

Republic of the Philippines  
Department of Labor and Employment  
National Wages and Productivity Commission  
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD-XI  
Davao City

**WAGE ORDER NO. RTWPB-XI-05  
INCREASING THE REGIONAL MINIMUM WAGE RATE OF WORKERS  
IN THE PRIVATE SECTOR IN REGION XI**

WHEREAS, pursuant to the mandate of the NWPC Guidelines No. 001-95 otherwise known as the Revised Rules of Procedure on Minimum Wage Fixing to conduct continuing studies of wage rates, productivity and other conditions in the region and to periodically assess the effects of a wage order, the Regional Board motu proprio initiated a review of Wage Order No. RTWPB-XI-04;

WHEREAS, the Regional Tripartite Wages and Productivity Board of Region XI (RTWPB-XI) conducted public hearings, sectoral and industry consultations and workshops on wages in key areas of the region during the first and second quarters of 1996;

WHEREAS, based on the public hearings, consultations and workshops conducted, this Regional Board has determined the need to modify Wage Order No. RTWPB-XI-04, to provide the workers and their families immediate relief measures to enable them to cope with the rising cost of living. The Board has also determined the need to sustain the viability of business and industry, and create favorable investment climate, as well as the need to control unemployment within tolerable limits considering the varying economic and living conditions in the region;

WHEREAS, the Regional Board has been continuously deliberating on the wage issue since the early part of this year;

NOW, THEREFORE, by virtue of the powers and authority vested under Republic Act No. 6727 otherwise known as the Wage Rationalization Act of 1989, the Regional Tripartite Wages and Productivity Board of Region XI (RTWPB-XI) hereby issues this Wage Order:

**SECTION I. COVERAGE**

a. Upon the effectivity of this Wage Order, the regional minimum wage rate applicable to all workers in the private sector is increased by P10.00 per day on January 1, 1997 and P6.00 on June 01, 1997;

b. Establishments with duly certified and registered collective bargaining agreements with the Department of Labor and Employment, Region XI, shall be governed by the provisions on wage adjustments thereof, provided that the regional minimum wage rate prescribed in this Wage Order is complied with;

c. Private Educational Institutions shall be governed by the provisions of RA 6728 on wage adjustments, provided that the regional minimum wage rate prescribed in this Wage Order is complied with. The increase prescribed under this Wage Order shall apply to all workers and employees entitled to the same in private educational institutions as soon as they have increased or are granted authority to increase their tuition fees during school year 1997-98. Otherwise, such increase shall be so applicable no later than the opening of the next school year beginning 1998.

**SECTION 2. EXEMPTIONS**

a. Automatic Exemptions. Exempted from the provisions of this Wage Order are household or domestic helpers and persons in the personal service of another, including family drivers;

b. Upon Proper Application. The following establishments may be exempted from the applicability of this Wage Order upon application with and approval by the RTWPB-XI in accordance with the applicable rules and guidelines issued by the Regional Board and the Commission, to wit:

1. Retail/Service establishments (As defined under R.A. 602) regularly employing not more than TEN (10) employees;
2. Distressed establishments in accordance with the guidelines issued by the Commission, series of 1992 (NWPC Guidelines No. 01, series of 1996);

**SECTION 3. EXTENT AND DURATION OF EXEMPTION.** The Regional Board has the option whether to grant FULL OR PARTIAL 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 of 1996. A partial exemption of 50% with respect to the amount or period of exemption shall be granted only in the case of distressed establishments.

**SECTION 4. CONTRACT WORKERS.** In the case of contracts for construction projects and for security, janitorial and similar services, the prescribed minimum wage increases shall be borne by the principals or clients of the

construction/service contractors and the contract shall be deemed amended accordingly. In the event, however, that 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 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 prescribed minimum wage adjustment per eight (8) hours work a day, or a proportion thereof for working less than eight (8) hours.

SECTION 6. MOBILE AND BRANCH WORKERS. The minimum wage rate of workers, who by the nature of their work have to travel shall be those applicable in the domicile or head office of the employer. The minimum wage rates of workers working in branches or agencies of establishments in or outside the Region XI shall be those applicable in the place where they are stationed.

SECTION 7. TRANSFER OF PERSONNEL OUTSIDE REGION XI. The transfer of personnel to areas outside of Region XI shall not be a valid ground for the reduction of the wage rates being enjoyed by the workers prior to such transfer. The workers transferred to Region XI shall be entitled to the minimum wage rates applicable therein.

SECTION 8. WAGE DISTORTION. Where the application of the prescribed regional minimum wage rate under this Wage Order results in distortions of the wage structure within an establishment, such distortion shall be corrected using the procedure as specified under Article 124 of the Labor Code of the Philippines as amended.

SECTION 9. COMPLAINT FOR NON-COMPLIANCE. a. Whenever an application for exemption has been duly filed with the Regional Board, action on any complaint for alleged non-compliance with this Wage Order shall be deferred pending resolution of the application for exemption by the Regional Board.

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

SECTION 10. PENAL PROVISION. Any employer who refuses or fails to pay the minimum wage increase provided under this Wage Order shall be subject to the penalties provided for in R.A. 8188.

SECTION 11. NON-DIMINUTION OF BENEFITS. Nothing in this Wage Order shall be construed as authorizing the reduction of any existing wage rates, allowance or other benefits under existing laws, decrees, issuances, executive orders and/or under any contract or agreements between workers and employers.

SECTION 12. PROHIBITION AGAINST INJUNCTION. No preliminary or permanent injunction or temporary restraining order may be issued by any court, tribunal or other entity against this Wage Order or any proceedings before this Regional Board.

SECTION 13. SEPARABILITY CLAUSE. If any provision or part of this Wage Order is declared unconstitutional or illegal, the other provisions or parts shall remain valid.

SECTION 14. IMPLEMENTING RULES AND REGULATIONS. This Regional Board shall promulgate the necessary rules and regulations to implement the provisions of this Wage Order.

SECTION 15. EFFECTIVITY. This Wage Order shall take effect FIFTEEN (15) days following its complete publication in at least one (1) newspaper of general circulation in Region XI.

Approved. 16 December 1996, Davao City, Philippines.

(SGD) MR. JORGE G. ALEGARBES  
Labor Representative  
RTWPB-XI, Member

(SGD) MRS. VIRGINIA T. CAMUS  
Labor Representative  
RTWPB-XI, Member

(SGD) MR. RULFO V. ASIS  
Management Representative  
RTWPB-XI, Member

(SGD) ATTY. BIENVENIDO D. CARIAGA  
Management Representative  
RTWPB-XI, Member

(SGD) ENGR. MERLY M. CRUZ  
DTI-XI Regional Director  
RTWPB-XI Vice Chairman

(SGD) DIR. SANTIAGO G. ENGINCO  
NEDA-XI Regional Director  
RTWPB-XI Vice Chairman

(SGD) DIR. MA. BRENDA L. VILLAFUERTE  
DOLE-XI, Regional Director  
RTWPB-XI, Board Chairman

Republic of the Philippines  
Department of Labor and Employment  
National Wages and Productivity Commission  
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD-XI  
Davao City

**RULES AND REGULATIONS IMPLEMENTING WAGE ORDER NO. RTWPB-XI-05**

Pursuant to Section 14 of Wage Order No. RTWPB-XI-05, the following rules and regulations are hereby issued for the guidance and compliance of all concerned:

Chapter I  
DEFINITION OF TERMS

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

- a. "WAGE ORDER" means Wage Order No. RTWPB-XI-05, 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 XI.
- d. "REGION XI" covers the Cities of Davao, General Santos and the Provinces of Davao del Sur, Davao del Norte, Davao Oriental, South Cotabato, and Sarangani, including Surigao del Sur until such time a Regional Board for CARAGA Region is created.
- e. "DEPARTMENT" refers to the Department of Labor and Employment, Region XI.
- f. "REGIONAL MINIMUM WAGE" is the lowest wage rate fixed by law/wage order that an employer should pay his workers;
- g. "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 activity performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, but does not include the manufacturing and/or processing of sugar, coconut, abaca, tobacco, pineapple, aquatic or other farms products.
- h. "PLANTATION AGRICULTURAL WORKERS" are those agricultural workers employed in any plantation or agricultural establishment with an area of more than twenty-four (24) hectares in a locality or which employs at least twenty (20) workers. All other agricultural workers not included in the definition of plantation agricultural workers are considered non-plantation agricultural workers.
- i. "ESTABLISHMENT" refers to an economic unit which engages in one or predominantly one kind of economic activity at a single fixed location.

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

- j. "RETAIL ESTABLISHMENT" is one open to the general consuming public, principally engaged in the sale of goods to end users for personal or household use.

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

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

- l. "COTTAGE/HANDICRAFT ESTABLISHMENT" refers to any business entity or enterprise engaged in industry, agribusiness and/or services whether single proprietorship, cooperative, partnership or corporation whose total assets, inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plant and equipment are situated, must have a value not exceeding P1,500,000 (As defined in SMED Council Resolution No. 3, Series of 1995).
- m. "STOCK CORPORATION" refers to one organized for profit and issues shares of stock to its members.
- n. "NON-STOCK, NON-PROFIT CORPORATIONS" refer 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.
- o. "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.
- p. "SINGLE PROPRIETORSHIP" refers to a business unit owned and controlled by only one person.
- q. "COOPERATIVE" refers to a duly registered association of persons who voluntarily join together to form a business establishment which they themselves own, control and patronize and which may fall under any of the following types: credit, consumers, producers, marketing, service or multi-purpose.
- r. "QUASI-BANKS" refer to institutions such as investment houses and financing companies performing quasi-banking functions as defined by the Bangko Sentral ng Pilipinas.
- s. "DISTRESSED ESTABLISHMENT" refers to an establishment which meets the criteria enumerated in Section 3A of NWPC Guidelines No. 1, series of 1996 and/or Chapter III, Section 2.b of this Rules.
- t. "CAPITAL" refers to paid-up capital at the end of the last full accounting period, in the case of corporations or total invested capital at the beginning of the period under review, in the case of partnerships and single proprietorships.
- u. "FULL ACCOUNTING PERIOD" refers to a period of twelve (12) months or one year of business operations.
- 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 distributions, prior period adjustments and other capital adjustments.
- w. "WAGE DISTORTION" refers to 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 distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.

## Chapter II COVERAGE OF WAGE INCREASE

### SECTION 1. EMPLOYEES COVERED.

- a. All covered workers and employees in the private sector in Region XI regardless of their position, designation or status, and irrespective of the method by which their wages are paid, except household or domestic helpers, including family drivers and workers in the personal service of another.

- b. Establishments with duly certified and registered collective bargaining agreements with the Department, shall be governed by the provisions on wage adjustments thereof, provided that the regional minimum wage rate prescribed in the Wage Order is complied with.
- c. Private Educational Institutions shall be governed by the provisions of R.A. 6728 on wage adjustments, provided that the regional minimum wage rate prescribed in the Wage Order is complied with.

SECTION 2. AMOUNT OF MINIMUM WAGE INCREASE. Upon the effectivity of the Wage Order, the daily regional minimum wage rates of covered workers and employees in Region XI shall be increased by P10.00/day, and an additional increase of P6.00/day effective June 1, 1997. Hence, under Wage Order No. RTWPB-XI-O5, the daily regional minimum wage rates shall be as follows:

SECTOR/INDUSTRY	Davao City General Santos City			Davao Province Davao del Sur South Cotabato Sarangani Province			Davao Oriental			Surigao del Sur		
	WO 04	WO 05		WO 04	WO 05		WO 04	WO 05		WO 04	WO 05	
		Jan 3/97	Jun 1/97		Jan 3/97	Jun 1/97		Jan 3/97	Jun 1/97			
<b>NON-AGRICULTURE</b>	119.00	129.00	135.00	117.00	127.00	133.00	115.00	125.00	131.00	114.00	124.00	130.00
<b>AGRICULTURE</b>												
Plantation with annual gross sales of P5M or more	109.00	119.00	125.00	107.00	117.00	123.00	105.00	115.00	121.00	104.00	114.00	120.00
Plantation with annual gross sales of less than P5M	104.00	114.00	120.00	102.00	112.00	118.00	100.00	110.00	116.00	99.00	109.00	115.00
Non-Plantation	88.50	98.50	104.50	86.50	96.50	102.50	84.50	94.50	100.50	83.50	93.50	99.50
<b>COTTAGE/HANDICRAFT</b>												
Employing more than 30 workers	97.00	107.00	113.00	95.00	105.00	111.00	93.50	103.50	109.00	92.00	102.00	108.00
Employing not more than 30 workers	95.00	105.00	111.00	93.00	103.00	109.00	91.00	101.00	107.00	90.00	100.00	106.00
<b>PRIVATE HOSPITALS</b>	115.00	125.00	131.00	113.00	123.00	129.00	111.00	121.00	127.00	110.00	120.00	126.00
<b>RETAIL/SERVICE</b>												
Cities w/ population of more than 150,000												
Employing more than 15 workers	119.00	129.00	135.00	117.00	127.00	133.00	115.00	125.00	131.00	114.00	124.00	130.00
Employing 11 to 15 workers	115.00	125.00	131.00	113.00	123.00	129.00	111.00	121.00	127.00	110.00	120.00	126.00
Employing not more than 10 workers	88.00	98.00	104.00	86.00	96.00	102.00	84.00	94.00	100.00	83.00	93.00	99.00
Municipalities/Cities with population of not more Than 150,000												
Employing more than 10 workers	115.00	125.00	131.00	113.00	123.00	129.00	111.00	121.00	127.00	110.00	120.00	126.00
Employing not more than 10 workers	88.00	98.00	104.00	86.00	96.00	102.00	84.00	94.00	100.00	83.00	93.00	99.00
<b>SUGAR</b>												
Mills (P91.33 for mills that have integrated into the basic wage the P10.00 COLA under LOI 1016)	121.00	131.00	137.00	119.00	129.00	135.00	117.00	127.00	133.00	116.00	126.00	132.00
Agriculture												
Plantation w/ annual gross sales of P5M or more	103.50	113.50	119.50	101.50	111.50	117.50	99.50	109.50	115.50	98.50	108.50	114.50
Plantation w/ annual gross sales of less than P5M	98.50	108.50	114.50	96.50	106.50	112.50	94.50	104.50	110.50	93.50	103.50	109.50
Non-Plantation	88.50	98.50	104.50	86.50	96.50	102.50	84.50	94.50	100.50	83.50	93.50	99.50
<b>BUSINESS ENTERPRISES W/ CAPITALIZATION OF NOT MORE THAN P500,000 &amp; EMPLOYING NOT MORE THAN 20 WORKERS</b>												
<b>NON-AGRICULTURE</b>	109.00	119.00	125.00	107.00	117.00	123.00	105.00	115.00	121.00	104.00	114.00	120.00
<b>AGRICULTURE PLANTATION</b>												
Products other than Sugar	99.00	109.00	115.00	97.00	107.00	113.00	95.00	105.00	111.00	94.00	104.00	110.00
Sugar	93.50	103.50	109.50	91.50	101.50	107.50	89.50	99.50	105.50	88.50	98.50	104.50
<b>PRIVATE HOSPITALS</b>	105.00	115.00	121.00	103.00	113.00	119.00	101.00	111.00	117.00	100.00	110.00	116.00
<b>RETAIL/SERVICE</b>												
Cities w/ population of more than 500,000												
Employing more than 15 workers	109.00	119.00	125.00	107.00	117.00	123.00	105.00	115.00	121.00	104.00	114.00	120.00
Employing 11 to 15 workers	105.00	115.00	121.00	103.00	113.00	119.00	101.00	111.00	117.00	100.00	110.00	116.00
Municipalities/Cities with population of not more P150,000												
Employing more than 10 workers	105.00	115.00	121.00	103.00	113.00	119.00	101.00	111.00	117.00	100.00	110.00	116.00

SECTION 3. FORMULA. In determining the Equivalent Monthly Minimum Wage Rate -- without prejudice to existing company practices, agreements or policies -- the following formula, as provided in Department Order No. 40, S. 1994, is recommended:

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

$$\begin{array}{l} \text{Equivalent} \\ \text{Monthly } \} \\ \text{Rate } \} \end{array} = \frac{\text{Applicable Daily Wage Rate (ADR)} \times 391.5 \text{ days}}{12}$$

where 391.5 days

302	days = Ordinary Working Days
18	days = 9 Regular Holidays x 200%
2.6	days = 1 Regular Holiday falling on last Sunday of August x 200% + ( 30 % of 200% )
66.3	days = 51 Rest Days x 130%
<u>2.6</u>	days = 2 Special Days x 130%
391.5	days = Total Equivalent Number of Days

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

$$\text{EMR} = \frac{\text{ADR} \times 365 \text{ days}}{12}$$

where 365 days

302	days = Ordinary Working Days
51	days = Rest Days
10	days = Regular Holidays
<u>2</u>	days = Special Days
365	days = Total Equivalent Number of Days

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

$$\text{EMR} = \frac{\text{ADR} \times 314.6 \text{ days}}{12}$$

where 314.6 days

302	days = Ordinary Working Days
10	days = Regular Holidays
<u>2.6</u>	days = 2 Special Days (if worked is equivalent to 2.6 days) x 130%
314.6	days = Total Equivalent Number of Days

- d. For those who do not work and are not considered paid on Saturdays and Sundays or Rest Days:

$$\text{EMR} = \frac{\text{ADR} \times 262.60 \text{ days}}{12}$$

where 262.6 days

250	days = Ordinary Working Days
10	days = Regular Holidays
<u>2.6</u>	days = 2 Special Days (if worked is equivalent to 2.6 days) x 130%
262.6	days = Total Equivalent Number of Days

SECTION 4. WORKERS PAID BY RESULTS. All workers paid by results, including those paid on piecework, takay, pakyaw, or task basis, shall be entitled to the prescribed minimum wage adjustment for eight (8) hours of work a day, or a proportion thereof for working less than eight (8) hours.

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

- Amount of increase in AMW (which is the applicable minimum wage rate) ? previous AMW x 100 = % increase.
- Existing rate/piece x % increase = increase in rate/piece.
- Existing rate/piece + increase in rate/piece = adjusted rate/piece.

The wage rates of 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 5. APPLICATION TO CONTRACTORS. In the case of contracts for construction projects, security, janitorial and similar services, the prescribed minimum wage adjustment shall be borne by the principals or clients of the construction/service contractors and contracts shall be deemed amended accordingly.

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

SECTION 6. APPLICATION TO PRIVATE EDUCATIONAL INSTITUTIONS. The increase prescribed under the Wage Order shall apply to all workers and employees entitled to the same in private educational institutions as soon as they have increased or are granted authority to increase their tuition fees during school year 1997-98. Otherwise, such increase shall be so applicable not later than the opening of the next school year beginning 1998.

### Chapter III EXEMPTION

SECTION 1. EXEMPTIONS. The following categories of establishments may be exempted from complying with the Wage Order upon proper application with and as determined by the Regional Board, in accordance with applicable criteria on exemption as provided in NWPC Guidelines No. 01, Series of 1996 and/or this Rules:

- a. Retail or service establishments regularly employing not more than TEN (10) employees.
- b. Distressed establishments.

SECTION 2. CRITERIA FOR EXEMPTION. The following criteria shall be used to determine whether the applicant/establishment is qualified for exemption :

- a. For Retail/Service Establishments Regularly Employing Not More Than Ten (10) Employees :
  - (1) It is principally 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. For Distressed Establishments
  - (1) For Stock Corporations/Cooperatives
    - (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
    - (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
    - (a) Single proprietorships/partnerships operating for at least two (2) years may be granted exemption:
      - (a.1) When the net accumulated losses for the last two (2) full accounting periods and interim period, if any, preceding the effectivity of the Wage Order amounts to 20% or more of the total invested capital at the beginning of the period under review; or
      - (a.2) When an establishments registers capital deficiency i.e., negative net worth as of the last full accounting period and interim period, if any, immediately preceding the effectivity of the Wage Order.
    - (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 amounts to 20% or more of the total invested capital at the beginning of the period under review.
  - (3) For Non-Stock, Non-Profit Organizations
    - (a) Non-stock, non-profit organizations operating for at least two (2) years may be granted exemption:
      - (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 amounts to 20% or more of the fund balance/members' contribution at the beginning of the period under review; or

- (a.2) 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 Wage Order.
- (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 amounts to 20% or more of the fund balance/members' contribution at the beginning of the period under review.
- (4) For Banks and Quasi-Banks
  - (a) Under receivership/liquidation. When there is a certification from Bangko Sentral ng Pilipinas that it is under receivership or liquidation as provided in Section 30 or R.A. 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.1 of NWPC Guidelines No. 01, Series of 1996 or Chapter III, Section 2.b (1) of this Rules.

### SECTION 3. PROCEDURES ON EXEMPTION.

a. Application for Exemption. Within sixty (60) days from publication of this Rules, applications for exemption shall be filed in three (3) legible copies with the Regional Board by the owner/manager or duly authorized representative of an establishment, in person or by registered mail. The date of mailing shall be deemed the date of filing.

Applications shall be under oath and accompanied by complete supporting documents as enumerated under Section 4 of NWPC Guidelines No. 01, Series of 1996, and/or Chapter III, Section 3.b of this Rules. In the case of an application with incomplete supporting documents, the applicant shall be notified to complete the same within ten (10) days from receipt of the notice; otherwise, the application shall be dismissed.

b. Documents Required. The following supporting documents shall be submitted together with the application:

- (1) 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.
- (2) For Distressed Establishments
  - (2.a) For corporations, cooperatives, single proprietorships, partnerships, non-stock, non-profit organizations
    - (2.a.1) 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.
    - (2.a.2) 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.b) For Banks and Quasi-Banks
    - (2.b.1) Certification from Bangko Sentral ng Pilipinas that it is under receivership/liquidation.
- (3) For Retail/Service Establishments Employing not more than Ten (10) Workers.
  - (3.a) Affidavit from employer stating that it is a retail/service establishment and it is regularly employing not more than ten (1) workers for at least six (6) months in any calendar year;

(3.b) Business permit for the current year from the appropriate government agency.

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

c. Opposition. Any worker or, if unionized, the union in the applicant establishments, may file with the Regional Board within fifteen (15) days from receipt of the notice of the filing of the application, an opposition to the application for exemption stating the reasons why the same should not be approved, furnishing the applicant a copy thereof. The fifteen (15) day period shall run only upon receipt of complete supporting documents. The opposition shall be in three (3) legible copies, under oath and accompanied by pertinent documents, if any.

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

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

e. Appeal to the Commission

(1) Any party aggrieved by the decision of the Regional Board may file an appeal to the Commission, through the board, in two (2) legible copies, not later than ten (10) days from date of receipt of the decision.

The Appeal, with proof of service to the other 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 thereof.

The appeal shall not be deemed perfected if it is filed with any office or entity other than the Regional Board.

(2) An appeal may be filed on the following grounds:

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

(3) The appellee may file with the Regional Board his reply or opposition to the appeal within ten (10) days from receipt of the appeal. Failure of the appellee to file his reply or opposition shall be construed as waiver on his part to file the same.

(4) Within five (5) days upon receipt of the reply or opposition of the appellee or after the expiration of the period to file the same, the entire records of the case which shall be consecutively numbered, shall be transmitted by the Regional Board to the Commission.

SECTION 4. APPLICATIONS FOR BRANCHES/DIVISIONS. Where the subject applicant, be it a corporation, partnership or single proprietorship requests for exemption for a particular branch/division not separately registered and licensed, the consolidated audited financial statements of the establishment shall be used as the basis for determining the distressed condition.

SECTION 5. ACTION ON APPLICATION FOR EXEMPTION. Upon receipt of an application with complete documents, the Regional Board shall take the following steps :

a. Notify the Department having jurisdiction over the workplace of the pendency of the application requesting that action on any complaint for non-compliance with the Wage Order be deferred pending resolution of the application by the Regional Board.

b. Request the Department to conduct ocular inspection, if necessary, of establishments applying for exemption to verify number of workers, nature of business and other relevant information.

c. Act and decide on the application for exemption with complete documents, as much as practicable, within forty-five (45) days from the date of filing. In case of contested application, the Regional Board may conduct conciliation or call hearings thereon.

d. Transmit the decision of the Regional Board to the applicant establishment, the workers or president of the union, if any, and the Commission, for their information; and the Department, for their implementation/enforcement.

The Regional Board may create a Special Committee with one representative from each sector to expedite processing of applications for exemption.

#### SECTION 6. EXTENT AND DURATION OF EXEMPTION.

a. A full exemption of one (1) year shall be granted to establishments that meet the applicable criteria for exemption under Section 3 of NWPC Guidelines No. 01, Series of 1996 and/or Chapter III, Section 2 of this Rules.

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 as follows:

(1) For corporations/cooperatives. When deficit as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Wage Order amounts to less than 20% of the paid-up capital of the same period.

(2) For single proprietorships/partnerships. When the net accumulated losses for the period under review amounts to at least 15% but less than 20% of the total invested capital at the beginning of the period under review.

(3) Non-stock Non-profit organizations. When the net accumulated losses for the period under review preceding the effectivity of the Wage Order amounts to at least 15% but less than 20% of the fund balance/members' contribution at the beginning of the period under review.

b. Any exemption granted under this Rules shall not extend beyond one (1) year from the effectivity of the Wage Order.

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

SECTION 7. EFFECT OF DISAPPROVED APPLICATION. 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 Wage Order retroactive to the date of effectivity of the Wage Order plus simple interest of one percent (1%) per month.

### Chapter IV GENERAL PROVISIONS

SECTION 1. BASIS FOR MINIMUM WAGE RATES. The minimum wage rates as adjusted by the Wage Order shall be for the normal working hours, which shall not exceed eight (8) hours of work a day.

SECTION 2. WAGE DISTORTION. Where the application of the wage increase provided under the Wage Order results in a distortion in the wage structure within an establishment, the employer and the union shall negotiate to correct the distortion. Any dispute arising from wage distortions shall be resolved through the grievance procedure under the Collective Bargaining Agreement and, if it remains unresolved, it shall be decided 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 as prescribed by law.

In case 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 within the period prescribed by law, shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC).

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

SECTION 3. COMPLAINTS FOR NON-COMPLIANCE. Complaints for non-compliance with the wage increase provided in the Wage Order shall be filed with the Department and shall be the subject of enforcement proceedings under Art. 128/129 of the Labor Code, as amended.

SECTION 4. CONDUCT OF INSPECTION BY THE DEPARTMENT. The Department shall conduct inspection of establishments, as often as necessary, to determine whether workers are paid the prescribed minimum wage under the Wage Order. In the conduct of inspection in unionized companies, the Department inspectors shall be accompanied by the President or other responsible officer of the recognized bargaining unit. In 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 to testify on the same if he does not concur with the findings of the Department Inspector.

SECTION 5. NON-DIMINUTION OF BENEFITS. Nothing in the Wage Order and this Rules shall be construed as authorizing the reduction of any existing wage rates, allowances and benefits under existing laws, decrees, issuances, executive orders and/or under any contract or agreements between workers and employers.

SECTION 6. PENAL PROVISION. Any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay the prescribed increase under the Wage Order shall be subject to the penalties provided for in R.A. 8188.

SECTION 7. PROHIBITION AGAINST INJUNCTION. No preliminary injunction or temporary restraining order may be issued by any court, tribunal or other entity against the Wage Order or any proceedings before this Regional Board.

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

SECTION 9. SEPARABILITY CLAUSE. If, for any reason, any section or provision of this Rules is declared null and void, no other section, provision, or part thereof shall be affected and the same shall remain in full force and effect.

SECTION 10. EFFECTIVITY. This Rules shall take effect January 03, 1997.

Done in Davao City, Philippines, this 16th day of December, 1996.

(SGD) MR. JORGE G. ALEGARBES  
Labor Representative  
Member, RTWPB-XI

(SGD) MS. VIRGINIA T. CAMUS  
Labor Representative  
Member, RTWPB-XI

*I refused to sign*  
MR. RULFO V. ASIS  
Management Representative  
Member, RTWPB-XI

*I dissent as to the increase of the floor wage.*  
(SGD) ATTY. BIENVENIDO D. CARIAGA  
Management Representative  
Member, RTWPB-XI

(SGD) ENGR. MERLY M. CRUZ  
DTI-XI Regional Director  
RTWPB-XI Vice Chairman

(SGD) DIR. SANTIAGO G. ENGINCO, JR.  
NEDA-XI Regional Director  
RTWPB-XI Vice Chairman

(SGD) DIR. MA. BRENDA L. VILLAFUERTE  
DOLE-XI Regional Director  
RTWPB-XI Board Chairman

Approved this 8th day of May 1997 subject to the notation below.

(SGD) LEONARDO A. QUISUMBING  
Secretary

*Notation to the Rules Implementing Wage Order No. RTWPB-XI-05*

The table of Minimum Wage Rates under Section 2, Chapter II shall reflect the correct effectivity date of 01 January 1997, instead of January 03, 1997 to be consistent with the effectivity of the wage increase provided in Section 1 of the Wage Order.

Republic of the Philippines  
Department of Labor and Employment  
National Wages and Productivity Commission  
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD-XI  
Davao City

**AMENDED WAGE ORDER NO. RTWPB-XI-05-B  
PROVIDING FOR DEFERMENT/EXEMPTION IN THE IMPLEMENTATION OF WAGE ORDER NO.  
RTWPB-XI-05 WITH RESPECT TO AGRI-EXPORT INDUSTRIES, PARTICULARLY THE BANANA,  
PINEAPPLE AND ASPARAGUS GROWERS/EXPORTERS.**

WHEREAS, the AGRI-EXPORT industries, particularly the banana, pineapple, and asparagus exporters, have filed formal petitions for deferment in the implementation of the new wage adjustment in RTWPB-XI-05;

WHEREAS, gathered from the public hearings conducted by this Regional Board, and from the records submitted, the petitioners who represent the bulk of the agri-export industries, particularly in the banana industry are undergoing economic difficulties due to stiff global competition;

WHEREAS, the petitioners have been and are granting substantial fringe benefits to their workers and employees;

WHEREAS, to preserve the viability of the agri-export industries who employ around 33,000 workers in Region XI, this Regional Board is persuaded that they need the support of the government;

NOW, THEREFORE, by virtue of the powers and authority vested under Republic Act 6727, otherwise known as the Wage Rationalization Act of 1989, the Regional Tripartite Wages and Productivity Board of Region XI (RTWPB-XI) hereby issues this Wage Order:

Section 1. DEFERMENT/EXEMPTION AND COVERAGE. The implementation of the new minimum wage rates provided in Wage Order No. RTWPB-XI-05 is hereby deferred/exempted with respect to the agri-export industries, specifically the individual/cooperative/association/corporate banana, pineapple, and asparagus growers/ exporters, for a period of ONE (1) year from January 1, 1997 to December 31, 1997.

Section 2. UPON PROPER APPLICATION. The establishments/entities/individual growers in the agri-export industries specifically the banana, pineapple and asparagus industries may be granted deferment/exemption from the applicability of Wage Order No. RTWPB-XI-05 upon individual application with and approval by the RTWPB-XI in accordance with the implementing rules and regulations/guidelines issued by the Regional Board for this purpose.

Section 3. NON-DIMINUTION OF BENEFITS. Nothing in this Wage Order shall be construed as authorizing the reduction of any existing wage rates, allowance or other benefits under existing laws, decrees, issuances, executive orders and/or under any contract or agreements between workers and employers.

Section 4. PROHIBITION AGAINST INJUNCTION. No preliminary or permanent injunction or temporary restraining order may be issued by any court, tribunal or other entity against this Wage Order or any proceedings before this Regional Board.

Section 5. SEPARABILITY CLAUSE. If any provision or part of this Wage Order is declared unconstitutional or illegal, the other provisions or parts shall remain valid.

Section 6. IMPLEMENTING RULES AND REGULATIONS. This Regional Board shall promulgate the necessary rules and regulations to implement the provisions of this Wage Order.

Section 7. EFFECTIVITY. This Wage Order shall take effect FIFTEEN (15) days following its complete publication in at least one (1) newspaper of general circulation in Region- XI.

APPROVED, Aril 6, 1998, Davao City, Philippines.

*Dissenting Opinion:  
We vote against the sweeping deferment/exemption of  
agri-export industry. It is outside the NWPC Revised*

*Guidelines on Exemption. The decision of the majority is an ultra vires act.*

(SGD) MR. JORGE G. ALEGARBES  
Labor Representative

(SGD) MRS. VIRGINIA.T. CAMUS  
Labor Representative

(SGD) MR. RULFO V. ASIS  
Management Representative

(SGD) ATTY. BIENVENIDO D. CARIAGA  
Management Representative

(SGD) ENGR. MERLY M. CRUZ  
DTI-XI, Regional Director  
Vice- Chairman

(SGD) DIR. SANTIAGO G. ENGINCO  
NEDA-XI Regional Director  
Vice- Chairman

(SGD) ATTY. BARTOLOME C. AMOGUIS  
DOLE-XI, Regional Chairman,  
Board Chairman

Republic of the Philippines  
Department of Labor and Employment  
National Wages and Productivity Commission  
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD-XI  
Davao City

**RULES AND REGULATIONS IMPLEMENTING WAGE ORDER NO. RTWPB-XI-05-B**

Pursuant to Section 6 of the subject Wage Order and Section 5, Chapter IV of the NWPC Guidelines No. 001-95 on the Revised Rules of Procedure on Minimum Wage Fixing, the following rules and regulations implementing Wage Order No. RTWPB-XI-05-B are hereby issued for the guidance and compliance of all concerned.

Chapter I  
DEFINITION OF TERMS

SECTION 1. DEFINITION OF TERMS: As used in this Rules,

- a) WAGE ORDER means Wage Order No. RTWPB-XI-05-B promulgated by this Regional Board pursuant to its wage-fixing authority.
- b) WAGE ORDER NO. RTWPB-XI-05 refers to Wage Order mandating an increase of P10.00/day and an additional increase of P 6.00/day effective June 1,1997 of the daily regional minimum wage rates of covered workers and employees in Region XI.
- c) REGIONAL BOARD/RTWPB-XI means Regional Tripartite Wages and Productivity Board of Region XI.
- d) REGION XI covers the cities of Davao, General Santos, and the Provinces of Davao del Sur, Davao del Norte, Davao Oriental, South Cotabato, Sarangani, Sultan Kudarat including Surigao del Sur until such time a Regional Board for CARAGA Region is created.
- e) AGRI-EXPORT INDUSTRIES for purposes of this Wage Order refer to individuals, cooperatives, associations, corporations or entities duly organized and existing under the laws of the Philippines, directly or indirectly engaged in the agricultural production and/or exportation of bananas, pineapple, and asparagus.
- f) ESTABLISHMENT refers to an economic unit which engages in one or predominantly one kind of economic activity at a single fixed location.
- g) CORPORATE GROWERS refer to corporations who are directly or indirectly engaged in the agricultural production and/or exportation of bananas, pineapple, and asparagus and have contract relations with the individual and cooperative growers.
- h) COOPERATIVE GROWERS refer to CARP beneficiaries who have grouped into a cooperative engaged in the agricultural production of bananas, pineapple and asparagus with a single contract to buy and sell with the agri-exporting firms.
- i) AGRARIAN REFORM BENEFICIARIES ASSOCIATION GROWERS refer to CARP beneficiaries who have grouped themselves into an association registered with SEC/CDA and are engaged in the agricultural production of bananas, pineapple, and asparagus with a single contract to buy and sell with the agri-exporting firms.
- j) INDIVIDUAL GROWERS refer to owners/possessors/lessees of land engaged in the agricultural production of bananas, pineapple and asparagus with a contract to buy and sell with the agri-exporting firms.
- k) AGRICULTURAL PRODUCTION refers to the farming in all its branches and among others, includes the cultivation, tillage of the soil, planting, growing, harvesting and packaging of agricultural commodities, specifically bananas, pineapples and asparagus.

- l) AGRI-EXPORTING FIRMS for purposes of this Wage Order refer to individuals, corporations or entities duly organized and existing under Philippine laws which actually and directly/indirectly engaged in the agricultural production and/or exportation of bananas, pineapple and asparagus.
- m) FORWARD CONTRACTS refer to any written agreement entered into by an agri-exporting firm as defined herein and its foreign buyer or principal prior to the effectivity of Wage Order No. RTWPB-XI-05.
- n) BUYER/PRINCIPAL- any individual, corporation or entity with an existing contract for the importation/exportation of banana, pineapple, and asparagus produced by an agri-exporting firm.
- o) DEFERMENT/EXEMPTION means that Wage Order No. RTWPB-XI-05 mandating for a minimum wage adjustment of P16.00 will not be implemented in the agri-export industries as herein defined for ONE (1) year effective January 1, 1997 to December 31, 1997 upon individual applications with and approval by RTWPB -XI in accordance with the rules and regulations issued by the Regional Board. However, these agri-export industries will start implementing the wage adjustment provided in Wage Order no. RTWPB-XI-05 effective January 1, 1998.

## Chapter II COVERAGE OF WAGE ORDER

Section 1. EMPLOYERS COVERED AND DURATION OF COVERAGE. The following categories of employers belonging to the Agri-export industries as defined in par(e) Section I, Chapter 1 shall be covered by the one (1) year deferment/exemption from January 1, 1997 to December 31, 1997 from the coverage/implementation of Wage Order No. RTWPB-XI-05, to wit:

- a) Corporate Growers
- b) Cooperative Growers
- c) Agrarian Reform Beneficiaries Association Growers
- d) Individual Growers

## CHAPTER III PROCEDURE AND CRITERIA FOR DEFERMENT/EXEMPTION

### SECTION 1. PROCEDURES ON DEFERMENT/EXEMPTION

#### A. Filing of Application

- 1. An application, in three (3) legible copies may be filed with the Regional Board by the owner/manager or duly authorized representative of an establishment, in person or by registered mail. The date of mailing shall be deemed the date of filing.
- 2. Applications shall be filed not later than sixty (60) days from publication of the approved implementing rules of the Wage Order.
- 3. The application shall be under oath and accompanied by complete supporting documents as enumerated under sub-section B hereof. In the case of an application with incomplete supporting documents, the applicant shall be notified to complete the same within ten (10) days from receipt of the notice; otherwise, the application shall be dismissed.

#### B. DOCUMENTS REQUIRED. The following supporting documents shall be submitted together with the application.

- 1. Proof of notice of filing of the application to the President of the union/contracting party if one is organized in the establishment.

If there is no union, a copy of the 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.

- 2. The following are required from the employer :

- A. For Corporate Growers
1. Affidavit stating the following information :
    - a) That they are engaged in the agricultural production and/or exportation of banana, pineapple and asparagus;
    - b) List of the latest forward contracts/MOA/Bill of Lading/commercial documents entered into and must be effective prior to January 1, 1997 stating the following information among others:
      - i) name of foreign buyers or principals and addresses;
      - ii) date of contracts;
      - iii) delivery or shipping dates;
      - iv) amount and volume of orders per statement of accounts issued by the buyer/proof of sale.
  2. Certified true copies of the latest forward contracts/MOA/Bill of Lading/commercial document effective prior to January 1, 1997;
  3. Registration from the Securities and Exchange Commission;
  4. Audited financial statements (together with the Auditor's opinion and the notes thereto ) for the last two (2) full accounting periods and interim period, if any, preceding the effectivity of the Wage Order filed with and stamped "received" by the BIR/SEC;
  5. List of employees/workers for the period from January 1 - December 31, 1997 and their corresponding daily/monthly wages.
- B. For Cooperative And Agrarian Reform Beneficiaries Association Growers
1. Affidavit stating the following information:
    - a) That they are engaged in the agricultural production and/or exportation of banana, pineapple and asparagus;
    - b) List of the latest contracts to buy and sell/MOA entered into and must be effective prior to January 1, 1997 stating the following information among others:
      - i) name of buyers or principals and addresses;
      - ii) date of contracts;
      - iii) amount and volume of orders per statement of accounts issued by the buyer/proof of sale.
  2. Certified true copies of the latest contract to buy and sell/MOA effective prior to January 1, 1997;
  3. Registration from the Cooperative Development Authority/Securities and Exchange Commission;
  - ~~3.4.~~ Audited financial statements (together with the Auditor's opinion and the notes thereto) for the last two (2) full accounting periods and interim period, if any, preceding the effectivity of the Wage Order filed with and stamped "received" by the BIR/CDA/SEC;
  - ~~4.5.~~ List of workers (members and non-members) for the period January 1 - December 31, 1997 and their corresponding daily/monthly wages.
- C. For Individual Growers
1. Affidavit stating the following information:
    - a) That they are engaged in the agricultural production and/or exportation of bananas, pineapple and asparagus;
    - b) List of the latest contracts to buy and sell/MOA entered into and must be effective prior to January 1, 1997 stating the following information among others:
      - i) name of buyers or principals and addresses;
      - ii) date of contracts;
      - iii) amount and volume of orders per statement of accounts issued by the buyer/proof of sale.
  2. Certified true copies of the latest contract to buy and sell/MOA effective prior to January 1, 1997;
  3. Statement of Operation/Income Statement under oath or stamped "received" by the BIR for the last two (2) full accounting periods and interim period, if any, preceding the effectivity of the Wage Order;
  4. List of workers for the period January 1 - December 31, 1997 and their corresponding daily/monthly wages.

Section 2. CRITERIA FOR DEFERMENT/EXEMPTION. The following criteria shall be used to determine whether the applicant is qualified for deferment/exemption.

A. For Corporate Growers

1. The applicant must have the latest forward contracts/MOA/Bill of Lading/commercial documents executed prior to January 1, 1997;
2. The applicant must be engaged in the agricultural production/and or exportation of banana, pineapple and asparagus;
3. The applicant must be directly/indirectly exporting or selling:
  - i) to other export producers who utilize said products/produce as direct inputs in products subsequently manufactured or processed by them and thereafter exported; or
  - ii) to foreign buyers and foreign principals.
4. 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
5. 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.

B. For Cooperative And Agrarian Reform Beneficiaries Association Growers

1. The applicant must have the latest contract to buy and sell/MOA executed prior to January I, 1997;
2. The applicant must be engaged in the agricultural production and/or exportation of banana, pineapple and asparagus;
3. The applicant must be directly/indirectly selling:
  - i) to an agri-exporting firm that subsequently exports the said produce; or
  - ii) to other export producers who utilize said products/produce as direct inputs in products subsequently manufactured or processed by them and thereafter exported.
4. When deficit as of the 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
5. 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.

C. For Individual Growers

1. The applicant must have the latest contract to buy and sell/MOA with an agri-exporting firm executed prior to January 1, 1997;
2. The applicant must be engaged in the agricultural production of banana, pineapple and asparagus;
3. The applicant must be directly selling:
  - i) to an agri-exporting firm that subsequently exports the said produce; or
  - ii) to other export producers who utilize said products /produce as direct inputs in products subsequently manufactured or processed by them and thereafter exported.
4. When an individual grower registers net accumulated losses for the last two (2) full accounting period and interim period, if any, preceding the effectivity of the Wage Order.

SECTION 4. EFFECT OF DISAPPROVED APPLICATION. In the event that the application for deferment/exemption is not approved for failure to comply with these Implementing Rules, covered employers shall pay the mandated wage increase provided for under Wage Order RTWPB-XI-05 retroactive to the date of effectivity of the Wage Order plus interest of one percent (1%) per month.

Chapter IV  
GENERAL PROVISIONS

SECTION 1. NON-DIMINUTION OF BENEFITS. Nothing in this Wage Order and this Rules shall be construed as authorizing the reduction of any existing wage rates, allowances, and benefits under existing laws, decrees, issuances, executive orders and/or under any contract or agreements between workers and employers.

SECTION 2. PROHIBITION AGAINST INJUNCTION. No preliminary injunction or temporary restraining order may be issued by any court, tribunal or other entity against the Wage Order or any proceedings before this Regional Board.

SECTION 3. EFFECTS ON OTHER ISSUANCES. The provision of existing laws and decrees on wages and their implementing rules and regulations and issuances not otherwise repealed, modified or inconsistent with the Wage Order and this Rules shall continue to have full force and effect.

SECTION 4. SEPARABILITY CLAUSE. If for any reason, any section or provision of this Rules is declared null and void, no other section, provision or part thereof shall be affected and the same shall remain in full force and effect.

SECTION 5. EFFECTIVITY. These Rules shall take effect January 1, 1997.

Done in the City of Davao, May 19, 1998 Philippines.

(SGD) MR. RULFO V. ASIS  
Management Representative

(SGD) ATTY. BIENVENIDO D. CARIAGA  
Management Representative

(SGD) MR. JORGE G. ALEGARBES  
Labor Representative

(SGD) MS. VIRGINIA T. CAMUS  
Labor Representative

(SGD) ENGR. MERLY M. CRUZ  
DTI-XI, Regional Director  
Vice- Chairman

(SGD) MS. AURORA R. PELAYO  
NEDA-XI, OIC- Regional Director  
Vice- Chairman

(SGD) DIR. BARTOLOME C. AMOGUIS  
DOLE-XI, Regional Director  
Board Chairman

Republic of the Philippines  
 Department of Labor and Employment  
 National Wages and Productivity Commission  
 REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD-XI  
 Davao City

**WAGE ORDER NO. RTWPB-XI-05-C**  
**PRESCRIBING FOR THE PROVINCE OF SULTAN KUDARAT**  
**NEW MINIMUM WAGE RATES FOR WORKERS IN THE PRIVATE SECTOR**

WHEREAS, the Regional Tripartite Wages and Productivity Board of Central Mindanao (Region XII) adjusted its minimum wage rates when it issued Wage Order No. CMR-05 on December 19, 1996 and its implementing rules and regulations;

WHEREAS, the Regional Tripartite Wages and Productivity Board of Central Mindanao (Region XII) issued Wage Order No. CMR-05-A captioned *Amending Certain Provisions of Wage Order No. CMR-05*, which among others excluded the Province of Sultan Kudarat from its coverage by virtue of R.A. 7901;

WHEREAS, the Province of Sultan Kudarat by virtue of R.A. 7901 is a component part of Region XI but was not included in the coverage of Wage Order No. RTWPB-XI-05 issued on December 17, 1996;

WHEREAS, the workers of the Province of Sultan Kudarat must be protected from the effects of a rising standard of living brought about by the series of adjustments in petroleum products, agricultural commodities, transportation fares and the like;

WHEREAS, the Regional Tripartite Wages and Productivity Board- Region XI invited to Davao City the management and labor sectors of Sultan Kudarat on August 8, 1997 for consultation regarding the issue; and on August 14, 1997 consulted with the members of the Regional Board of Region XII during a Coordinative Meeting held at Maguindanao Hotel, Davao City;

WHEREAS, the Regional Board of Region XI recognizing the need for adjusting the minimum wage rates in the Province of Sultan Kudarat at the same time taking cognizance of present development specifically House Bill No. 5446 which seeks for the return of said province to the jurisdiction of Region XII, hereby adopts Wage Order No. CMR-05 issued by RTWPB-XII for the Province of Sultan Kudarat;

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

SECTION 1. AMOUNT OF MINIMUM WAGE. Upon the effectivity of this Wage Order, the new minimum wage rates of all workers in the private sector for the Province of Sultan Kudarat effective January 9, 1997 shall be as follows:

Sector, Industry and Other Selected Indicators	Sultan Kudarat Effective January 9, 1997
Non-Agriculture *	P126.00
Agriculture	
Sugar and Rubber Plantation	104.00
Others	112.00
Retail/Service	
Employing More Than Ten Workers	123.00
Employing Not More Than Ten Workers	90.00

\* Includes private educational institutions and hospitals.

To augment the adjusted amount, the Regional Board recommends and encourages the workers and employers to improve their production and to share the gains of such produce.

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

SECTION 3. BASIS OF MINIMUM WAGE RATES. The new minimum wage rates prescribed in this Order shall be for the normal working hours, which shall not exceed eight (8) hours a day.

SECTION 4. NON-DIMINUTION OF BENEFITS. 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 under any contract or agreement between the workers and employers.

SECTION 5. CREDITABLE MONETARY BENEFITS DERIVED FROM PROFIT-SHARING OR GAIN-SHARING SCHEMES. The monetary benefits, derived from profit-sharing or productivity gain-sharing scheme as mutually agreed by the parties involved, permanently or consistently granted to the workers within one year from the effectivity of this Order and have been continuously granted even after the effectivity of this Order, shall be considered as compliance to the new minimum wage rates prescribed under this Order, but if the benefits given are less than the prescribed new minimum wage rates, the employer shall pay the difference.

In the event that the profit-sharing or gain-sharing scheme is suspended, for whatever reason, the employer shall pay the minimum wage rates prescribed under this Order during the period of suspension.

Further, if the Productivity Gain-sharing is discontinued, the employer shall pay the wage rates prescribed under this Order retroactive to the date the discontinuance of the scheme took effect.

The Regional Board shall issue Rules that specify the procedure for integrating the productivity benefits or incentives into the minimum wage subject to the approval of the Secretary of Labor and Employment.

SECTION 6. WAGE DISTORTION. Where the application of the new minimum wage rates prescribed under this Order results in wage distortion, the distortion shall be addressed through mutual agreements by the employer and its employees or their representative unions.

The Regional Board may, from time to time, issue an advisory distortion formula from which the parties may, at their own discretion, agree to adopt to resolve the distortion. The said advisory distortion formula, however, is either compulsory nor mandatory in nature.

Disputes that may arise as a result of this Order shall be resolved in accordance with Article 124 of the Labor Code, as amended.

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

SECTION 7. APPLICATION TO PRIVATE EDUCATIONAL INSTITUTIONS. For private educational institutions of all levels which determine their rate of tuition and other school fees or charges subject to guidelines issued by the Department of Education, Culture and Sports or the Commission on Higher Education (CHED) as the case may be, the new minimum wage rates in this Order shall apply for school year 1997-1998 if tuition fees are increased for said school year. If no increase in tuition fees is planned for school year 1997-1998, payment of the new minimum wage rates may be deferred but in no case will this temporary deferment be for more than one school year.

SECTION 8. APPLICATION TO CONTRACTORS. In the case of contracts for construction projects and for security, janitorial and similar services, the new minimum wage rates for covered workers shall be borne by the principals or clients of the contractor/agent and the contract shall be deemed amended accordingly.

Except for the mandated salary deductions such as withholding tax, Social Security System contributions, Medicare, and Pag-ibig contributions, no other deductions shall be made against the workers' wage rates as prescribed under this Order, unless specifically agreed by both parties.

In all cases, the principal and the contractor shall be jointly and severally liable for the compliance with the new minimum wage rates.

SECTION 9. WORKERS PAID BY RESULTS. All workers paid by results, including those who are paid on piecework, takay, pakyaw, or task basis, shall receive not less than the new minimum wage rates prescribed under this Order for the normal working hours that shall not exceed eight (8) hours a day, or a proportion of the new minimum wage rates for work of less than the normal working hours.

SECTION 10. WAGES OF SPECIAL GROUPS OF WORKERS. Wages of apprentices, learners and handicapped workers shall never be less than seventy-five percent (75%) of the new minimum wage rates prescribed under this Order.

All recognized apprenticeship and learnership agreements entered before the effectivity of this Order shall be considered as automatically modified as far as their wage clauses are concerned to reflect the new minimum wage rates prescribed under this Order.

SECTION 11. MOBILE WORKERS. The new minimum wage rates provided in this Order shall apply to workers who by the nature of their work have to travel from one city or province to another if the domicile or head office of the employer is in Region XI.

SECTION 12. BRANCH WORKERS. The minimum wage rates of workers working in branches or agencies of establishments are those applicable in the place where they are stationed.

SECTION 13. TRANSFER OF PERSONNEL. The transfer of personnel from one province or city to another or to areas outside Region XI shall not be a valid ground for the reduction of the wage rates being enjoyed by the workers before the transfer.

The workers transferred to Region XI shall be entitled to receive the new minimum wage applicable therein.

#### SECTION 14. EXEMPTIONS.

1. Automatic Exemption. Automatically exempted from the provisions of this Order are household or domestic helpers and persons in the personal service of another including family drivers.
2. Non-Automatic Exemption. Upon proper application with and as determined by the Regional Board, the following categories of establishments may be exempted from the applicability of this Order:
  - (a) Retail/Service establishments regularly employing not more than ten (10) workers;
  - (b) Distressed establishments as provided under Section 3 (A) of the NWPC Guidelines No. 01, Series of 1996;
  - (c) New Business Establishments including non-profit institutions, established within two (2) years from the effectivity of this Order based on the latest registration with the appropriate government agency such as the Securities and Exchange Commission, Department of Trade and Industry, Cooperatives Development Authority and Mayor's Office classified under any of the following:
    - i. Agricultural establishments whether plantation or non-plantation.
    - ii. Establishments with total assets after financing of five million pesos (P5,000,000.00) and below.
  - (d) Establishments adversely affected by natural calamities as provided under Section 3 (D) of the NWPC Guidelines No. 01, Series of 1996.
3. Duration and Extent of Exemption. The establishments that properly applied and are found qualified for exemptions shall be granted full exemption of one (1) year from the effectivity of this Order; except for distressed establishments which may be granted either full or partial exemption as provided under Section 7 & 8 of the NWPC Guidelines No. 01, Series of 1996.
4. Deadline of Application for Exemption. The deadline for filing of applications for exemption shall be sixty (60) days from the date of publication of the approved Rules Implementing this Order in at least one newspaper of general circulation in the region; except, however, for New Business Enterprises of which the deadline for filing of application for exemption shall be sixty (60) days from the date of registration with the appropriate government agency.
5. Effect of Application for Exemption. Whenever an application for exemption has been duly filed with the Regional Board, any action or complaint for alleged non-compliance of this Order shall be deferred pending the resolution of the application.
6. Effect of Disapproved Application for Exemption. In the event that the application for exemption is disapproved, the workers shall be paid the new minimum wage rates due them as provided for under this Order retroactive to the date of effectivity of this Order plus simple interest of one percent (1%) per month.

7. **Workers' Opposition.** Any worker or, if unionized, the union in the applicant establishment, may file with the Regional Board within fifteen (15) days from receipt of the notice of the application, an opposition to the application for exemption stating the reasons why the application should not be approved, furnishing the applicant a copy thereof. The fifteen (15) day period shall run only upon receipt of the complete supporting documents. The opposition shall be in three (3) legible copies, under oath and accompanied by pertinent documents, if any.
8. **Motion for Reconsideration.** The aggrieved party may file with the Regional Board a motion for reconsideration of the decision on the application for exemption within ten (10) days from its receipt and shall state the particular grounds upon which the motion is based, copy furnished the other party and the DOLE Regional Office concerned.

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

9. **Appeal to the Commission.** Any party aggrieved by the decision of the Board may file an appeal to the Commission, through the Regional Board, in two (2) legible copies, not later than ten (10) days from date of receipt of the decision.

The appeal, with proof of service to the other 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 thereof.

The appeal shall not be deemed perfected if it is filed with any office or entity other than the Regional Board.

10. **Effect of Appeal to the Commission.** Whenever an appeal of disapproved application for exemption has been duly filed, any action or complaint for alleged non-compliance of this Order shall be deferred pending the resolution of the appeal.

**SECTION 15. PAYMENT OF WAGES.** Upon written petition of the majority of the workers concerned, all private establishments, companies, businesses and other entities with at least twenty-five workers and located within one kilometer radius to a commercial, savings or rural bank, shall pay the wages and other benefits of their workers through any of the banks, within the period and in the manner and form prescribed under the Labor Code, as amended.

**SECTION 16. DUTY OF BANK.** Whenever applicable and upon request of a concerned worker or union, the bank through which wages and other benefits are paid shall issue a certification of the record of payment of the wages and benefits of a particular worker or workers for a particular payroll period.

**SECTION 17. COMPLAINTS FOR NON-COMPLIANCE.** Complaints for non-compliance with the new minimum wage rates prescribed under this Order may be filed with the Regional Office of the Department of Labor and Employment having jurisdiction over the workplace and shall be subject of enforcement proceedings under Article 128 of the Labor Code, as amended, without prejudice to the criminal prosecution.

**SECTION 18. PENAL PROVISIONS.** Any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay any of the prescribed adjustments or increases in the new minimum wage rates made in accordance with this 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 as provided in R.A. 8188: provided, that any person convicted under this 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 the criminal liability imposable under this Order.

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 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 Regional Board.

SECTION 20. RULES IMPLEMENTING THIS ORDER. The Regional Board shall prepare the necessary rules to implement this Order, subject to approval of the Secretary of Labor and Employment.

SECTION 21. 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 22. EFFECTIVITY. This Order shall take effect fifteen (15) days after its publication in at least one (1) newspaper of general circulation in Region XI and Sultan Kudarat.

APPROVED, September 19, 1997, Davao City, Philippines.

(SGD) MR. RULFO V. ASIS  
Management Representative  
Member, RTWPB-XI

(SGD) ATTY. BIENVENIDO D. CARIAGA  
Management Representative  
Member, RTWPB-XI

(SGD) MR. JORGE G. ALEGARBES  
Labor Representative  
Member, RTWPB-XI

(SGD) MS. VIRGINIA T. CAMUS  
Labor Representative  
Member, RTWPB-XI

(SGD) ENGR. MERLY M. CRUZ  
Vice-Chairman  
DTI-XI Regional Director

(SGD) DIR. SANTIAGO G. ENGINCO  
Vice-Chairman  
NEDA-XI Regional Director

(SGD) DIR. MA. BRENDA L. VILLAFUERTE  
DOLE-XI, Regional Director  
RTWPB-XI, Board Chairman

Republic of the Philippines  
Department of Labor and Employment  
National Wages and Productivity Commission  
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD-XI  
Davao City

**RULES IMPLEMENTING WAGE ORDER NO. RTWPB-XI-05-C**

Pursuant to Section 5, Rule IV of the NWPC Guidelines No. 001-95, the Revised Rules of Procedure on Minimum Wage Fixing, and Section 20 of Wage Order No. RTWPB-XI-05-C, the following rules are hereby issued for guidance and compliance by all concerned:

RULE I - DEFINITION OF TERMS

SECTION 1. DEFINITION OF TERMS. As used in this Rules:

- a) "Order" means Wage Order No. RTWPB-XI-05-C;
- b) "Board" means the Regional Tripartite Wages and Productivity Board in Region XI;
- c) "Commission" means the National Wages and Productivity Commission;
- d) "Department" means the Department of Labor and Employment;
- e) "Region XI" refers to a geographical area composed of the cities of Davao, General Santos, and the provinces of Davao del Norte, Davao Oriental, South Cotabato, Sarangani, including Surigao del Sur until such time that a Regional Board for CARAGA Region is created, and Sultan Kudarat by virtue of R.A. 7901;
- f) "Secretary" refers to the Secretary of Labor and Employment;
- g) "Party" means any legitimate organization of workers or employers with substantial interest in the region, province or industry therein as determined by the Board, and who stands to be directly affected by the Board proceedings, orders, decisions or resolutions;
- h) "Wage" refers to the remuneration or earnings paid to any employee or worker, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece or commission basis, other method of calculating the same, which is payable by an employer to an employee or worker under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of board, lodging or other facilities customarily furnished by the employer to the employee or worker. "Fair and reasonable value" shall not include any profit to the employer or to any person affiliated with the employer.
- i) "Minimum Wage" is the lowest wage rate fixed by the Board that an employer should pay his employees or workers;
- j) "Basic Wage" means all remuneration or earnings paid by an employer to an employee or a worker for services rendered on normal working days and hours but does not include cost of living allowances, profit-sharing payments, 13th month pay or other monetary benefits which are not considered as part of or integrated into the regular salary of the workers on the date the Order became effective;
- k) "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 or worker 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;
- l) "Voluntary Arbitration" refers to the mode of settling labor-management disputes by which the parties select a competent, trained, and impartial person who shall decide on the merits of the case and whose decision is final, executory and unappealable;
- m) "Wage Order" refers to the Order promulgated by the Board pursuant to its wage fixing authority;

- n) "Industry" refers to a trade, businesses in similar or allied activities in which individuals are gainfully employed; and,
- o) "Establishment" refers to an economic unit which engages in one or predominantly one kind of economic activity at a single fixed location;

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

- p) "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 engages in wholesale activities loses its retail character.

- q) "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;

- r) "Distressed Establishment" refers to an establishment which meets the criteria enumerated in Section 3A of the NWPC Guidelines No. 01, Series of 1996;

NWPC Guidelines No. 01, Series of 1996 prescribes the Rules on Exemption from compliance with the prescribed wage increases/cost of living allowances granted by the Regional Tripartite Wages and Productivity Boards.

- s) "New Business Enterprises" refer to establishments, including non-profit institutions, established within 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 classified under any of the following:
  - i. Agricultural establishments whether plantation or non-plantation.
  - ii. Establishments with total assets after financing of five million pesos (P5,000,000.00) and below.

- t) "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, rubber, coconut, abaca, tobacco, pineapple, aquatic or other farm products;

- u) "Plantation Agricultural Enterprise on Sugar or Rubber" is one engaged in agriculture on sugar or rubber products. Any other agricultural enterprises whether plantation or non-plantation shall be considered as "Other Agricultural Enterprises;"

- v) "Non-Agriculture Enterprises" refer to establishments or industries regardless of employment size other than retail/service establishments, plantation agricultural enterprises on sugar or rubber, and other agricultural enterprises; and, shall include private educational institutions and hospitals;

- w) "Productivity" refers to the relation of output to input in physical and/or monetary terms;

- x) "Profit-Sharing or Gain-Sharing Scheme" refers to a program formally and mutually agreed by the workers and employers involved of which establishes the system and procedures of sharing profits or gains brought about by increased profit or improved productivity in accordance with an agreed proportion or formula;

- y) "Monetary Benefits" refer to cash incentives given to employees derived from profit-sharing or gainsharing scheme.

## RULE II - NEW MINIMUM WAGE RATES

SECTION 1. AMOUNT OF MINIMUM WAGE. Upon the effectivity of the Order, the new minimum wage rates of all covered workers in the private sector of the Province of Sultan Kudarat, according to specific sector, industry, and other selected indicators shall be as follows:

Sector, Industry and Other Selected Indicators	Sultan Kudarat Effective January 9, 1997
Non-Agriculture *	126.00
Agriculture	
Sugar and Rubber Plantation	104.00
Others	112.00
Retail/Service	
Employing More Than Ten Workers	123.00
Employing Not More Than Ten Workers	90.00

\* Includes private educational institutions and hospitals.

To augment the adjusted amount, the Board recommends and encourages the workers and employers to improve their production and to share the gains of such produce.

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

SECTION 3. BASIS OF MINIMUM WAGE RATES. The minimum wage rates prescribed under the Order shall be for the normal working hours, which shall not exceed eight (8) hours a day.

SECTION 4. SUGGESTED FORMULA IN DETERMINING THE EQUIVALENT MONTHLY MINIMUM WAGE RATES - Without prejudice to existing company practices, agreements or policies, the following formula may be used as guides in determining the equivalent monthly minimum wage rates:

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

$$\text{Equivalent Monthly Rate (EMR)} = \frac{\text{Applicable Daily Wage Rate (ADR)} \times 391.50^{2/} \text{ days}}{12}$$

Where 391.50 days:

302 days	Ordinary working days
18 days	9 regular holidays x 200%
2.60 days	1 regular holiday falling on last Sunday of August x 200% (+30% of 200%)
66.30 days	51 rest days x 130%
2.60 days	2 special days x 130%      3/
<u>391.50</u> days	Total equivalent number of days

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

$$\text{EMR} = \frac{\text{ADR} \times 365 \text{ days}}{12}$$

Where: 365 days:

302 days	Ordinary working days
51 days	Rest days
10 days	Regular Holidays
2 days	2 special days x 130%      3/
<u>365</u> Days	Total equivalent number of days

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

$$\text{EMR} = \frac{\text{ADR} \times 314.6 \text{ days}}{12}$$

Where: 314.6 days:

302 days	Ordinary working days
10 days	Regular holidays
2.60 days	2 special days (if worked) x 130%      3/
<u>314.60</u> days	Total equivalent number of days

<sup>2/</sup> Includes premium for holidays, special days and rest days

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

$$EMR = \frac{ADR \times 262.6 \text{ days}}{12}$$

Where 262.6 days:

250	Days	Ordinary working days	
10	days	Regular holidays	
2.60	days	2 special days (if worked) x 130%	3/
391.50	days	Total equivalent number of days	

*Note: For workers whose rest days fall on Sundays, the number of rest days in a year is reduced from 52 to 51 days, the last Sunday of August being regular holiday under Executive Order No. 203. For purposes of computation, said holiday, although still a rest day for them, is included in the ten regular holidays. For workers whose rest days is 52 days, as there are 52 weeks in a year.*

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

### RULE III

#### NON-DIMINUTION OF BENEFITS, CREDITABLE MONETARY BENEFITS, AND WAGE DISTORTION

**SECTION 1. NON-DIMINUTION OF BENEFITS.** Nothing in the 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 under any contract or agreement between the workers and employers.

**SECTION 2. CREDITABLE MONETARY BENEFITS DERIVED FROM PROFIT-SHARING OR GAIN SHARING SCHEMES.** The monetary benefits, derived from profit-sharing or productivity gain-sharing scheme as mutually agreed by the parties involved, permanently or consistently granted to the workers within one year from the effectivity of the Order and have been continuously granted even after the effectivity of the Order, shall be considered as compliance to the new minimum wage rates prescribed under the Order, but if the benefits given are less than the prescribed new minimum wage rates, the employer shall pay the difference.

In the event that the gain-sharing scheme is suspended, for whatever reason, the employer shall pay the minimum wage rates prescribed under the Order during the period of suspension.

Further, if the Productivity Gain-sharing is discontinued, the employer shall pay the wage rates prescribed under the Order retroactive to the date the discontinuance of the scheme took effect.

The Board shall issue Rules, supplemental to this Rules, that specify the procedure for integrating the productivity benefits or incentives into the minimum wage subject to the approval of the Secretary of Labor and Employment.

**SECTION 3. WAGE DISTORTION.** Where the application of the new minimum wage rates prescribed under the Order results in wage distortion, the distortion shall be addressed through mutual agreements by the employer and its employees or their representative unions.

The Board may, from time to time, issue an advisory distortion formula from which the parties may, at their own discretion, agree to adopt to resolve the distortion. The said advisory distortion formula, however, is neither compulsory nor mandatory in nature.

Disputes which may arise as a result of the Order shall be resolved in accordance with Article 124 of the Labor Code, as amended.

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

### RULE IV - APPLICATION TO SELECTED ESTABLISHMENTS, INDUSTRIES, AND GROUPS OF WORKERS

**SECTION 1. APPLICATION TO PRIVATE EDUCATIONAL INSTITUTIONS.** For private educational institutions of all levels which determine their rate of tuition and other school fees or charges subject to guidelines issued by the Department of Education, Culture and Sports or the Commission on Higher Education (CHED) as the case may be, the new minimum wage rates in the Order shall apply for school year 1997-1998 if

tuition fees are increased for said school year. If no increase in tuition fees is planned for school year 1997-1998, payment of the new minimum wage rates may be deferred but in no case will this temporary deferment be for more than one school year.

**SECTION 2. APPLICATION TO CONTRACTORS.** In the case of contracts for construction projects and for security, janitorial and similar services, the new minimum wage rates for covered workers shall be borne by the principals or clients of the contractor/agent and the contract shall be deemed amended accordingly.

Except for the mandated salary deductions such as withholding tax, Social Security System contributions, Medicare, and Pag-ibig contributions, no other deductions shall be made against the workers' wage rates as prescribed under the Order, unless specifically agreed by both parties.

In all cases, the principal and the contractor shall be jointly and severally liable for the compliance with the new minimum wage rates.

**SECTION 3. WORKERS PAID BY RESULTS.** All workers paid by results, including those who are paid on piecework, takay, pakyaw, or task basis, shall receive not less than the new minimum wage rates prescribed under the Order for the normal working hours that shall not exceed eight (8) hours a day, or a proportion of the new minimum wage rates for work of less than the normal working hours.

The new minimum wage rates for employees or workers paid by results shall be computed in accordance with the following steps:

- 1) Amount of increase in ANMW\* ? Previous AMW x 100 = % Increase;  
\* Where ANMW is the applicable new minimum wage rates.
- 2) Existing rate/piece x % increase = increase in rate/piece;
- 3) Existing rate/piece + increase in rate/piece = Adjusted rate/piece;

The wage rates of 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 4. WAGES OF SPECIAL GROUPS OF WORKERS.** Wages of apprentices, learners and handicapped workers shall never be less than seventy-five percent (75%) of the new minimum wage rates prescribed under the Order.

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

**SECTION 5. MOBILE WORKERS.** The new minimum wage rates provided in the Order shall apply to workers who by the nature of their work have to travel from one city or province to another if the domicile or head office of the employer is in Region XI.

**SECTION 6. BRANCH WORKERS.** The minimum wage rates of workers working in branches or agencies of establishments are those applicable in the place where they are stationed.

**SECTION 7. TRANSFER OF PERSONNEL.** The transfer of personnel to areas outside Region XI shall not be a valid ground for the reduction of the wage rates being enjoyed by the workers before the transfer.

The workers transferred to Region XI shall be entitled to receive the new minimum wage applicable therein.

#### RULE V - EXEMPTIONS

**SECTION 1. AUTOMATIC EXEMPTION.** Automatically exempted from the provisions of the Order are households or domestic helpers and persons in the personal service of another including family drivers.

**SECTION 2. NON-AUTOMATIC EXEMPTION.** Upon proper application with and as determined by the Board, the following categories of establishments may be exempted from the applicability of the Order:

- (a) Retail/Service establishments regularly employing not more than ten (10) workers;
- (b) Distressed establishments as provided under Section 3 (A) of the NWPC Guidelines No. 01, Series of 1996;

- (c) New Business Establishments including non-profit institutions, established within two (2) years from the effectivity of the Order based on the latest registration with the appropriate government agency such as the SEC, DTI, CDA, and Mayor's Office classified under any of the following:
  - i. Agricultural establishments whether plantation or non-plantation.
  - ii. Establishments with total assets after financing of five million pesos (P5,000,000.00) and below.
- (d) Establishments adversely affected by natural calamities as pointed under Section 3 (D) of the NWPC Guidelines No. 01, series of 1996.

SECTION 3. DURATION AND EXTENT OF EXEMPTION. The establishments that properly applied and are found qualified for exemptions shall be granted full exemption of one (1) year from the effectivity of the Order; except for distressed establishments which may be granted either full or partial exemption as provided under Section 7 & 8 of the NWPC Guidelines No. 01, Series of 1996.

SECTION 4. DEADLINE OF APPLICATION FOR EXEMPTION. The deadline for filing of applications for exemption shall be sixty (60) days from the date of publication of this Rules implementing the Order in at least one newspaper of general circulation in the region; except, however, for New Business Enterprises of which the deadline for filing of application for exemption shall be sixty (60) days from the date of registration with the appropriate government agency.

SECTION 5. EFFECT OF APPLICATION FOR EXEMPTION. Whenever an application for exemption has been duly filed with the Board, any action or complaint for alleged non-compliance of the Order shall be deferred pending the resolution of the application.

SECTION 6. EFFECT OF DISAPPROVED APPLICATION FOR EXEMPTION. In the event that the application for exemption is disapproved, the workers shall be paid the new minimum wage rates due them as provided for under the Order retroactive to the date of effectivity of the Order plus simple interest of one percent (1%) per month.

SECTION 7. WORKERS' OPPOSITION. Any worker or, if unionized, the union in the applicant establishment, may file with the Board within fifteen (15) days from receipt of the notice of the application, an opposition to the application for exemption stating the reasons why the application should not be approved, furnishing the applicant a copy thereof. The fifteen (15) day period shall run only upon receipt of the complete supporting documents. The opposition shall be in three (3) legible copies, under oath and accompanied by pertinent documents, if any.

SECTION 8. MOTION FOR RECONSIDERATION. The aggrieved party may file with the Board a motion for reconsideration of the decision on the application for exemption within ten (10) days from its receipt and shall state the particular grounds upon which the motion is based, copy furnished the other party and the DOLE Regional Office concerned.

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.

SECTION 9. APPEAL TO THE COMMISSION. Any party aggrieved by the decision of the Board may file an appeal to the Commission, through the Board, in two (2) legible copies, not later than ten (10) days from date of receipt of the decision.

The appeal, with proof of service to the other 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 thereof.

The appeal shall not be deemed perfected if it is filed with any office or entity other than the Board.

SECTION 10. EFFECT OF APPEAL TO THE COMMISSION. Whenever an appeal of disapproved application for exemption has been duly filed, any action or complaint for alleged non-compliance of the Order shall be deferred pending the resolution of the appeal.

#### RULE VI - PAYMENT OF WAGES AND DUTY OF BANK

SECTION 1. PAYMENT OF WAGES. Upon written petition of the majority of the workers concerned, all private establishments, companies, businesses and other entities with at least twenty-five workers and located within one kilometer radius to a commercial, savings or rural bank, shall pay the wages and other benefits of

their workers through any of the banks, within the period and in the manner and form prescribed under the Labor Code, as amended.

SECTION 2. DUTY OF BANK. Whenever applicable and upon request of a concerned worker or union, the bank through which wages and other benefits are paid shall issue a certification of the record of payment of the wages and benefits of a particular worker or workers for a particular payroll period.

#### RULE VII - COMPLAINTS FOR NON-COMPLIANCE AND PENAL PROVISIONS

SECTION 1. COMPLAINTS FOR NON-COMPLIANCE. Complaints for non-compliance with the new minimum wage rates prescribed under the Order may be filed with the Regional Office of the Department of Labor and Employment having jurisdiction over the workplace and shall be subject of enforcement proceedings under Article 128 of the Labor Code, as amended, without prejudice to the criminal prosecution.

SECTION 2. PENAL PROVISIONS. Any person, corporation, trust or firm, partnership, association or entity which refuses or fails to pay any of the prescribed increases or adjustments in the new minimum wage rates made in accordance with 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 as provided for in R.A. 8188: provided, that any person convicted under the 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 the criminal liability imposed under the Order.

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.

#### RULE VIII - PROHIBITION AGAINST INJUNCTION AND SEPARABILITY CLAUSE

SECTION 1. 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 2. SEPARABILITY CLAUSE. If, for any reason, any section or provision of this Rules is declared null and void, no other section, provision, or part thereof shall be affected and those shall remain in full force and effect.

#### RULE IX - EFFECTIVITY

SECTION 1. EFFECTIVITY. This Rules takes effect retroactive on January 9, 1997, the date of effectivity of Wage Order No. RTWPB-XI-05-C.

APPROVED, September 19, 1997, Davao City, Philippines.

(SGD) MR. RULFO V. ASIS  
Management Representative  
Member, RTWPB-XI

*(Dissenting)*  
(SGD) MR. JORGE G. ALEGARBES  
Labor Representative  
Member, RTWPB-XI

(SGD) ENGR. MERLY M. CRUZ  
Vice-Chairman  
DTI-XI Regional Director

(SGD) ATTY. BIENVENIDO D. CARIAGA  
Management Representative  
Member, RTWPB-XI

*(Dissenting)*  
(SGD) MS. VIRGINIA T. CAMUS  
Labor Representative  
Member, RTWPB-XI

(SGD) DIR. SANTIAGO G. ENGINCO  
Vice-Chairman  
NEDA-XI Regional Director

(SGD) DIR. MA. BRENDA L. VILLAFUERTE

DOLE-XI, Regional Director  
RTWPB-XI, Board Chairman

Approved this 12<sup>th</sup> day of November, 1997.

(SGD) LEONARDO A. QUISUMBING  
Secretary