

Republic of the Philippines
Department of Labor and Employment
National Wages and Productivity Commission
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD NO. 3
San Fernando, Pampanga

WAGE ORDER NO. RBIII-10

**PROVIDING FOR COST OF LIVING ALLOWANCE
IN CENTRAL LUZON**

WHEREAS, by virtue of Republic Act 6727, the Regional Tripartite Wages and Productivity Board-Region III, hereinafter referred to as the Board, is mandated to periodically review the minimum wage rates in relation to socio-economic and other conditions in the region;

WHEREAS, the Mitsumi Philippines Workers Union, an affiliate of ALU-TUCP, filed a petition for wage increase with the Board on June 1, 2004;

WHEREAS, in response to the wage petition and complying with the requirements of the rules on minimum wage fixing, the Board conducted a series of sectoral consultations during the month of June 2004 and a public hearing on July 19, 2004;

WHEREAS, after deliberations on the results of the sectoral consultations and public hearing and the periodic review of the minimum wage rates, the socio-economic and other conditions in the region, the Board deemed it necessary to provide the workers immediate relief measures to enable them to cope with the increasing cost of living with due regard to increased productivity, viability and sustainability of business and industry;

WHEREAS, the coverage of this Wage Order extends to the province of Aurora as a result of its transfer from Region IV to Region III, in pursuant to Executive Order No. 103 dated May 17, 2002;

NOW THEREFORE, by virtue of the power and authority vested under Republic Act No. 6727, otherwise known as the Wage Rationalization Act, the Board hereby issues this Wage Order:

Section 1. COST OF LIVING ALLOWANCE. Upon effectivity of this Wage Order, all employers in the private sector doing business in Region III shall provide their employees and workers receiving the minimum wage rates provided for under Wage Order No. RBIII-09 (covering the provinces of Bataan, Bulacan, Nueva Ecija, Pampanga, Tarlac and Zambales) and Wage Order No. RBIV-08 (for the province of Aurora) or its monthly equivalent, Cost of Living Allowance (COLA) in the amount of P15.00 per day.

Section 2. INTEGRATION OF COLA. Twelve months after the effectivity date of this Wage Order, the COLA provided herein shall be integrated into the basic pay of covered workers.

Section 3. COVERAGE. The minimum wage rates provided herein shall apply to all covered workers and employees in the private sector in Region III regardless of position, designation or status of employment and irrespective of the method by which their wages are paid. Not covered in this Wage Order are household or domestic helpers and persons employed in the personal service of another including family drivers. Also, not covered are workers of Barangay Micro Business Enterprises with Certificate of Authority, pursuant to R.A. 9178.

Section 4. BASIS OF COST OF LIVING ALLOWANCE. The cost of living allowance prescribed under the Wage Order shall be for the normal working hours, which shall not exceed eight (8) hours work a day.

Section 5. 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 equivalent of the prescribed cost of living allowance per eight (8) hours a day, or a proportion thereof for working less than eight (8) hours.

Section 6. SPECIAL GROUP OF WORKERS. Cost of living allowance of apprentices and learners shall in no case be less than seventy-five percent (75%) of the applicable cost of living allowance prescribed in this Wage Order.

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

Section 7. PRIVATE EDUCATIONAL INSTITUTIONS. In the case of educational institutions, the share of workers and employees covered in the increase in tuition fees for School Year 2004-2005 shall be considered as compliance with this Wage Order. Where the share of the workers and employees is less than what is provided herein, the employer shall pay the difference starting School Year 2005-2006.

Private educational institutions which did not increase their tuition fees for the School Year 2004-2005 may defer compliance with the provisions of this Wage Order until School Year 2005-2006.

Section 8. CONTRACTORS. In the case of contracts for construction projects and for security, janitorial and similar services, the prescribed wage rates of the workers shall be borne by the principal or clients of the construction/service contractors and their contracts shall be deemed amended

accordingly. In the event, however, that the principal or client fails to pay the prescribed COLA, the construction/service contractor shall be jointly and severally liable with his principal or client.

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

1. Retail and service establishments employing not more than ten (10) workers at the time of the publication of this Wage Order;
2. Distressed establishments, as defined in the NWPC Guidelines No. 01, Series of 1996;
3. Garment exporting firms, including indirect exporters, with at least fifty percent (50%) export sale and with forward contracts with their foreign buyers/principals entered into on or twelve (12) months before the date of publication of this Order may be exempt during the lifetime of the said contract but not to exceed twelve (12) months from the effectivity of this Wage Order.

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

Section 11. 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 12. CREDITING. Increases granted by an employer within ninety (90) days prior to the effectivity of this Wage Order shall be credited as compliance with the Order, provided that, where such increases are less than what is provided in the Order, the employer shall pay the difference.

Such increases shall not include anniversary wage increases, merit wage increases and those resulting from the regularization or promotion of employee, unless there is an agreement expressly allowing such crediting.

SECTION 13. EFFECTS ON EXISTING WAGE STRUCTURE. Where the application of the COLA prescribed in this Wage Order results in distortions in the wage structure within the establishment, the wage distortions may be resolved using the following formula:

$$\begin{array}{l} \text{Minimum Wage Under} \\ \text{Wage Order No. RBIII-09} \\ \text{COLA} \end{array} \times \begin{array}{l} \text{Amount of COLA} \\ \text{in WO RBIII-10} \end{array} = \begin{array}{l} \text{Amount of} \\ \text{due to distortion} \end{array}$$

Present Salary

Section 14. COMPLAINTS FOR NON-COMPLIANCE. Complaints for non-compliance with this Wage 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 15. NON-DIMINUTION OF BENEFITS. Nothing in this Wage Order shall be construed to reduce any existing wage rates, allowances, and benefits of any form under existing laws, decrees, issuance, executive orders and/or under any contract or agreement between workers and employers.

Section 16. PENAL PROVISION. Any person, corporation, trust or firm, partnership, association or entity which refuses or fails to pay the prescribed wage rates in accordance with this Wage Order shall be subject to the penal provisions under R.A. 6727, as amended by R.A. 8188.

Section 17. 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 18. FREEDOM TO BARGAIN. This Wage 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 19. REPORTING REQUIREMENTS. Any person, company, corporation, partnership, or any entities 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 20. REPEALING CLAUSE. All laws, orders, rules, and regulations, or parts thereof inconsistent with the provision of this Wage Order are hereby repealed, amended or modified accordingly.

Section 21. SEPARABILITY CLAUSE. If, for any reason, any section or provision of this Wage Order is declared unconstitutional or illegal, the other provisions or parts shall remain valid.

Section 22. IMPLEMENTING RULES. The Board shall prepare the necessary rules to implement this Wage Order subject to the approval of the Secretary of Labor and Employment.

Section 23. EFFECTIVITY. This Wage Order shall take effect fifteen (15) days after its publication in at least one (1) newspaper of general circulation.

APPROVED this 2nd day of August 2004, City of San Fernando,
Pampanga.

(Sgd) **JOSE T. DE LEON**
Member

(Sgd) **FLORDELIZA MA. REYES-RAYEL**
Board Member

(Sgd) **RAUL C. REMODO**
Board Member
I dissent, I am for P70.50, no exemption

(Sgd) **REMIGIO A. MERCADO**
Vice-Chairperson

(Sgd) **BLESILA A. LANTAYONA**
Vice-Chairperson

(Sgd) **JOSEFINO I. TORRES**
Chairperson

RULES IMPLEMENTING WAGE ORDER NO. RBIII-10

RULE I GENERAL PROVISIONS

Pursuant to Section 5, Rule IV of the NWPC Revised Rules of Procedure on Minimum Wage Fixing and Section 22 of Wage Order No. RBIII-10, the following rules are hereby issued for guidance and compliance by all concerned.

Section 1. TITLE.

This Rules shall be known as the “Rules Implementing Wage Order No. RBIII-10”

Section 2. DEFINITION OF TERMS. As used in this Rules.

- a) Order refers to Wage Order No. RBIII-10;
- b) Board refers to the Regional Tripartite Wages and Productivity Board in Region III;
- c) Commission refers to the National Wages and Productivity Commission;
- d) Department refers to the Department of Labor and Employment;
- e) Secretary refers to the Secretary of Labor and Employment;
- f) Cost of Living Allowance (COLA) refers to Cost of Living Allowance prescribed by the Board for covered private sector workers and employees in Region III;
- g) Region III covers the Provinces of Aurora, Bataan, Bulacan, Nueva Ecija, Pampanga, Tarlac, Zambales and the Cities of Angeles, Balanga, Cabanatuan, Gapan, Malolos, Munoz, Olongapo, Palayan, San Fernando, San Jose, San Jose Del Monte and Tarlac;
- h) Agriculture refers to farming in all its branches including 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 connection with such farming operations. This does not include the manufacturing and/or processing of sugar, coconut, abaca, tobacco, pineapple, aquatic or other farm products;
- i) Plantation Agricultural Enterprise is one engaged in agriculture with an area of more than 24 hectares in a locality or which employs at least twenty (20) workers. Any other agricultural enterprise shall be considered as “Non-Plantation Agricultural Enterprise”;
- j) Cottage/Handicraft Establishment is one engaged in an economic endeavor in which the products are primarily done in the home or such other places for profit which requires manual dexterity and craftsmanship and whose capitalization does not exceed P3.0

million (in conformity with SMEDC Resolution No. 1, Series of 2003) regardless of previous registration with the defunct NACIDA;

- k.) Household or Domestic Helper refers to workers who administer strictly to the personal needs of their employer. This includes family drivers;
- l.) Establishment refers to an economic unit which engages in one or predominantly one kind of economic activity at a single fixed location;
- m.) Retail Establishment refers to one principally engaged in the sale of goods to end-users for personal or household use. A retail establishment that regularly engage in wholesale activities loses its retail character;
- n.) Service Establishment refers to one principally engaged in the sale of services to individuals for their own or household use and is generally recognized as such;
- o.) Distressed Employer refers to employers/establishments which meet the criteria enumerated in Section 3 (A) of the NWPC Guidelines No. 01, Series of 1996 on the Rules on Exemption;
- p.) Garment Exporting Firm refers to any person, natural or juridical, licensed to do business in the Philippines, engaged directly or indirectly in the manufacture or trade of garments or services which earn at least fifty (50%) of its normal operating revenues from the sale of garments or services abroad for foreign currency. In the case of indirect exporters, the requirement that products or services be sold "abroad for foreign currency" shall not apply as, by the very nature of their business, the sale of garments or services takes place in the Philippines and such indirect exporters are usually paid in Philippine Currency;
- q.) Indirect exporter refers to a person, firm or corporation who performs any production process for a manufacturer or exporter of garments;
- r.) Wage Distortion refers to a situation where an increase in the prescribed wage rates results in the elimination or severe contraction of intentional quantitative difference in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service or other logical bases of differentiation;
- s.) Capitalization refers to the paid-up capital, in the case of corporation, and total invested capital, in the case of a partnership or single proprietorship;
- t.) Full Accounting Period refers to a period twelve (12) months or one (1) year of business operations;
- u.) Total Assets refers to all kinds of properties, real or personal, owned by the firm and use for the conduct of its business;
- v.) Deficit refers to the negative balance of the retained earnings account of a corporation. Retained earnings represent the cumulative balance

of periodic earnings, dividend distribution, prior period adjustments and other capital adjustments;

- w.) Stock Corporation refers to one organized for profit and issues shares of stock to its members;
- x.) Non-stock Non-profit Organization refers to one organized principally for public purposes such as charitable, educational, cultural or similar purposes and does not issue shares of stock to its members;
- y.) 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 the exercise of a profession;
- z.) Single Proprietorship refers to a business unit owned and controlled by; one person;
- aa.) Cooperative refers to a duly registered association of persons who voluntarily join together to form a business establishment which they themselves own, control and patronized and which may fall under any of the following types: credit, consumers, producers, marketing, service or multi-purpose;
- bb.) Quasi-banks refers to institutions such as investment houses and financing companies performing quasi-banking functions as defined by the Bangko Sentral ng Pilipinas.

RULE II

COST OF LIVING ALLOWANCE

Section 1. **COST OF LIVING ALLOWANCE.** Effective August 20, 2004, all employees and workers in the private sector in Region 3 receiving the minimum wage shall receive a Cost of Living Allowance (COLA) of P15.00 per day.

The daily minimum wage rates in Region 3, therefore, shall be as follows:

SECTOR	Minimum Wage		Rate	
		BASIC WAGE No. RBIII	Under WO - 09	BASIC WAGE Under W.O. No. IV-08
	Bulacan	Bataan, Nueva Ecija, Pampanga, Tarlac and Zambales	Aurora	All Provinces

NON-AGRICULTURE			182.00	15.00
Establishment with total assets of P30 million or more	228.50	224.50	-	15.00
Establishment with total assets of less than P30 million	221.00	217.00	-	15.00
AGRICULTURE				
Plantation	194.50	194.50	167.00	15.00
Non-Plantation	178.50	178.50	147.00	15.00
PRIVATE HOSPITALS				
With bed capacity of 20 or more	215.50	215.50	-	15.00
With bed capacity of less than 20	200.50	200.50	-	15.00
RETAIL./SERVICE				
Establishment with 16 or more employees	213.50	213.50	-	15.00
Establishment with less than 16 employees	199.50	199.50	-	15.00
Establishment employing not more 10 workers			104.00	15.00
COTTAGE/HANDICRAFT	178.50	178.50	155.00	15.00

Section 2. **COVERAGE.** The Cost of Living Allowance provided in the Wage Order shall apply to all covered workers and employees in the private sector in Region 3 regardless of position, designation or status of employment and irrespective of the method by which their wages are paid. Not covered in this Order are household or domestic helpers and persons employed in the personal service of another including family drivers; and workers of Barangay Micro Business Enterprises (BMBEs) with Certificates of Authority, pursuant to R.A. 9178.

Section 3. **INTEGRATION OF COLA.** Effective August 19, 2005 or exactly twelve months after the effectivity of the Wage Order, the COLA provided herein shall be integrated into the basic pay of covered workers resulting in the following applicable minimum wage rates in Region III.

	Minimum Wage Effective	Rate August 19, 2005
		Bataan, Nueva Ecija,

Sector	Bulacan	Pampanga, Tarlac & Zambales	Aurora
NON-AGRICULTURE			197.00
Establishment with total assets of P30 million or more	243.50	239.50	-
Establishment with total assets of less than P30 million	236.00	232.00	-
AGRICULTURE			
Plantation	209.50	209.50	182.00
Non-Plantation	193.50	193.50	162.00
PRIVATE HOSPITALS			
With bed capacity of 20 or more	230.50	230.50	-
With bed capacity of less than 20	215.50	215.50	-
RETAIL/SERVICE			
Establishment with 16 or more employees	228.50	228.50	-
Establishment with less than 16 employees	214.50	214.50	-
Establishment employing not more 10 workers	-	-	119.00
COTTAGE/HANDICRAFT	193.50	193.50	170.00

Section 4. **BASIS OF COST OF LIVING ALLOWANCE.** The COLA prescribed herein shall be for the normal working hours, which shall not exceed eight (8) hours work a day.

Section 5. **CREDITING.**

- a. Increases granted by an employer within ninety (90) days prior to the effectivity of the Wage Order shall be credited as compliance with the Order. In case the increases are less than the prescribed adjustment in the Order, the employer shall pay the difference.
- b. Such increases shall not include anniversary wage increases, merit wage increases and those resulting from the regularization or promotion of employee, unless there is agreement expressly allowing such crediting.

Section 6. **PRIVATE EDUCATIONAL INSTITUTIONS.** In the case of private educational institutions, the share of workers and employees covered in the increase in tuition fees for School Year 2004 -2005 shall be credited as compliance with the Wage Order. In case of any shortfall, the employer shall pay the difference starting School Year 2005-2006.

Private educational institutions which did not increase their tuition fees for School Year 2004-2005 may defer compliance with the provisions of the Wage Order until School Year 2005-2006.

In any case, all private educational institutions shall implement the cost of living allowance prescribed in the Order starting School Year 2005-2006.

Section 7. **CONTRACTORS.** In the case of contracts for construction projects and for security, janitorial and similar services, the prescribed cost of living allowance of the workers shall be borne by the principal or clients of the construction/service contractors and their contract shall be deemed amended accordingly. In the event, however, that the principal or client fails to pay the prescribed cost of living allowance, the construction/service contractor shall be jointly and severally liable with his principal or client.

Section 8. **WORKERS PAID BY RESULTS.** All covered workers paid by results, including those who are paid on piecework, "takay", "pakyaw", or task basis, shall receive not less than the prescribed cost of living allowance 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 cost of living allowance for workers paid by results shall be computed in accordance with the following steps:

a)
$$\frac{\text{Amount of COLA}^*}{\text{Previous AMW}^{**}} \times 100 = \% \text{ increase}$$

b) Existing rate/piece x % increase = Increase in rate/piece

c) Existing rate/piece + Increase in rate/piece = Adjusted rate/piece

* Where COLA is the cost of living allowance

** AMW is the applicable minimum wage

Section 9. **SPECIAL GROUPS OF WORKERS.** The COLA of apprentices and learners shall in no case be less than seventy-five percent (75%) of the prescribed allowance in the Order.

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 adjustments prescribed under the Order.

Section 10. **MOBILE AND BRANCH 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.

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 11. **TRANSFER OF PERSONNEL.** The transfer of personnel to areas outside the Region shall not be valid ground for the reduction of the COLA being enjoyed by the workers prior to such transfer. The workers transferred to the other Regions with higher wage rates shall be entitled to the COLA applicable therein.

Section 12. **APPEAL TO THE COMMISSION.** Any party aggrieved by the Wage Order 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. The appeal shall be accompanied by a memorandum of appeal which shall state the grounds relied upon and the arguments in support of the appeal.

Section 13. **EFFECT OF THE 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 to employees affected by the Order of the corresponding increase, in the event such Order is affirmed.

RULE III EXEMPTIONS

Section 1. **WHO MAY BE EXEMPTED.** The following establishments may be exempted from the payment of the prescribed cost of living allowance upon application with and as determined by the Board based on documentation and other requirements submitted in accordance with the applicable rules and regulations issued by the Commission:

1. Retail /service establishments regularly employing not more than ten (10) workers at the time of the publication of the Wage Order;
2. Distressed Establishments, as defined in the NWPC Guidelines No. 01, Series of 1996; and
3. Garment exporting firms, including indirect exporters, with at least fifty percent (50%) export sale and with forward contracts with their foreign buyers/principals entered into on before August 5, 2004 may be exempt during the lifetime of the said contract but not to exceed twelve (12) months from the effectivity of this Wage Order.

Section 2. **APPLICATION FOR EXEMPTION.** Within seventy-five (75) days from date of publication of this Rules, an application for exemption shall be filed with the Board in two (2) typewritten copies by the owner/manager or duly authorized representative of an establishment, either through personal service or by registered mail. The date of mailing shall be deemed the date of filing.

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

All applications for exemption shall also be supported with a certificate of registration as a business enterprise from the appropriate government agency/ies (e.g. Securities and Exchange Commission (SEC) registration in the case of a corporation, partnership or association; Cooperative

Development Authority (CDA) registration in the case of cooperative; Department of Trade and Industry (DTI) business name registration in the case of sole proprietorship);

Section 3.

CRITERIA AND ADDITIONAL SUPPORTING DOCUMENTS FOR EXEMPTION.

In order to determine whether an applicant establishment is qualified for exemption, the following are the criteria and additional supporting documents required:

For Retail/Service Establishments

A. Criteria:

1. Engaged in the retail sale of goods or services to end- users for personal or household use; and
2. Employing not more than ten (10) workers at the time of the publication of the Wage Order.

B. Additional Supporting Documents

1. An affidavit from the employer stating the principal economic activity and the number of workers employed in the establishment.
2. Business permit for the current year from the appropriate government agency/cies

For Distressed Establishments

A. Criteria:

1. For stock corporations/cooperatives, deficit as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Order amounts to twenty percent (20%) or more of the paid-up capital for the same period; or registers a capital deficiency i.e. negative stockholders' equity as of the last full accounting period immediately preceding the effectivity of the Order.
2. For single proprietorship/partnerships operating for at least two (2) years, the net accumulated losses for the last two (2) full accounting periods or interim period, if any, preceding the effectivity of the Order

amounts to twenty percent (20%) or more of the total invested capital at the beginning of the period under review; or the establishment registers capital deficiency i.e. negative net worth as of the last full accounting period immediately preceding the effectivity of the Order.

Single proprietorships/partnerships operating for less than two (2) years may be granted exemption when the net accumulated losses for the period immediately preceding the effectivity of the Order amounts to twenty percent (20%) or more of the total invested capital at the beginning of the period under review.

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

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

4. For banks and quasi-banks under receivership/liquidation, a certification from the Bangko Sentral ng Pilipinas (BSP) that it is under receivership or liquidation as provided in Section 30 of RA 6753, otherwise known as the New Central Bank Act.

Banks under controllership/conservatorship may apply may apply for exemption as a distressed establishment under Section 3A of NWPC Guidelines No. 01 , Series of 1996.

B. Additional Supporting Documents:

1. For corporations, cooperatives, single proprietorships, partnerships, non-stock, non-profit organizations:
 - a. Audited financial statements (together with the Auditor's opinion and the notes thereto) for the year 2002 and 2003 filed with and stamped "received" by the Securities and Exchange Commission (SEC) and the Bureau of Internal Revenue (BIR)/Bank;
 - b. Audited interim quarterly financial statements (together with the Auditor's opinion and notes thereto) for the first and second quarter of 2004, where applicable;
 - c. Annual income tax returns for the last two taxable periods, filed with and "stamped" received by the BIR;
 - d. First quarter income tax returns for 2004 , filed with and stamped "received" by the BIR, where applicable.
2. For Banks and Quasi-Banks
 - (a) Certification from the Bangko Sentral ng Pilipinas that it is under receivership/liquidation;

For Garment Exporting Firms, Including Indirect Exporters

A. Criteria:

1. Engaged in the manufacture or processing of garments.
2. Must have at least fifty percent (50%) export sales;
3. Must have forward contracts executed on or twelve (12) months before August 5, 2004;

B. Additional Supporting Documents:

1. Affidavit from the employer stating the following:

- a. Principal economic activity, number of workers and existing union if any;
 - b. List of forward contracts entered into stating the the name of foreign buyers or principals and their addresses, date of contracts, delivery or shipping dates and amount or volume of orders;
2. Business permit for the current year from appropriate Government agencies;
 3. Certified true copies of forward contracts;
 4. Irrevocable letters of credit/ Proof of payment from Principal;
 5. Notarized Purchase orders;
 6. Proof of acceptance of the purchase order;
 7. Bills of lading/Delivery Receipts

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

Section 4. **DURATION AND EXTENT OF EXEMPTION.** The Board shall grant full exemption to all categories of establishments that meet the applicable criteria for exemption, but in no case shall it exceed one (1) year from August 20, 2004, in accordance with the provisions of Section 8, NWPC Guidelines No. 01, series of 1996.

In the case of distressed establishments, the Board may grant partial exemption of 50% with respect to the amount or period of exemption pursuant to Section 8, NWPC Guidelines No. 01, series of 1996.

Section 5. **EFFECT OF FILING 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 application, action on any complaint for alleged non-compliance with the Order shall be deferred by the Regional Office of the Department.

Section 6. **EFFECT OF DISAPPROVED APPLICATION FOR EXEMPTION.** In the event that the application for exemption is

not approved, affected workers shall be paid the prescribed cost of living allowance as provided for in the Order retroactive to the date of the effectivity of the order plus simple interest of one percent (1%) per month retroactive to the effectivity of the Wage Order.

Section 7. **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 PROVISION

Section 1. **EFFECTS ON EXISTING WAGE STRUCTURE.** 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 voluntary arbitrators within ten (10) calendar days from the time said dispute was referred to voluntary arbitration.

In cases where there are no collective bargaining agreements or recognized labor unions, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board (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.

Where the application of the COLA prescribed in the Wage Order results in distortions in the wage structure within the establishment, the following suggested formula may be used:

Minimum Wage Order Under W.O. No. RBIII-09/RBIV-08 COLA	Amount of COLA	Amount of
-----	X	under W.O. No. RBIII-10 = due to
distortion		
Present Salary		

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

Section 2. **COMPLAINTS FOR NON-COMPLIANCE.** Complaints for non-compliance with 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 inspection of establishments, as often as necessary, to determine whether workers are paid the minimum wage rates prescribed in the Wage Order and other benefits granted by law or any Wage Order. In the conduct of inspection in unionized companies, Department inspectors shall always be accompanied by the President or other responsible officer of the recognized bargaining unit or of any interested union. In the case of non-unionized establishments, a representative chosen by the workers in the said company shall accompany the Department 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 Department Inspector.

Section 4. **NON-DIMINUTION OF BENEFITS.** 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, issuance, executive orders and/or under any contract or agreement between the workers and the employers.

Section 5. **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 wage adjustments in the 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 Order shall not be entitled to the benefits provided for under the Probation Law.

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.

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.

Section 6. **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 7. **FREEDOM TO BARGAIN.** The Wage 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 8. **REPORTING REQUIREMENTS.** Any person, company, corporation, partnership, or any entities 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. **REPEALING CLAUSE.** All orders, 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 10. **SEPARABILITY CLAUSE.** If any provision or part of the Order and this Rules, or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of the Order and this Rules or the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

Section 11. **EFFECTIVITY.** This Rules shall take effect on August 20, 2004.

APPROVED this 16th day of August, 2004, City of San Fernando, Pampanga.

(Sgd.) JOSE T. DE LEON
Board Member

(Sgd.) FLORDELIZA MA. REYES-RAYEL
Board Member

(Sgd.) RAUL C. REMODO
Board Member

(Sgd.) REMIGIO A. MERCADO
Vice-Chairperson

(Sgd.) BLESILA A. LANTAYONA
Vice-Chairperson

(Sgd.) JOSEFINO I. TORRES
Chairman

Approved this 19th day of November 2004, subject to the notation contained on page 15, hereof.

(Sgd.) PATRICIA A. STO. TOMAS
Secretary
Department of Labor and Employment

NOTATIONS TO THE RULES IMPLEMENTING WAGE ORDER NO. RBIII-10

On the Effects on Existing Wage Structure (Section 1, Rule IV)

The word "Order " in the formula should be deleted. The formula should read as follows:

$$\begin{array}{l} \text{Minimum Wage Under} \\ \text{W.O. No. RBIII-09/RBIV-08} \\ \text{COLA} \\ \text{-----} \\ \text{distortion} \\ \text{Present Salary} \end{array} \quad \times \quad \begin{array}{l} \text{Amount of COLA in} \\ \\ \text{W.O. No. RBIII-10} \end{array} \quad = \quad \begin{array}{l} \text{Amount of} \\ \\ \text{due to} \end{array}$$