

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

(SGD) DIR. SANTIAGO G. ENGINCO
NEDA-XI Regional Director
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(SGD) ATTY. BARTOLOME C. AMOGUIS
DOLE-XI, Regional Chairman,
Board Chairman

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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
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