from the effectivity of the Order shall be granted only in the case of distressed establishment under the abovementioned Guidelines. The conditional exemption shall be confirmed, as follows:

1. For Corporations

When deficit as defined in Section 2 Z , as of the last full accounting period amounts to 20% or more of the paid-up capital for the same period;

2. For Single Proprietorships and partnerships

When net loss for the last two (2) full accounting periods 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.

3. For Non-stock Non-Profit Organization

When net loss for the last for the last two (2) full accounting periods immediately preceding the effectivity of the Order amounts to 20% or more of the fund balance/member's contribution at the beginning of the period.

In the absence of such actual losses, the company shall pay its workers the wage increase due them under the Order, retroactive to the effectivity of the Order.

Section 6. ADOPTION OF PRODUCTIVITY IMPROVEMENT PROGRAMS

Establishments granted exemption are required to adopt productivity improvement initiatives or schemes to improve business viability. The Commission and the Boards shall provide technical assistance in the development of a productivity improvement program in the establishment .

Section 7. 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 8. 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 9. 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 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.

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.

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 these 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 31 January 2008 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. REPEALING CLAUSE

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

Section 11. EFFECTIVITY

This Rule shall take effect on November 7, 2007.

APPROVED. Butuan City, Philippines, this 25th day of October, 2007.

(Sgd.) JOSELITO V. SORIANO
Member, Labor Representative

(Sgd.) ROLANDO C. DAHANG
Member, Labor Representative

(Sgd.) JORGE G. UY
Member, Employers' Representative

Vacant
Member, Employers' Representative

(Sgd.) Dir. CARMENCITA S. COCHINGCO
Vice Chairperson – NEDA

(sgd.) Dir. BRIELGO O. PAGARAN
Vice Chairperson – DTI

(Sgd.) Dir. CHONA M. MANTILLA
Chairperson - DOLE

Approved this _____ day of _____ 2007, Manila, Philippines.

ARTURO D. BRION
Secretary
Department of Labor and Employment