

**WAGE ORDER NO. NCR-09
PROVIDING AN EMERGENCY COST OF LIVING ALLOWANCE
IN THE NATIONAL CAPITAL REGION**

WHEREAS, the Regional Tripartite Wages and Productivity Board-National Capital Region, has its mandate to conduct continuing studies of wage rates, unemployment and other conditions in the region;

WHEREAS, the Board views the need to provide workers with immediate relief through the grant of Emergency Cost of Living Allowance to enable them to cope with increases in the cost of living, without impairing the viability of business and industry;

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 - National Capital Region hereby issues this Wage Order:

Section 1. Upon the effectivity of this Wage Order, private sector workers and employees in the National Capital Region receiving daily wage rates of TWO HUNDRED FIFTY PESOS (P250.00) up to TWO HUNDRED NINETY PESOS (P290.00) shall receive an emergency cost of living allowance in the amount of THIRTY PESOS (P30.00) per day payable in two (2) tranches as follows:

Amount of ECOLA	Effectivity
P15.00	05 Nov 2001
P15.00	01 Feb 2002

Section 2. Workers in the following sectors/industries receiving the prescribed minimum wage rate of TWO HUNDRED THIRTEEN PESOS (P 213.00) per day shall receive an emergency cost of living allowance in the amount of THIRTY PESOS (P 30.00) to be given in two tranches:

Dates of Effectivity	Dates of Effectivity	05 Nov 2001	01 Feb 2002
a.1	Agriculture - Plantation - Non-Plantation	P 15.00	P 15.00
a.2	Private Hospitals with bed capacity of 100 or less	P 15.00	P15.00
a.3	Retail/Service Establishments regularly employing 15 workers or less	P 15.00	P 15.00
a.4	Manufacturing establishments regularly employing less than 10 workers	P 15.00	P 15.00

Section 3. The THIRTY PESO (P 30.00) daily emergency cost of living allowance prescribed under this Order shall apply to all wage earners in the private sector in the Region mentioned in Sections 1 and 2 of this Order, regardless of their position, designation or status and irrespective of the method by which their wages are paid.

Section 4. The provisions of this Order shall not cover household or domestic helpers and persons in the personal service of another, including family drivers.

Section 5. In the case of private educational institutions, the share of covered workers and employees in the increase in tuition fees for School Year 2000-2001 shall be considered as compliance with the emergency cost of living allowance prescribed herein. However, payment of any shortfall in the allowance set forth herein shall be covered starting School Year 2002-2003.

Private educational institutions which did not increase their tuition fees for the School Year 2001-2002 may defer compliance with the provisions of this Wage Order until School Year 2002-2003.

In any case, all private educational institutions shall implement the allowance prescribed herein starting School Year 2002-2003.

Section 6. In the case of workers covered by contracts for works and services, the prescribed allowance set forth herein shall be borne by the principal and the contract previously forged between the principal and the contractor is deemed amended accordingly. In the event that the principal fails to pay the prescribed allowance, the contractor shall be jointly and severally liable with the principal.

Section 7. All workers paid by result, including those who are paid on piecework, "takay", "pakyaw" or task basis, shall be entitled to receive the prescribed allowance per eight (8) hours work a day, or a proportion thereof for working less than eight (8) hours.

Section 8. Apprentices and learners shall receive seventy-five percent (75%) of the allowance as prescribed in this Order. All handicapped employees shall receive the full amount of emergency cost of living allowance prescribed in this Order.

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

1. Retail/Service establishments employing not more than ten (10) workers;
2. Distressed establishments, as defined in the NWPC Guidelines No. 01, series of 1996; and
3. Establishments facing potential losses, subject to the guidelines issued by the NWPC.

Section 10. All applications for exemption from compliance with this Order shall be filed within seventy five (75) days from the date of the publication of the Rules Implementing this Order, with complete supporting documents as specified in the Rules. Failure to submit the required supporting documents within the prescribed period will be tantamount to dismissal of the application for exemption. The Board has the discretion to grant full or partial exemption to such employer with respect to the amount or period of exemption but in no case shall it exceed one (1) year from the effectivity of this Order.

Section 11. Whenever an application for exemption has been duly filed with the Board, action on any complaint for alleged non-compliance with this Wage Order shall be deferred pending its resolution.

Section 12. In the event that the application for exemption is not granted, the employees of the applicant firm shall receive the appropriate compensation due them as provided for in this Order, together with the payment of interest amounting to one percent (1%) per month retroactive to the effectivity of this Order.

Section 13. Wage increases/allowances granted by an employer in an organized establishment within three (3) months prior to the effectivity of this Order shall be credited as compliance with the prescribed increase set forth herein, provided the corresponding bargaining agreement provision allowing creditability exists. In the absence of such an agreement or provision in the CBA, any increase granted by the employer can not be credited as compliance with the increase prescribed in this Order.

In unorganized establishments, wage increases/allowances granted by the employer within three (3) months prior to the effectivity of this Order shall be credited as compliance therewith.

In case the increases given are less than the prescribed adjustment, the employer shall pay the difference. Such increases shall not include anniversary increases, merit wage increases and those resulting from the regularization or promotion of employees.

Section 14. Where the application of the emergency cost of living allowance prescribed in this Order results in distortions in the wage structure

within the establishment, the wage distortions may be resolved using the following formula:

$$\begin{array}{l} \text{Minimum Wage under} \\ \text{Amount of ECOLA} \\ \text{Present Salary} \end{array} \quad \begin{array}{l} \text{WO-NCR-08 X Amt. of ECOLA} \\ \\ \text{in WO NCR 09} \end{array} = \begin{array}{l} \\ \\ \text{due to distortion} \end{array}$$

Section 15. Any employer who refuses or fails to pay the prescribed emergency cost of living allowance provided under this Wage Order shall be subject to the penalties specified under R.A. 6727, as amended by R.A. 8188.

Section 16. The Regional Tripartite Wages and Productivity Board - National Capital Region shall prepare the necessary rules and regulations to implement this Order.

Section 17. If any provision or part of this Wage Order is declared unconstitutional, or illegal, the other provisions or parts thereof shall remain valid. Nothing in this Order shall be construed to reduce any existing wage rate, allowance or other benefit under existing laws, decrees, issuance, and executive orders or under any contract or agreement between workers and employers.

Section 18. This Order shall take effect on 05 November 2001.

Approved.

Manila, Philippines, 19 October 2001.

(SGD) ALEX E. MARAAN
Chairman

(SGD) LUWINA S. ENECIO
Vice-Chairman

(SGD) MA. SOCORRO V. ZINGAPAN
Vice-Chairman

I concur with reservation
I concur with reservation

(SGD) GERMAN N PASCUA, JR.
Labor Representative

We dissent with respect to the ceiling of P290.00 and the non-coverage of the micro and small establishments
We dissent with respect to the ceiling of P290.00 and the non-coverage of the micro and small establishments

(SGD) VICENTE LEOGARDO, JR.
Employer Representative
(SGD) CLETO T. VILLATUYA
Employer Representative

I dissent

(SGD) DANIEL R. ANG
Labor Representative

(SGD) DANIEL R. ANG
Labor Representative

**Rules Implementing
WAGE ORDER NO. NCR-09**

Pursuant to RA 6727 otherwise known as Wage Rationalization Act and Section 16 of Wage Order No. NCR-09, the following rules are hereby issued for guidance and compliance by all concerned:

**RULE I
GENERAL PROVISIONS**

SECTION 1. Title. This Rules shall be known as "The Rules Implementing Wage Order No. NCR-09";

SECTION 2. Definition of Terms. As used in this Rules,

- a. "Order" means Wage Order No. NCR-09;
- b. "Department" means the Department of Labor and Employment;
- c. "Commission" means the National Wages and Productivity Commission;
- d. "Board" means the Regional Tripartite Wages and Productivity Board - National Capital Region;
- e. "Regional Office" refers to the regional office of the Department of Labor and Employment in the National Capital Region;
- f. "National Capital Region" covers the cities of Caloocan, Las Piñas, Makati, Mandaluyong, Manila, Marikina, Malabon, Muntinlupa, Parañaque, Pasay, Pasig, Quezon, Valenzuela and the municipalities of Navotas, Pateros, San Juan, and Taguig;
- 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 farm products;

h. "Plantation Agricultural Enterprise" is one engaged in agriculture with an area of more than 24 hectares in a locality or which employs at least twenty (20) workers. Any other agricultural enterprise shall be considered as "Non-Plantation Agricultural Enterprise";

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 individual and distinct establishments.

j. "Retail Establishment" is 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.

k. "Service Establishment" is one principally engaged in the sale of service to individuals for their own or household use and is generally recognized as such;

l. "Distressed Establishments" refer to establishments which meet the criteria enumerated in Section 3A of the National Wages and Productivity Commission (NWPC) Guidelines No. 01 Series of 1996, known as Rules on Exemption from Compliance with the Prescribed Wage Increases/Cost of Living Allowances Granted By the Regional Tripartite Wages and Productivity Board;

m. "Establishments Facing Potential Losses" refer to establishments as defined in the National Wages and Productivity Commission (NWPC) Policy Guidelines No. 01, series of 2001;

n. "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;

o. "Full Accounting Period" refers to a period of twelve (12) months of business operations;

p. "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;

q. "Stock Corporation" refers to one organized for profit and issues shares of stock to its members;

r. "Non-stock, Non-profit Organization" refers to one organized principally for public purposes such as charitable, educational, cultural or similar purposes and does not issue shares of stock to its members;

s. "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;

t. "Single Proprietorship" refers to a business unit owned and controlled by only one person;

u. "Cooperative" refers to a duly registered association of persons with the Cooperative Development Authority (CDA) 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;

v. "Prescribed Emergency Cost of Living Allowance (ECOLA)" refers to the emergency cost of living allowance prescribed by the Board for all private sector workers and employees in the National Capital Region;

w. "Wage Distortion" refers to a situation where an increase in the 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.

RULE II

EMERGENCY COST OF LIVING ALLOWANCE

SECTION 1. Amount and Effectivity of ECOLA. Effective 05 November 2001, private sector workers and employees in the National Capital Region receiving the prescribed minimum wage rate of TWO HUNDRED FIFTY (P 250.00) PESOS up to TWO HUNDRED NINETY (P 290.00) PESOS per day shall receive an emergency cost of living allowance (ECOLA) in the amount of THIRTY (P 30.00) PESOS per day payable in two (2) tranches, as follows:

Amount of ECOLA	Effectivity
P15.00	05 Nov 2001
P15.00	01 Feb 2002

SECTION 2. Application to Other Categories of Workers. Workers in the following sectors/industries receiving the prescribed minimum wage rate of TWO HUNDRED THIRTEEN (P 213.00) PESOS per day shall receive an emergency cost of living allowance in the amount of THIRTY (P 30.00) PESOS per day to be given in two (2) tranches payable in the manner prescribed in Section 1 hereof:

	Dates of Effectivity	05 Nov 2001	01 Feb 2002
a.1	Agriculture	P 15.00	P 15.00
	- Plantation		
	- Non-Plantation		
a.2	Private Hospitals with bed capacity of 100 or less	P 15.00	P 15.00

- | | | | |
|-----|--|---------|---------|
| a.3 | Retail/Service Establishments
regularly employing 15 workers or less | P 15.00 | P 15.00 |
| a.4 | Manufacturing establishments
regularly employing less than 10 workers | P 15.00 | P 15.00 |

SECTION 3. Coverage. The emergency cost of living allowance prescribed in the Order shall apply to private sector workers and employees in the National Capital Region, regardless of their positions, designation or status, and irrespective of the method by which their wages are paid, except household or domestic helpers and workers employed in the personal service of another, including family drivers.

SECTION 4. Basis. The emergency cost of living allowance prescribed herein shall be for the normal working hours a day.

SECTION 5. Application to Private Educational Institutions. In the case of private educational institutions, the share of covered workers and employees in the increase in tuition fees for School Year 2001-2002 shall be considered as compliance with the emergency cost of living allowance prescribed in this Order. However, payment of any shortfall in the emergency cost of living allowance set forth in the Order shall be covered starting School Year 2002-2003.

Private educational institutions, which did not increase their tuition fees for the School Year 2001-2002, may defer compliance with the provisions of the Order until School Year 2002-2003.

In any case, all private educational institutions shall implement the emergency cost of living allowance prescribed in the Order starting School Year 2002-2003.

SECTION 6. Application to Workers Covered by Contracts for Works and Services. In the case of workers covered by contracts for works and services, including but not limited to construction projects, security, janitorial, and other similar services, the prescribed emergency cost of living allowance set forth in the Order shall be borne by the principal of the construction/service contractors and the contract previously forged between them is deemed amended accordingly. In the event that the principal fails to pay the prescribed allowance, the contractor shall be jointly and severally liable with the principal.

SECTION 7. Workers Paid by Result. All workers paid by results including those who are paid on piecework, "takay", "pakyaw", or task basis shall receive not less than the prescribed emergency cost of living allowance under the Order for the normal working hours a day which shall not exceed eight (8) hours, or a proportion thereof for work of less than the normal working hours. The

adjusted emergency cost of living allowance for workers paid by results shall be computed in accordance with the following steps:

1. Amount of ECOLA* x 100 = % increase (ECOLA)

Prescribed AMW**

2. Existing rate/pc. x % increase (ECOLA) = Increase (ECOLA) in rate/pc.

3. Existing rate/piece + Increase (ECOLA) in rate/pc = Adjusted rate/piece

* ECOLA is the emergency cost of living allowance

**AMW is the applicable minimum wage rate

SECTION 8. Allowances of Special Groups of Persons. The ECOLA of apprentices and learners shall in no case be less than seventy-five percent (75%) of the prescribed allowance. Pursuant to Section 5, Title II of Republic Act No. 7277, otherwise known as the Magna Carta for Disabled Persons, all handicapped employees shall receive the full allowance prescribed in the Order.

All recognized learnership and apprenticeship agreements entered into before 05 November 2001, shall be considered as automatically modified insofar as their wage clauses are concerned to reflect the ECOLA prescribed under the Order.

SECTION 9. Mobile and Branch Workers. The ECOLA 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 National Capital Region shall be those applicable in the place where they are stationed.

SECTION 10. Transfer of Personnel. The transfer of personnel to areas outside the Region shall not be a valid ground for the reduction of the ECOLA being enjoyed by the workers prior to such transfer. The workers transferred to the other Regions with higher wage rates shall be entitled to the ECOLA applicable therein.

RULE III EXEMPTIONS

SECTION 1. Who May Be Exempted. Upon application with and as determined by the Board, based on compliance with the requirements in the applicable rules and regulations, the following may be exempted from the applicability of this Order:

1. Retail/Service establishments regularly employing not more than ten (10) workers.
2. Distressed establishment in accordance with the criteria enumerated in the National Wages and Productivity Commission (NWPC) Guidelines No. 01, series of 1996.

3. Establishments Facing Potential Losses as defined in the National Wages and Productivity Commission (NWPC) Policy Guidelines No. 01, series of 2001.

SECTION 2. Application for Exemption. Within seventy-five (75) days from the date of publication of this Rules, pursuant to Resolution No. 01, series of 1999 issued by the Commission, an application for exemption shall be filed with the Board in two (2) typewritten copies by the owner/manager or duly authorized representative of an establishment, either through personal service or by registered mail. The date of mailing shall be deemed as the date of filing.

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

SECTION 3. Criteria For Exemption. In order to determine whether an applicant establishment is qualified for exemption, the following criteria shall be used:

a. In the case of retail/service establishment, the latter must be:

- I. Engaged in the retail sale of goods or services to end-users for personal or household use; and
- II. 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. In the case of distressed establishment:

i. For stock corporations/cooperatives, deficit as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Order amounts to 20% or more of the paid-up capital for the same period; or registers a capital deficiency i.e. negative stockholders' equity as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Order;

ii. For single proprietorships/partnerships operating for at least two (2) years, the net accumulated losses for the last two (2) full accounting periods and interim period, if any, preceding the effectivity of the Order amounts to 20% or more of the total invested capital at the beginning of the period under review; or the establishment registers a capital deficiency i.e. negative net worth as of the

last full accounting period or interim period, if any immediately preceding the effectivity of the Order.

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

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

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

iv. For banks and quasi-banks under receivership/liquidation, a certification from the Bangko Sentral ng Pilipinas (BSP) that it is under receivership or liquidation on account of insolvency as provided in Section 30, R.A. 7653, otherwise known as the New Central Bank Act.

Banks under controllership/conservatorship may apply for exemption as a distressed establishment under Section 5(b) hereof.

c. In the case of establishments facing potential losses,

1. For single proprietorships, partnerships and stock and non-stock corporations charging fees for services rendered, when projected losses during the current year of effectivity of the Order and, if applicable, the next full accounting year, amount to 20% or more of total paid up capital of the current year.

2. In the case of non-stock, non-profit organizations, when potential deficit (i.e. total receipts net of total expenses) during the current year of effectivity of the Order and, if applicable, the next full accounting year amounts to 20% or more of the fund balance/members' contribution of the current year.

SECTION 4. Supporting Documents. Aside from those prescribed in the preceding Section, and in accordance with the applicable rules, the following supporting documents shall be submitted with the application:

A. For retail/service establishments regularly employing not more than ten (10) workers:

1. an affidavit from the employer stating the principal economic activity and the number of workers employed in the establishment;
 2. business permit for the current year from the appropriate government agency/ies.
- B. For distressed establishments:
1. For corporations, cooperatives, single proprietorships, partnerships, non-stock, non-profit organizations:
 - a. Audited financial statements (together with the Auditor's opinion and notes thereto) for the last two full accounting periods immediately preceding the effectivity of the Order, filed with and stamped "received" by the Securities and Exchange Commission (SEC) and/or the Bureau of Internal Revenue (BIR)/Bank;
 - b. Audited interim quarterly financial statements (together with the Auditor's opinion and notes thereto) for the first and second quarters of the accounting period immediately preceding 05 November 2001, where applicable;
 - c. Annual Income tax returns for the last two taxable periods, filed with and stamped "received" by the BIR;
 - d. Quarterly income tax returns immediately preceding the effectivity of the Order, filed with and stamped "received" by the BIR.
 2. For Banks and Quasi-Banks
Certification from the Bangko Sentral ng Pilipinas that it is under receivership/liquidation
- C. For establishments facing potential losses:
1. Projected financial statements for the current year of effectivity of the Order and, if applicable, the next full accounting year.
 2. Audited financial statements (together with the Auditor's opinion and notes thereto) for the last full accounting period immediately preceding the effectivity of the Order, filed with and stamped "received" by the Securities and Exchange Commission (SEC) and/or Bureau of Internal Revenue (BIR)/Bank, or a verified statement under oath containing the following information:
 - a. paid-up capital
 - b. retained earnings at the beginning of the fiscal/calendar year
 - c. actual start of operation
 3. To confirm the grant of exemption, audited financial statements for the next full accounting period/s referred to in Section 3, (c. 1 & 2) hereof, stamped "received" by the Securities and Exchange Commission (SEC) and/or the Bureau of Internal Revenue (BIR)/Bank to be submitted within twenty (20) days from submission to the said agencies.

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

SECTION 5. Extent of Exemption. The Board has the discretion to grant full or partial exemption with respect to the amount and the period of exemption but in no case shall it exceed one (1) year from 05 November 2001, in accordance with the provisions of Section 8, NWPC Guidelines No. 01, series of 1996.

In the case of distressed establishments, the Board may grant partial exemption of 50% with respect to the amount or period of exemption pursuant to Section 3, NWPC Guidelines No. 01, series of 1996.

In the case of establishments facing potential losses, no partial exemption shall be granted to applicants whose potential deficit is less than 20% of the total paid-up capital of the current year or the next full accounting year or less than 20% of the fund balance/members contribution of the current year or the next full accounting year.

SECTION 6. Effect of filing of an Application for Exemption. Whenever an application for exemption has been filed with the Board, the Regional Office of the Department shall be notified. Pending resolution of the said application, action on any complaint for alleged non-compliance with the Order shall be deferred by the Regional Office of the Department.

SECTION 7. Application for Projects/Branches/Divisions. Where the exemption being sought for is for a particular project/branch/division not separately registered and licensed, the consolidated audited financial statements of the establishment shall be used as basis for determining its distressed condition.

SECTION 8. Distressed Principal. 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 9. Effect of Disapproved Application. In the event that the application for exemption is not granted, or not confirmed in the case of establishments facing potential losses, the workers and employees shall receive the appropriate compensation due them as provided for under the Order plus an interest of one percent (1%) per month retroactive to 05 November 2001.

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

SECTION 11. Appeal. 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 receipt of the decision. The appeal must be filed in the manner prescribed by the Commission and must be based on any of the following grounds:

- a. non-conformity with the prescribed guidelines/procedures on exemption;
- b. prima facie evidence of grave abuse of discretion on the part of the Board; or
- c. questions of law

RULE IV **CREDITABLE INCREASE**

SECTION 1. Organized Establishments. Wage increases granted by an employer in an organized establishment within three (3) months prior to the effectivity of the Order shall be credited as compliance with the prescribed allowance set forth therein, provided that an agreement to this effect has been forged between the parties or a provision in the collective bargaining agreement allowing creditability exists.

In case the increases given are less than the prescribed allowance, the employer shall pay the difference. Such increases shall not include anniversary increases, merit wage increases, and those resulting from the regularization or promotion of employees.

SECTION 2. Unorganized Establishments. In unorganized establishments, wage increases granted by the employer within three (3) months prior to the effectivity of the Order shall be credited as compliance. In case the increases given are less than the prescribed adjustment, the provisions of the last paragraph of the preceding Section shall be applied.

RULE V **WAGE DISTORTION**

SECTION 1. Effect on Existing Wage Structure. Should any dispute arise as a result of wage distortion, the employer and the union shall negotiate to correct the distortions through the grievance procedure under their collective bargaining agreement, and if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, such dispute shall be decided by the voluntary arbitrator or panel of voluntary arbitrators within ten (10) calendar days from the time said dispute was referred to voluntary arbitration. In cases where there are no collective bargaining agreements or recognized labor unions, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and if it remains unresolved after ten (10) calendar days of conciliation, the same shall be referred to the appropriate

branch of the National Labor Relations Commission (NLRC). The NLRC shall conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration. Where the application of the emergency cost of living allowance prescribed in the Order results in distortion in the wage structure within the establishment, the wage distortion may be resolved using the following formula:

$$\frac{\text{Minimum Wage Under WO-NCR-08} \times \text{Amount of ECOLA}}{\text{Present Salary in WO-NCR-09 due to distortion}} = \text{Amount of ECOLA}$$

SECTION 2. Effect of Dispute. The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of the emergency cost of living allowance prescribed in the Order.

RULE VI

SPECIAL PROVISIONS

SECTION 1. Complaints for Non-Compliance. Complaints for non-compliance with the allowance set forth in the Order shall be filed with the Regional Office of the Department and shall be the subject of enforcement proceedings under Articles 128 and 129 of the Labor Code, as amended.

SECTION 2. Conduct of Inspection by the Department. The Department shall conduct inspections of establishments, as often as necessary, to determine whether the workers are paid the prescribed wage rates and other benefits granted by law or any Wage Order. In the conduct of inspection in unionized companies, Department inspectors shall always be accompanied by the president or other responsible officer of the recognized bargaining unit or of any interested union. In the case of non-unionized establishments, a worker representing the workers in the said company will accompany the inspector. The workers' representative shall have the right to submit his own findings to the Department and to testify on the same if he does not concur with the findings of the labor inspector.

SECTION 3. Non-Diminution of Benefits. Nothing in the Order, and this Rules shall be construed as authorizing the reduction of 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 or employer practices or policies.

SECTION 4. Penal Provision. Pursuant to the provisions of Section 12 of Republic Act No. 6727, as amended by Republic Act No. 8188, any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay the prescribed increase in the Order shall be punished by a fine not less than Twenty-five thousand pesos (P25,000.00) nor more than One hundred thousand

pesos (P100,000.00) or imprisonment of not less than two (2) years nor more than four (4) years or both such fine and imprisonment at the discretion of the court. Provided, that any person convicted under the Order shall not be entitled to the benefits provided 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 Act.

If the violation is committed by a corporation, trust or firm, partnership, association or any other entity, the penalty of imprisonment shall be imposed upon the entity's responsible officers, including but not limited to the president, vice-president, chief executive officer, general manager, managing director or partner.

SECTION 5. Prohibition Against Injunction. No preliminary or permanent injunction or temporary restraining order may be issued by any court, tribunal or other entity against any proceeding before the Board.

SECTION 6. Freedom to Bargain. The Order shall not be construed to prevent workers in particular firms or enterprises of industries from bargaining for higher wages and flexible working arrangements with their respective employers.

SECTION 7. Reporting Requirements. Any person, company, corporation, partnership or any entity engaged in business shall submit a verified itemized listing of their labor component to the Board not later than January 31, 2002 and every year thereafter in accordance with the form prescribed by the Commission.

SECTION 8. Effect 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 Order, and this Rules shall continue to have full force and effect.

SECTION 9. Separability Clause. If any provision or part of the Order and this Rules, or the application thereof to any person or circumstance, is held invalid or unconstitutional, the remainder of the Order and this Rules or the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

Effectivity. This Rules shall take effect on 05 November 2001.

Done in City of Manila, Republic of the Philippines this 22nd day of November, 2001.

(SGD) DANIEL R. ANG
Worker's Representative

(SGD) VICENTE LEOGARDO, JR.
Employers' Representative

(SGD) GERMAN N. PASCUA, JR.
Worker's Representative

(SGD) CLETO T. VILLATUYA
Employers' Representative

(SGD) LUWINA S. ENECIO
Vice-Chairman

(SGD) MA SOCORRO V. ZINGAPAN
Vice Chairman

(SGD) ALEX E. MARAAN
Chairman

Approved this 5th day of December, 2001.

(SGD) PARTICIA A. STO. TOMAS
Secretary
Department of Labor and Employment

ADDENDUM: EQUIVALENT MONTHLY WAGE RATES. Without prejudice to existing company practices, agreements or policies, the suggested formula indicated below may be used as a guide in determining the equivalent monthly minimum wage rates.

Recommended Computation of Equivalent Monthly Rates

For those who are required to work everyday including Sundays or rest days, special days and holidays

Equivalent Monthly Rate (EMR) = $\text{Applicable Daily Wage Rate or ADR} \times \frac{391.5}{12}$

= 302.0 - ordinary working days
18.0 - 9 regular holidays x 200%
2.6 - 1 regular holiday falling on last
Sunday of August x 200% + (30% of 200%)
66.3 - 51 rest days x 130%
2.6 - 2 special says x 130%

391.5 days

For those who do not work but are considered paid on rest days and holidays

Equivalent Monthly Rate (EMR) = $\text{ADR} \times \frac{365}{12}$

12

= 302 - ordinary working days
2 - special days
51 - rest days
10 - regular holidays
365 days

For those who do not work and are not considered paid on Sundays or rest days

Equivalent Monthly Rate (EMR) = $\text{ADR} \times \frac{314.6}{12}$

12

= 302.0 - ordinary working days

2.6 - 2 special days

(if worked) x 130%

10.0 - regular holidays

314.6 days

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

Equivalent Monthly Rate (EMR) = ADR x 262.6

12

= 250.0 - ordinary days

2.6 - 2 special days

(if worked) x 130%

10.0 - regular holidays

262.6 days

Note: Using the above indicated factors (a factor representing number of days as multiplier), the basic wage for the worked days and the holiday pay for the ten regular days are included in the monthly rates to be derived. Thirty percent (30%) rest day premium pay has been integrated in factor 391.5 for all the Sundays/rest days in a year including the last Sunday of August and in factors 314.6 and 262.6 for the two special days (November 1 and December 31) under Executive Order No. 203.