

Republic of the Philippines
 Department of Labor and Employment
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD
Region 2
 Tuguegarao City
WAGE ORDER NO. RTWPB-II-10
GRANTING AN ADDITIONAL COST OF LIVING ALLOWANCE

WHEREAS, under R.A. 6727 (The Wage Rationalization Act), the Regional Tripartite Wages and Productivity Boards (RTWPBs) are mandated to determine and fix minimum wage rates in their respective regions;

WHEREAS, RTWPB-II issued Wage Order No. RTWPB-II-9 granting an emergency cost of living allowance (ECOLA) to all covered workers in the private sector in the region effective 8 August 2004;

Section 3, Rule IV of NWPC Revised Rules of Procedures on Minimum Wage Fixing provides that any Wage Order issued by the Board may not be disturbed within 12 months from effectivity and no petition for wage increase shall be entertained within the said period, except when there is a supervening condition such as extraordinary increase in prices of petroleum products and basic goods/services which demands a review of minimum wage rates as determined by the Board and confirmed by the Commission;

WHEREAS, The Board has determined, as confirmed by the National Wages and Productivity Commission, that a supervening condition exists in the region due to erosion of the purchasing power of the peso resulting from the increase in prices of petroleum products, basic goods, transport and power costs;

WHEREAS, considering the changes in the socio economic indicators, two (2) Labor Unions filed petitions for a P101.00 per day across-the board wage increase for workers in the Region, while the management sector proposed an P8.00 daily wage adjustment only for those receiving not more than the minimum wage;

WHEREAS, the Board, after due notice to all concerned sectors, conducted consultations with the employers sector on 17 and 26 May 2005, in the Cities of Tuguegarao, Cagayan Province and Santiago, Isabela Province, respectively, and with the workers sectors on 20 and 21 May 2005 in Alicia, Isabela and the public hearing on 30 May 2005 in Santiago City to determine the propriety of issuing a new wage order

WHEREAS, there is a need to grant relief to the workers in the private sector in Region II to help them cope with the rising cost of living without impairing the productivity and viability of business and industry therein;

WHEREAS, consistent with the governments policy of achieving higher levels of productivity to promote economic growth and generate employment, 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, the **REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD-Region II**, by virtue of the power granted to it under Republic Act No. 6727, otherwise known as the Wage Rationalization Act, hereby issues this Wage Order.

SECTION 1. AMOUNT OF ADDITIONAL COST OF LIVING ALLOWANCE. Upon the effectivity of this Wage Order, all workers in the private sector in Region II receiving a daily basic wage rate of TWO HUNDRED THIRTY ONE (P231.00) PESOS and below shall be granted an additional cost of living allowance (COLA) in the amount of FIFTEEN PESOS (P15.00) per day.

The minimum wage rates in the region shall therefore be as follows:

Industry/Sector/Province	Basic Wage	P8.00 ECOLA (WO RTWPB-09)	Additional P15 COLA (WO RTWPB- 10)	TOTAL
Isabela				
1. Non-Agriculture	185.00	8.00	15.00	208.00

2. Agriculture	173.00	8.00	15.00	196.00
3. Retail /Service				
Employing more than 10	177.00	8.00	15.00	200.00
Employing not more than 10	150.00	8.00	15.00	173.00
Cagayan				
1. Non-Agriculture	182.00	8.00	15.00	205.00
2. Agriculture	170.00	8.00	15.00	193.00
3. Retail /Service				
Employing more than 10	174.00	8.00	15.00	197.00
Employing not more than 10	147.00	8.00	15.00	170.00
Nueva Vizcaya				
1. Non-Agriculture	178.00	8.00	15.00	201.00
2. Agriculture	166.00	8.00	15.00	189.00
3. Retail /Service				
Employing more than 10	170.00	8.00	15.00	193.00
Employing not more than 10	143.00	8.00	15.00	166.00
Quirino/Batanes				
1. Non-Agriculture	177.00	8.00	15.00	200.00
2. Agriculture	165.00	8.00	15.00	188.00
3. Retail /Service				
Employing more than 10	169.00	8.00	15.00	192.00
Employing not more than 10	142.00	8.00	15.00	165.00

SECTION 2. COVERAGE. The additional COLA prescribed under this Order shall apply to all covered workers in the private sector in the region, regardless of their position, designation or status of employment and irrespective of the method by which their wages are paid.

Excluded from the coverage of this Order are household or domestic helpers, persons in the personal service of another, including family drivers, and workers of registered Barangay Micro-Business Enterprises (BMBEs) with Certificates of Authority.

SECTION 3. BASIS OF ADDITIONAL COLA. The additional COLA prescribed under this Order shall be for the normal working hours which shall not exceed eight (8) hours of work a day.

SECTION 4. 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 2005-2006 shall be considered as compliance with the additional COLA prescribed herein. However, payment of any shortfall in the COLA set forth herein shall be covered starting School Year 2006-2007.

Private educational institutions which have not increased their tuition fees for the School Year 2005-2006 may defer compliance with the provisions of this Wage Order until the beginning of School Year 2006-2007.

In any event, all private educational institutions shall implement the additional COLA prescribed herein starting School Year 2006-2007.

SECTION 5. APPLICATION TO CONTRACTORS. In the case of contracts for construction projects and for security, janitorial and similar services, the prescribed additional COLA for covered workers shall be borne by the principal or clients of the construction/service contractors and the contract shall be deemed amended accordingly. If the principal or client fails to pay the prescribed wage rates, the construction/service contractor shall be jointly and severally liable with the principal or client.

SECTION 6. WORKERS PAID BY RESULTS. All workers paid by results, including those who are paid on piecework, takay, pakyaw or task basis shall be entitled to receive not less than the prescribed minimum wage rate for eight (8) normal working hours a day, or a portion thereof for working less than eight (8) hours.

SECTION 7. ADDITIONAL COLA OF SPECIAL GROUPS OF WORKERS. Apprentices and learners shall receive not less than seventy five (75%) of the additional COLA prescribed in this Order. All qualified handicapped workers shall receive the full amount of additional COLA prescribed herein pursuant to R.A. 7277.

All recognized learnership and apprenticeship agreements entered into before the effectivity of this Order shall be considered automatically modified in accordance with this Order.

SECTION 8. MOBILE WORKERS. The COLA of workers, who by nature of their work have to travel, shall be those applicable in the domicile or head office of the employer.

SECTION 9. BRANCH WORKERS. The COLA of workers working in branches or agencies of establishments within the region shall be those applicable in the place where they are stationed.

SECTION 10. TRANSFER OF PERSONNEL. The transfer of personnel to areas with lower COLA, if any, shall in no case be a valid ground for the reduction of the higher COLA being enjoyed by the worker prior to such transfer. However, where the worker is transferred to an area with higher COLA, he shall be entitled to the higher COLA.

SECTION 11. EXEMPTIONS. The following categories of establishments may be exempted from compliance with this Order, upon application with and as determined by the Board in accordance with the NWPC Guidelines No. 01, Series of 1996 (NWPC Revised Guidelines on Exemption):

1. Retail/Service establishments employing not more than ten (10) workers;
2. Distressed establishments;
3. Establishments which have been adversely affected by natural calamities and
4. New Business Establishments (NBEs)

SECTION 12. EFFECT OF APPLICATION FOR EXEMPTION. Whenever an application for exemption is filed with the Board, action on any complaint for non-compliance with this Order shall be deferred pending resolution of the said application.

If an application for exemption is not granted, the employees of the applicant firm shall receive the mandated COLA under this Order plus one percent (1%) interest per month retroactive to the effectivity of this Order.

SECTION 13. CREDITING. If expressly provided for and agreed upon in the collective bargaining agreements (CBAs), wage increases/allowances/any monetary benefits granted three (3) months prior to the effectivity of this Wage Order shall be credited as compliance with the Wage Order. Where the increase/allowance/any monetary benefits is less than that prescribed under this Order, the employer shall pay the difference.

In unorganized establishments, wage increases/allowances/any monetary benefits granted by the employer within three (3) months prior to the effectivity of this Order shall be considered as full or partial compliance, as the case may be.

SECTION 14. EFFECTS ON EXISTING WAGE STRUCTURE. Where the application of the additional COLA prescribed in this Order results in distortion in the wage structure within the establishment, it shall be corrected in accordance with the procedure under Article 124 of the Labor Code, as amended.

SECTION 15. COMPLAINTS FOR NON-COMPLIANCE. Complaints for non-compliance with this Order shall be filed with the Regional Office of the Department of Labor and Employment (DOLE) and shall be the subject of enforcement proceedings under Article 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 OF BENEFITS. Nothing in this Order shall be construed to reduce any existing wage rate, allowance or other benefits of any form under existing laws, decrees, issuances and executive orders/or under any contract or agreement between workers and employers.

SECTION 17. PRODUCTIVITY-BASED WAGES. In order to sustain rising levels of wages and enhance competitiveness, businesses are strongly encouraged to adopt productivity improvement schemes, such as time and motion studies, good housekeeping, quality circles, labor-management cooperation, as well as implement gain sharing programs. Accordingly, the Regional Board shall provide the necessary studies and technical assistance pursuant to RA 6971, the Productivity Incentives Act of 1990.

SECTION 18. PENAL PROVISION. Any person, corporation, trust or firm, partnership, association or entity which refuses or fails to pay the prescribed wage increase/allowance/rates in accordance with this Order shall be subject to the penal provisions under R.A. 6727, as amended by R.A. 8188.

SECTION 19. 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 Board.

SECTION 20. FREEDOM TO BARGAIN. This Order shall not be construed to prevent workers in particular firms or enterprises or industries from bargaining for higher wages with their respective employers.

SECTION 21. APPEAL TO THE COMMISSION. Any party aggrieved by this Wage Order may file a verified appeal with the Commission through the Board within ten (10) calendar days from the publication of this Order.

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 22. 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, 2006 and every year thereafter in accordance with the form prescribed by the Commission.

SECTION 23. SEPARABILITY CLAUSE. If, for any reason, any section or provision of this Order is declared unconstitutional or illegal, the other provisions or parts shall remain valid.

SECTION 24. REPEALING CLAUSE. All orders, issuances, rules and regulations, or parts thereof inconsistent with the provision of this Wage Order are hereby repealed, amended or modified accordingly.

SECTION 25. IMPLEMENTING RULES. The Regional Board shall prepare the implementing rules of this Order subject to the approval of the Secretary of Labor and Employment.

SECTION 26. EFFECTIVITY. This Order takes effect fifteen (15) days after its publication in a newspaper of general circulation in the region.

APPROVED this 1st day of June, 2005, Tuguegarao City, Philippines.

(Sgd.) ALFREDO Y. MADRIAGA
Workers' Representative

(Sgd.) ERNESTO J. FUECONCILLO
Workers' Representative

(Sgd.) CECILIA LA MADRID-DY
Employers' Representative

(Sgd.) CONSTANCIO S. SILVA
Employers' Representative

(Sgd.) MILAGROS A. RIMANDO
Vice Chairman

(Sgd.) MA. ESPERANZA C. BANARES
Vice Chairman

(Sgd.) NATHANIEL V. LACAMBRA
Board Chairman

NOTE: This Wage Order was published on June 10, 2005 issue of the Manila Standard Today.

DISSENTING POSITION

The undersigned Workers Sector Representatives agree to the P15.00/day COLA but are

opposed to the P231.00 wage rate ceiling per day for those workers who are covered or entitled to the COLA. We are insisting that Section 1 of the proposed Wage Order No. RTWPB-II-10 (Re: P231.00/day and below wage rate ceiling) should be amended and be raised to a P300.00/day wage rate ceiling so that many workers in the region shall be benefited from this Order.

Tuguegarao City June 1, 2005

(Sgd.) ALFREDO Y. MADRIAGA
Workers' Representative

(Sgd.) ERNESTO J. FUECONCILLO
Workers' Representative

Republic of the Philippines
Department of Labor and Employment
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD
Region 2
Tuguegarao City

RULES IMPLEMENTING WAGE ORDER NO. RTWPB-II-10

Pursuant to Section 5, Rule IV of the NWPC Revised Rules of Procedure on Minimum Wage Fixing and Section 25 of Wage Order No. RTWPB-II-10, the following rules are hereby issued for the guidance and compliance by all concerned:

Rule I
DEFINITION OF TERMS

SECTION 1. DEFINITION OF TERMS. As used in this rules,

- a. "Wage Order" means Wage Order No. RTWPB-11-10 promulgated by this Regional Board pursuant to its wage fixing authority.
- b. "Commission" means the National Wages and Productivity Commission.
- c. "Regional Board" means the Regional Tripartite Wages and Productivity Board of Region II.
- d. "Region II" covers the Cities of Tuguegarao, Cauayan and Santiago and the Provinces of Cagayan, Isabela, Quirino, Nueva Vizcaya and Batanes.
- e. "Department" refers to the Department of Labor and Employment.
- f. "Minimum Wage Rates" refer to the lowest wage rate that an employer can pay his workers as fixed by the Regional Board.
- g. "COLA" means the additional Cost of Living Allowance prescribed under this Rule.
- h. "Basic Wage" means all the remuneration or earnings paid by an employer to a worker for service rendered on normal working days and hours exclusive of living allowance and profit sharing payments, premium payment, 13th month pay or other monetary benefits.
- i. "Barangay Micro Business Enterprises (BMBEs) are those registered with the local government units where they are located and issued with Certificates of Authority pursuant to R.A. 9178, otherwise known as the BMBE Law.
- j. "Agriculture" refers to farming in all its branches and, among others, includes the cultivation and 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 activities 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.
- k. "Retail Establishment" is one principally engaged in the sale of goods to end users for personal use or household use.
- l. "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.
- m. "Non-Agriculture Establishment" refers to establishments or industries other than agriculture and retail or service regardless of employment size.
- n. "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 bases of differentiation.
- o. "Mobile Workers" are those employees, who by nature of their work, have to travel or move from one place to another.
- p. "Branch Workers" are those employees working in branches or agencies of establishments.
- q. "Productivity" refers to the relation of output to input in physical and/or real monetary terms.

Rule II
THE ADDITIONAL COST OF LIVING ALLOWANCE (COLA)

Section 1. AMOUNT. Effective 25 June 2005, all workers in the private sector in Region II receiving a daily basic wage rate of TWO HUNDRED THIRTY ONE (P231.00) PESOS and below shall be granted an additional Cost of Living Allowance (COLA) in the amount of FIFTEEN (P15.00/day) PESOS per day.

The minimum wage rates including COLA in the region shall be as follows:

Industry/Sector/Province	Basic Wage	P8.00 ECOLA (WO RTWPB-09)	Additional P15 COLA (WO RTWPB- 10)	TOTAL
Isabela				
1. Non-Agriculture	185.00	8.00	15.00	208.00
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3. Retail /Service				
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Employing not more than 10	150.00	8.00	15.00	173.00
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Employing more than 10	174.00	8.00	15.00	197.00
Employing not more than 10	147.00	8.00	15.00	170.00
Nueva Vizcaya				
1. Non-Agriculture	178.00	8.00	15.00	201.00
2. Agriculture	166.00	8.00	15.00	189.00
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Employing not more than 10	143.00	8.00	15.00	166.00
Quirino/Batanes				
1. Non-Agriculture	177.00	8.00	15.00	200.00
2. Agriculture	165.00	8.00	15.00	188.00
3. Retail /Service				
Employing more than 10	169.00	8.00	15.00	192.00
Employing not more than 10	142.00	8.00	15.00	165.00

Section 2. COVERAGE. The additional COLA prescribed under this Wage Order shall apply to all covered workers in the private sector in the region, regardless of their position, designation or status of employment and irrespective of the method by which their wages are paid.

Excluded from the coverage of this Wage Order are household or domestic helpers, family drivers, persons employed in the personal service of another, including family drivers, and workers of registered Barangay Micro Business Enterprises (BMBEs) with Certificates of Authority.

Section 3. BASIS OF ADDITIONAL COLA. The additional COLA prescribed under this Wage Order shall be for the normal working hours which shall not exceed eight (8) hours work a day. For work less than the normal working hours, the following formula shall apply:

$$\text{Amt. of additional COLA} = \frac{\text{No. of hours worked}}{\text{Normal Working Hours}} \times \text{P15.00}$$

Section 4. 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 2005-2006 shall be considered as compliance with the additional COLA prescribed herein. However, payment of any shortfall in the COLA set forth herein shall be covered starting School Year 2006-2007.

Private educational institutions which have not increased their tuition fees for the School Year

2005-2006 may defer compliance with the provisions of this Wage Order until School Year 2006-2007.

In any event, all private educational institutions shall implement the additional COLA prescribed herein starting School Year 2006-2007.

Section 5. APPLICATION TO CONTRACTORS. In the case of contracts for construction projects and for security, janitorial and similar services, the prescribed additional COLA for covered workers shall be borne by the principal or clients of the construction/service contractors and the contract shall be deemed amended accordingly. In the principal or client fails to pay the prescribed wage rates, the construction/service contractor shall be jointly and severally liable with the principal or client.

Section 6. WORKERS PAID BY RESULTS. All workers paid by results, including those who are paid on piecework, "takay," "pakyaw" or task basis, shall be entitled to receive the prescribed additional COLA per eight (8) hours work a day, or a proportion thereof for working less than eight (8) hours.

Section 7. ADDITIONAL COLA OF SPECIAL GROUP OF WORKERS. Apprentices and learners shall receive not less than seventy-five (75%) of the additional COLA prescribed in this Wage Order. All qualified handicapped workers shall receive the full amount of additional COLA prescribed herein pursuant to R.A. 7277.

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

Section 8. MOBILE WORKERS. The additional COLA 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 9. BRANCH WORKERS. The additional COLA of workers working in branches or agencies of establishments within the region shall be those applicable in the place where they are stationed.

Section 10. TRANSFER OF PERSONNEL. The transfer of personnel to areas with lower a COLA, if any, shall in no case be a valid ground for the reduction of the higher COLA being enjoyed by the worker prior to such transfer. However, where the worker is transferred to an area with higher COLA, he shall be entitled to the higher COLA.

Section 11. APPEAL TO THE COMMISSION. Any party aggrieved by the Wage Order may file a verified appeal to the Commission through the Regional Board within ten (10) calendar days from the publication of the Wage Order. The appeal shall not be deemed perfected if it is filed with any office or entity other the Regional Board. The Commission shall decide the appeal within sixty (60) days from the date of filing.

The appeal, with proof of notice to concerned party, shall be accompanied with a memorandum of appeal which shall state the date appellant received the decision, the grounds relied upon and the arguments in support of the appeal. An appeal may be filed on the following grounds:

- a. Non-conformity with the prescribed guidelines and/or procedures;
- b. Prima facie evidence of grave abuse of discretion on the part of the Board; or
- c. Questions of law.

Section 12. EFFECT OF THE APPEAL. The filing of the appeal does not operate to stay the Wage Order unless the appellant shall file with the Commission an undertaking with a surety or sureties satisfactory to the Commission for payment of the corresponding additional COLA to employees affected by the Wage Order, in the event the Wage Order is affirmed.

Rule III **EXEMPTIONS**

Section 1. EXEMPTIONS. The following establishments may be exempted from complying with the Wage Order upon application with and as determined by the Regional Board in

accordance with NWPC Guidelines 01, series of 1996 on Rules of Exemption:

- a) Retail/Service establishments regularly employing not more than 10 workers;
- b) Distressed establishments;
- c) Establishments which have been adversely affected by natural calamities; and,
- d) New business enterprises (NBEs).

Section 2. PERIOD FOR FILING APPLICATION FOR EXEMPTION. All applications for exemption from compliance with this Wage Order shall be filed with the Regional Board within seventy five (75) days from the date of publication of the Rules Implementing the Wage Order. An application in three (3) typewritten copies may be filed by the owner/manager or duly authorized representative of an establishment in person or by registered mail. The date of mailing shall be deemed as the date of filing. The application shall be under oath and accompanied by complete supporting documents as specified in the Rules.

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

Failure to submit the required supporting documents within the prescribed period will be tantamount to dismissal of the application for exemption.

Section 3. EXTENT AND DURATION OF EXEMPTION. A full exemption of one (1) year 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 may be granted in the case of distressed establishments.

Section 4. CRITERIA FOR EXEMPTIONS. The following criteria shall be used to determine whether the applicant-establishment is qualified for exemption:

A. Retail/service establishments regularly employing not more than 10 workers/employees

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; and,
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.

B. Distressed Establishments

1. For Stock Corporation/Cooperatives

1.a. When deficit as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Wage Order amounts to 20% or more of the paid-up capital for the same period; or

1.b. When an establishment registers 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 Wage Order.

2. For Single Proprietorships/Partnerships

2.a. Single proprietorships/partnerships operating for at least two (2) years may be granted exemption:

2.a.1. The net accumulated losses for the last two (2) full accounting periods and interim period, if any, preceding the effectivity of the Wage Order amount to 20% or more of the total invested capital at the beginning of the period under review, or,

2.a.2. An establishment registers 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 Wage Order.

2.b. 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 Wage Order amount to 20% or more of the total invested capital at the beginning of the period under review.

3. For Non-Stock Non-Profit Organizations

3.a. Non-stock non-profit organizations operating for at least two (2) years may be granted exemption:

3.a.1. When the net accumulated losses for the last two (2) full accounting periods and interim period, if any, immediately preceding the effectivity of the Wage Order amount to 20% or more of the fund balance/members' contributions at the beginning of the period under review.

3.a.2. When an establishment registered 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 Wage Order.

3.b. Non-stock non-profit organizations 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 Wage Order amount to 20% or more of the fund balance/members' contribution at the beginning of the period under review.

4. For banks and quasi - banks

4.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 (BSP) that it is under receivership or liquidation as provided in Section 30 of RA 7653, otherwise known as the New Central Bank Act.

4.b Under controllership/conservatorship

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

C. Establishments Adversely Affected by Natural Calamities

1. The establishment must be located in an area declared by a competent authority as under a state of calamity.
2. The calamities, such as earthquakes, typhoons, fire, flood and similar occurrences, must have occurred within six months (6) prior to the effectivity of the Wage Order.
3. Losses suffered by the establishment as a result of the calamity that exceed the insurance coverage should amount to 20% or more of the stockholders' equity as of the full accounting period in the case of corporations and cooperatives; total invested capital in the case of partnership and single proprietorship; and, fund balance/members' 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.

D. New Business Enterprises (NBEs). Exemption may be granted to New Business Enterprises (NBEs) established outside Export Processing Zones (EPZs) within two (2) years from the effectivity of the Wage Order classified under any of the following:

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

Section 5. DOCUMENTS REQUIRED. The following supporting documents shall be submitted together with the application:

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 the 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.

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

A. 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 (6) months in any calendar year.

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

B. For Distressed Establishments

1. For corporations, cooperatives, single proprietorship, partnership, non-stock non-profit organizations:

- a) Audited financial statements (together with the Auditor's opinion and the notes thereto) for the last two (2) full accounting periods preceding the effectivity of the Wage Order filed with and stamped "received" by the appropriate government agency.
- b) Audited interim quarterly financial statements (together with the Auditor's opinion and the notes thereto) for the period immediately preceding the effectivity of the Wage Order.

2. For banks and quasi-banks:

- a) Certification from the Bangko Central ng Pilipinas (BSP) that it is under receivership or liquidation.

C. For Establishment 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 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 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 Wage Order stamped "received" by the appropriate government agency.

D. 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 agency

Section 6. EFFECT OF APPLICATION FOR EXEMPTION. Whenever an application for exemption has been duly filed with the Regional Board, action on any complaint for non-compliance with the Wage Order shall be deferred pending its resolution.

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

Rule IV
SPECIAL PROVISIONS

Section 1. CREDITING. If expressly provided for and agreed upon in the collective bargaining agreement (CBA), wage increases/allowances or any monetary benefits granted by an employer within three (3) months prior to the effectivity of this Wage Order shall be credited as compliance with the Wage Order. Where the increase/allowance/any monetary benefits is less than that prescribed under this Wage Order, the employer shall pay the difference.

In the case of unorganized establishments, wage increases/allowances or any monetary benefits granted three (3) months prior to the effectivity of this Wage Order shall be considered as full or partial compliance, as the case may be.

Section 2. EFFECTS ON EXISTING WAGE STRUCTURE. Should any dispute arise as a result of the wage distortion, the employer and the union shall negotiate to correct the distortions through the grievance procedure under their collective bargaining agreement (CBA) 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 there from shall be settled through the National Conciliation and Mediation Board (NCMB) 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.

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

Section 3. COMPLAINTS FOR NON-COMPLIANCE. Complaints for non-compliance with the Wage Order shall be filed with the Regional Office of the Department and shall be subject of enforcement proceedings under Articles 128 and 129 of the Labor Code, as amended.

Section 4. 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 agent or of any interested unions existing in the bargaining unit. 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 5. NON-DIMINUTION OF BENEFITS. Nothing in the Wage 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 under any contract or agreement between the workers and the employers.

Section 6. PRODUCTIVITY-BASED WAGES. In order to address rising levels of wages and enhance competitiveness, businesses are strongly encouraged to adopt productivity improvement schemes and gain-sharing programs.

Establishments implementing productivity improvement schemes and gain-sharing programs may avail of the incentives provided for under RA 6971, the Productivity Incentives Act of 1990. These productivity improvement schemes and gain-sharing programs may be in the form of time and motion studies, good housekeeping, quality circles, labor and management cooperation, among others. The Regional Board shall provide the necessary studies and technical assistance to said establishments

Section 7. PENAL PROVISION. 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 the prescribed additional COLA prescribed in the Wage Order shall be punished by a fine of 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 Wage Order shall not be entitled to the benefits provided for 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 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 8. 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 Board.

Section 9. FREEDOM TO BARGAIN. The Wage Order shall not be construed to prevent workers in particular firms or enterprises of industries from bargaining for higher allowance with their respective employers.

Section 10. REPORTING REQUIREMENT. Any persons, company, corporation, partnership or any entity engaged in business shall submit a verified itemized listing of their labor component to the Regional Board not later than 31 January 2006 and every year thereafter in accordance with the form prescribed by the Commission.

Section 11. REPEALING CLAUSE. All orders, issuances, rules and regulations on wages, or parts thereof inconsistent with the provisions of the Wage Order and this Rules are hereby repealed, amended or modified accordingly.

Section 12. SEPARABILITY CLAUSE. If any provision or part of the Wage Order and this Rules, or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of the Wage Order and this Rules or the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

Section 13. EFFECTIVITY OF THE RULES. This Rules Implementing Wage Order No. RTWPB-II-10 shall take effect on 25 June 2005.

Done in Tuguegarao City this 21st day of June 2005.

ALFREDO Y. MADRIAGA

(SGD) **ERNESTO J. FUECONCILLO**

Workers' Representative

(SGD) **CECILIA LA MADRID-DY**
Employers' Representative

(SGD) **MILAGROS A. RIMANDO**
Vice Chairperson

Workers' Representative

(SGD) **CONSTANCIO S. SILVA**
Employers' Representative

(SGD) **MA. ESPERANZA C. BAÑARES**
Vice Chairperson

(SGD) **NATHANIEL V. LACAMBRA**
Board Chairperson

Approved this _____ day of _____, 2005.

(SGD) **DANILO P. CRUZ**
Acting Secretary
Department of Labor and Employment