

OMNIBUS RULES

IMPLEMENTING THE LABOR CODE

PRELIMINARY PROVISIONS

SECTION 1. Title. — These Rules shall be referred to as the "*Rules to Implement the Labor Code.*"

SECTION 2. Meanings of Terms. — Whenever used herein, the words "*Code,*" "*Secretary,*" "*Department,*" "*Regional Office*" and "*Regional Director*" shall respectively mean the Labor Code of the Philippines; the Secretary of Labor and Employment; the Department of Labor and Employment; Regional Office of the Department and Director of the Regional Office.

SECTION 3. Construction. — All doubts in the interpretation and implementation of these rules shall be resolved in favor of labor.

BOOK ONE

Pre-Employment

RULE I

Definitions of Terms

SECTION 1. Definition of terms. —

- (a) "Bureau" means the Bureau of Employment Services.
- (b) "NSB" means the National Seamen Board.
- (c) "OEDB" means the Overseas Employment Development Board.
- (d) "Private recruitment entity" means any person or entity engaged in the recruitment and placement of workers locally or overseas, without charging, directly or indirectly, any fee against the worker.
- (e) "Private employment agency" means any person or entity engaged in the recruitment and placement of workers for a fee which is charged directly against the workers or employers, or both.
- (f) "Authority" means a document issued by the Secretary of Labor and Employment authorizing a person or association to engage in recruitment and placement activities as a private recruitment entity.
- (g) "License" means a document issued by the Secretary of Labor and Employment authorizing a person or entity to operate a private employment agency.

(h) "Employment permit" means the authority issued by the Secretary of Labor and Employment to a non-resident alien to work in the Philippines or to an employer engaged in business in the Philippines to employ such alien.

(i) "Beneficiary" means a person designated by a contract worker or seaman employed overseas to receive his monthly remittance.

(j) "Non-resident alien" means any alien already in the Philippines or seeking admission to the Philippines to obtain employment in any public or private enterprise.

(k) "Seaman" means any person employed in maritime navigation.

(l) "Understudy" means any qualified Filipino citizen designated by a local employer to be trained by a foreign national allowed to work in the country by virtue of an employment permit granted to him by the Secretary of Labor and Employment under an approved understudy training program.

(m) "Recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers and includes referrals, contract services, promising or advertising employment locally or abroad, whether for profit or not: *Provided*, That any person or entity which in any manner, offers or promises employment for a fee to two or more persons shall be deemed engaged in recruitment and placement.

(n) "Foreign exchange earnings" means the earnings abroad of contract workers and seamen or their recruiters or local employers or agents in terms of US dollars or any other internationally acceptable currency.

(o) "Remittance" means the amount of the foreign exchange earnings remitted by a contract worker or seaman to any beneficiary in the Philippines through the Philippine banking system.

(p) "Placement fees" means the amount charged by a private employment agency from an applicant worker for its services in the recruitment and placement of said worker.

(q) "Mobilization fee" means the amount charged by a licensee or authority holder from its foreign employer-principal/partner to cover costs of recruitment, processing and documentation of its recruits for overseas employment.

(r) "Service fee" means the amount charged by a licensee or authority holder from its foreign employer-principal/partner as payment for actual services rendered in relation to the recruitment and employment of workers for said principal/partner.

(s) Administration. — means the Philippine Overseas Employment Administration.

(u) Administrator. — means a private employment or a manning agency as herein defined.

(v) Code. — means the Labor Code of the Philippines, as amended.

- (w) Contracting partner. — refers to a foreign party to any service agreement or project contract entered into by a service contractor or construction contractor.
- (x) Contract Worker. — means any person working or who has worked overseas under a valid employment contract and shall include seamen.
- (y) Directorate. — means the executive body of the Administration composed of its administrators and Directors.
- (z) Director LRO. — refers to the Director of the Licensing and Regulation Office.
- (aa) Director MPDO. — refers to the Director of the Market Development and Placement Office.
- (bb) Director WAAO. — refers to the Director of the Worker's Assistance and Adjudication Office.
- (cc) Employer. — refers to any person, partnership or corporation, whether local or foreign directly engaging the services of the Filipino workers overseas.
- (dd) Entity. — means a private recruitment entity as herein defined.
- (ee) Governing Board. — is the policy making body of the Administration.
- (ff) Manning Agency. — refers to any person or entity duly licensed by the Secretary to recruit seamen for vessels plying international waters and for related maritime activities.
- (gg) Name Hire. — is a worker who is able to secure employment overseas on his own without the assistance or participation of any agency or entity.
- (hh) Non-licensee or Non-holder of Authority. — refers to any person, partnership or corporation which has not been issued a valid license or authority, has been suspended, revoked or cancelled by the Administrator or Secretary.
- (ii) One-Stop Processing Center. — refers to an inter-agency servicing body designed to facilitate the employment and subsequent deployment of contract workers for work overseas.
- (jj) Overseas employment. — means employment of a worker outside the Philippines including employment on board vessels plying international waters, covered by a valid employment contract.
- (kk) Principal. — refers to any foreign person, partnership or corporation hiring Filipino workers through an agency.
- (ll) Regional Director. — refers to the Directors of the Regional Office of the Department.
- (mm) Regional Labor Center or RLC. — refers to an overseas field office of the Administration.

RULE II

Employment Promotion

SECTION 1. Powers of the Secretary of Labor and Employment. — The Secretary shall have the power and authority to:

- (a) Organize and establish, as the need arises, new public employment offices in addition to or in place of existing ones for the efficient, systematic and coordinated recruitment and placement of workers for local and overseas employment.
- (b) Organize and establish a nationwide job clearance and information system to inform applicants registering with a particular employment office of job opportunities in other parts of the country as well as overseas.
- (c) Develop and organize programs that will facilitate occupational, industrial and geographical mobility of labor and provide assistance in the relocation of workers from one area to another.
- (d) Require any person, establishment, organization or institution to submit such employment information as may be necessary; and channels virtual law library
- (e) Issue such rules and regulations as may be necessary to regulate and supervise private sector participation in the recruitment and placement of workers, locally or overseas, in the context of a comprehensive national employment program.

SECTION 2. Free placement services. — The public employment offices shall provide free placement of workers applying for both domestic and overseas placement. Applicants shall accomplish appropriate information sheets and submit such other documents as may be prescribed by the Bureau for the purpose.

SECTION 3. Placement of workers. — Any applicant registering for employment with a public employment office shall be interviewed to determine his occupational qualifications. The public employment office shall refer him to any appropriate job for vacancy.

SECTION 4. Vocational guidance and testing. — The public employment offices shall provide adequate vocational guidance and testing service to persons seeking help in choosing or changing an occupation. Each office shall at least have one (1) vocational guidance and testing officer to undertake these tasks.

SECTION 5. Occupational classification of registered applicants. — The public employment office shall classify registered applicants in accordance with job-titles and codes of the Philippine Standard Classification. They shall also maintain a registry of skills using such forms as may be appropriate for the purpose.

SECTION 6. Occupational-industrial mobility of workers. — The public employment offices shall arrange for the training or retraining of unemployed applicants in occupations or trades where they are suitably qualified and have greater prospect of employment.

SECTION 7. Geographical movement of workers. — The public employment office shall arrange for the inter-area placement of unemployed workers through a nationwide job-clearance and information system. The transfer of workers shall be arranged by the public employment office where the applicant is registered and the office where the vacancy exists.

SECTION 8. Job-clearance and information system. — The public employment office shall furnish lists of registered job applicants and job openings to the Bureau which shall act as the national job-clearing house.

SECTION 9. Submission of reports. — At the end of each month, every employer with at least six (6) employees shall submit to the nearest public employment office the following:

- (a) List of existing job vacancies or openings;
- (b) List of new employees, if any;
- (c) Terminations, lay-offs or retirements;
- (d) Total number of employed workers for the period; and
- (e) Request for assistance, if needed, to fill vacancies or openings.

RULE III

Recruitment and Placement

SECTION 1. Private recruitment. — No person or entity shall engage in the recruitment and placement of workers either for local or overseas employment except the following:

- (a) Public employment offices;
- (b) Overseas Employment Development Board;
- (c) National Seamen Board;
- (d) Private recruitment offices;
- (e) Private employment agencies;
- (f) Shipping or manning agents or representatives; and
- (g) Such other persons or entities as may be authorized by the Secretary.

SECTION 2. Ban on direct hiring. — No employer may hire a Filipino worker for overseas employment except through the person or entities enumerated in the preceding section or as authorized by the law or by the Secretary. Direct hiring by members of the diplomatic service, officials and employees of international organizations and such other employers as may be authorized by the Secretary is exempted from this provision. Such hirings shall be processed by the Overseas Employment Development Board.

RULE IV

Private Sector Participation in Recruitment and Placement

SECTION 1. Who may participate in the private sector. — Only the following persons or entities in the private sector may engage in the recruitment and placement of workers either for local or overseas employment:

- (a) Private employment agencies;
- (b) Private recruitment entities;
- (c) Shipping or manning agents or representatives; and
- (d) Such other persons or entities as may be authorized by the Secretary.

SECTION 2. Citizenship requirement. — Only Filipino citizens or corporations, partnerships or entities at least seventy-five percent (75%) of the authorized and voting capital stock of which is owned and controlled by Filipino citizens shall be permitted to participate in the recruitment and placement of workers, locally or overseas.

RULE V

Private Employment Agencies

SECTION 1. Qualifications of applicants. — All applicants for license to operate private employment agencies either for local or overseas recruitment and placement shall possess the following qualifications:

- (a) Citizenship requirement as provided for in Rule IV of these Rules;
- (b) Appropriate capitalization as follows:
 1. For overseas recruitment and placement, a minimum networth of P150,000.00 in the case of single proprietorship, and a paid-up capital or networth of P150,000.00 in the case of a corporation or partnership, as the case may be;
 2. For local recruitment and placement, a minimum networth of P25,000.00 in the case of single proprietorship; and a paid-up capital or networth of P25,000.00 in the case of partnership or corporation, as the case may be;
- (c) Applicants not otherwise disqualified by law, rule or regulations as may be determined by competent authority to engage in recruitment and placement. (Repealed by POEA Rules and Regulations)

SECTION 2. Application for license for overseas recruitment and placement. — Every applicant for license to operate a private employment agency for overseas recruitment and placement shall submit to the Bureau the following documents in support of the application:

- (a) A certified copy of the Articles of Incorporation in the case of a corporation, or the registration with the Bureau of Domestic Trade in the case of a single proprietorship or partnership;
- (b) If the applicant is a corporation, proof of financial capacity of the major stockholders such as sworn statements of assets and verified income tax returns for the last two years;
- (c) Clearance from the Philippine Constabulary and the Bureau of Internal Revenue for all the incorporators, partners or single proprietor; chan robes virtual law library
- (d) A verified statement that the applicant has in its employ persons with adequate competence to evaluate and test recruits and to consider them for employment strictly on the basis of merit and fitness, without any undue discrimination and in accordance with the qualifications prescribed by the employer;
- (e) A verified undertaking to assume all responsibilities for the proper use of its license/authority and the implementation of the contracts of employment with the workers; and
- (f) Such other requirements that the Secretary may require upon recommendation of the Bureau Director. (Amended by Sec. 1, Rule II, Book II, POEA Rules and Regulations)

SECTION 3. Action on application. — Within the thirty (30) days from the receipt of the application for license, the Bureau shall recommend its denial or approval to the Secretary. Upon considering the findings and recommendations of the Bureau, the Secretary may either deny or approve the application. (Amended by POEA Rules and Regulations)

SECTION 4. Fees and bonds. — Upon approval of the application, the applicant shall pay to the Department a license fee of P6,000.00, post a cash bond of P50,000.00 or negotiate bonds of equivalent amount convertible to cash issued by banking or financial institutions duly endorsed to the Department, as well as a surety bond of P150,000.00 from an accredited bonding company to answer for valid and legal claims arising from violations of the conditions of the license or the contracts of employment and guarantee compliance with the provisions of the Code, its implementing rules and regulations and appropriate issuances of the Department. (Amended by Sec. 2 & 4 Rule II Book II, POEA Rules and Regulations)

SECTION 5. Issuance of license. — Upon payment of the license fee and the posting of the appropriate bonds, the Bureau shall issue the corresponding licensing to the applicant. (Modified by Sec. 5, Rule II, Book II, POEA Rules and Regulations)

SECTION 6. Duration of license. — Every license shall be valid for one year from the date of approval, unless sooner cancelled, revoked or suspended by the Secretary for violation of any of the conditions of the license or any of applicable provisions of the Code and these Rules. (As amended by Sec. 6, Rule II, Book II, POEA Rules and Regulations)

SECTION 7. Non-transferability of license. — No license shall be transferred, conveyed or assigned to any other person or entity, or used in any place other than that stated in the

license. Any transfer of business address, appointment or designation, of any agent or representative, including the establishment of additional offices elsewhere, shall be subject to the final approval of the Bureau. (As amended by Sec. 7, Rule II, Book II, POEA Rules and Regulations)

SECTION 8. Change of Ownership of Business. — Transfer or change of ownership of a single proprietorship licensed or authorized to engage in overseas employment shall cause the automatic revocation of the license or authority. The new owner shall be required to apply for a license or authority in accordance with these Rules. (Added by Sec. 8, Rule II, Book II, POEA Rules and Regulations)

A change in the relationship of the partners in a partnership duly authorized or licensed to engage in overseas employment which materially interrupt the course of the business or results in the actual dissolution of the partnership shall likewise cause the automatic revocation of the license or authority.

SECTION 9. Upgrading of Single Proprietorship or partnership. — Licensees or authority holders which are single proprietorships or partnerships may, subject to the guidelines of the Administration, convert into corporations for purposes of upgrading or raising their capabilities to meet the stiff competition in the international labor market and to enable them to better comply with their responsibilities arising from the recruitment and deployment of workers overseas. (Added by Sec. 9, Rule II, Book II, POEA Rules and Regulations)

The prohibition on the issuance of new license under L.O.I. 1190 shall not apply to the new entity created by reason of the above merger, consolidation or upgrading.

The approval of merger, consolidation or upgrading shall automatically revoke or cancel the license or authorities of the single proprietorships, partnerships or corporations so merged, consolidated or upgraded.

SECTION 10. Change of Directors of Corporations. — Every change in the composition of the Board of Directors of a corporation licensed or authorized to participate in overseas employment shall be registered with the Administration within 30 days from the date the change was decided or approved. The corporation shall be required to submit to the Administration the bio-data and clearances of the new members of the Board from the government agencies identified in Section 1 (c) Rule II, Book II of these Rules. (Added by Sec. 10, Rule II, Book II, POEA Rules and Regulations)

SECTION 11. Change of Other Officers and Personnel. — Every change of officers or representatives and termination of appointment of personnel shall be registered with the Administration within 30 days from the date the change or termination occurred. (Added by Sec. 11, Rule II, Book II, POEA Rules and Regulations)

SECTION 12. Transfer of Business Address. — Any transfer of business address, including the establishment of additional offices elsewhere, shall be effected only with prior authority or approval of the Administration. The approval shall be issued only upon formal notice of

the intention of transfer with the following attachments: (Added by Sec. 12, Rule II, Book II, POEA Rules and Regulations)

(a) Copy of the company's formal notice to the BDT or SEC on the transfer of business address;

(b) In case of a corporation, Board Resolution duly registered with the SEC authorizing transfer of business address;

(c) Copy of the BDT or SEC acknowledgment of the notice to transfer;

(d) Copy of the contract of lease or proof of building ownership.

The new office space shall be subject to the normal ocular inspection procedures by duly authorized representatives of the Administration.

A notice to the public of the new address shall be published in a newspaper of general circulation.

SECTION 13. Conduct of Recruitment Outside of Registered Office. — No licensed or authorized agency or entity shall conduct recruitment activities outside of the address stated in the licensed authority without first securing prior authority from the Administration. (Added by Sec. 13, Rule II, Book II, POEA Rules and Regulations)

SECTION 14. Appointment of Representatives. — Every appointment of representatives or agents of licensed or authorized agency or entity shall be subject to the prior approval or authority of the Administration. The approval may be issued upon submission of or compliance with the following requirements:(Added by Sec. 14, Rule II, Book II, POEA Rules and Regulations)

(a) Proposed appointment or special power of attorney;

(b) Philippine Constabulary (PC-CIS) and National Bureau of Investigation (NBI) clearances of the proposed representative or agent;

(c) Two (2) copies of passport-size pictures of the proposed representative or agent;

(d) A sworn or verified statement by the designating or appointing person or company assuming full responsibility for all acts of the agent or representative done in connection with the recruitment and placement of workers.

Approval by the Administration of the appointment or designation does not authorize the agent or representative to establish a branch or extension office of the licensed agency represented.

Any revocation or amendments in the appointment should be communicated to the Administration, otherwise the designation or appointment shall be deemed as not revoked or amended.

SECTION 15. Renewal of license. — Not later than forty five (45) days before the expiry date of the license, a private employment agency shall submit to the Bureau an application for renewal of license. Such application shall be supported by the following documents:

(a) A report under oath of its operations during the period covered by the license containing the following information, among other:

1) Number and categories of workers recruited and placed overseas during the period, names and addresses of their respective employer(s)/principal(s), total basic wages and salaries earned of workers placed by it and reported foreign exchange earnings remitted during the period as certified by the Central Bank;

2) Total amount paid to the welfare fund and processing fees paid during the period;

3) Names and addresses of its principals and the amount of service fees per worker charged against them; and

(b) Verified financial statement of operation during the period, including latest income tax payment. (Amended by Sec. 15, Rule II, Book II, POEA Rules and Regulations)

SECTION 16. Processing of application for renewal. — Within thirty (30) days from receipt of the application for renewal of license, the Bureau shall complete the processing of the same. Upon evaluation of the documents submitted and the agency's performance records, the Bureau shall recommend its denial or renewal to the Secretary who may accept or deny the Bureau's recommendation. The Bureau shall release the license subject to payment of a license fee of P6,000.00, posting of a cash bond of P50,000.00 or its acceptable equivalent, and the renewal of the surety bond of P150,000.00. (Amended by Sec. 16 to 18, Rule II, Book II, POEA Rules and Regulations)

(a) Replenishment of Cash or Surety Bonds. — Within thirty (30) days from notice by the Administration that the bonds or any part thereof had been garnished, the agency or entity shall replenish the same. Failure to replenish shall cause the suspension or cancellation of the license or authority.

(b) Refund of Cash Bond. A licensed agency or entity which voluntarily surrenders its license or authority shall be entitled to the refund of its cash bond only after posting a surety bond of similar amount valid for three (3) years.

(c) Evaluation of Performance of Agencies and Entities. The Administration shall undertake the evaluation and rating of the performance of licensed agencies and entities and determine the merits of their continued participation in the overseas employment program taking into consideration compliance with laws and regulations and such other criteria as it may deem proper. (Sec. 21 Rule II, Book III, POEA Rules and Regulations)

(d) Classification and Ranking. — The Administration may undertake the classification and ranking of agencies and entities. (Sec. 22 Rule II, Book III, POEA Rules and Regulations)

(e) Incentives and Recognition. — The Administration may undertake incentives and recognition to deserving agencies and contractors for exemplary performance. (Sec. 23 Rule II, Book III, POEA Rules and Regulations)

SECTION 17. Requirement before recruitment. — Before recruiting any worker, the private employment agency shall submit to the Bureau the following documents:

(a) A formal appointment or agency contract executed by a foreign-based employer in favor of the license holder to recruit and hire personnel for the former duly authenticated or attested by the Philippine Labor Attaché or duly authorized Philippine foreign service official or, in his absence by an appropriate official, agency or organization in the country where the employer conducts his business. In case any of the foregoing documents is executed in the Philippines, the same may be authenticated by the duly authorized official of the Department of Foreign Affairs or of the employer's consulate or Embassy or of the Department of Labor and Employment official as may be appropriate. Such formal appointment or recruitment agreement shall contain the following provisions, among others:

- (1) Terms of recruitment, including the responsibility of the parties relative to the employment of workers;
- (2) Power of the agency to sue and be sued jointly and solidarily with the principal or foreign-based employer for any of the violations of the recruitment agreement and the contracts of employment;
- (3) Compensation or payment schedule, including payment of documentation costs, government fees, service from the transportation fare and the mode of payments;
- (4) Period of validity, which shall be not less than one year and up to the expiration date of the last employment contract signed with its recruits; and
- (5) Institutions of systems or procedure to be implemented for mandatory remittance of a portion of the worker's salary as provided under the Code and the Affidavit of undertaking.

(b) Commercial registration and other pertinent documents proving the legal personality of the foreign principal, including its authority to hire and recruit foreign workers;

(c) Job order or requisition of the foreign-based employer or principal, including the number for categories of workers needed, salary and benefit schedule, qualification guidelines and testing procedures and master employment contract; and

(d) Work permits or work visas where such are required by the country of destination.

SECTION 18. Submission of employment contracts. — (a) Every private employment agency shall submit to the Bureau, for evaluation and approval, the master employment contract to be used for its recruits and the service/recruitment agreement which shall be written in English and in the language of the country of work whenever necessary.

(b) All applicants for passport or travel of recruited workers shall be properly endorsed by the Bureau.

SECTION 19. Standard format of service agreement and employment contract. — The Bureau shall adopt a standard format of service agreement and employment contract in accordance with pertinent labor and social legislation and prevailing international standard and conventions. The standard format shall set the minimum standards of the terms and conditions to govern the employment of land-based overseas Filipinos. All employers shall adopt the model contract in connection with the hiring and engagement of the services of overseas workers. (Modified by Sec. 2 Rule I, Book V, POEA Rules and Regulations)

SECTION 20. Worker's deployment. — It shall be the responsibility of the private employment agency to facilitate the deployment of the recruits. If the worker is unable to depart within forty-five (45) days from the release of passport through no fault of his and without any valid reason on the part of the agency, he shall be entitled to the refund of his expenses, if any, and standby pay, if he is made to wait for his deployment. On the other hand, if after the applicant worker has been properly documented and processed, he decides to withdraw without any valid reason, he shall reimburse the agency all expenses of processing and documentation. The Bureau shall issue as appropriate, orders to implement this provision.

SECTION 21. Contents of employment contracts. — The employment contracts shall in no case provide for terms of employment below the standards established by the Department, which shall not be below the basic requirements of Philippine labor and social legislation or practices, and shall include the following: (Modified by Sec. 1 Rule I, Book V, POEA Rules and Regulations)

(a) Guaranteed wages for regular working hours and overtime pay for services rendered in excess of basic working hours as established by the Ministry;

(b) Free transportation from point of hire to site of employment and return, including expenses for travel documentation;

(c) Adequate board and lodging facilities;

(d) Free emergency medical and dental treatment and facilities;

(e) Just causes for the termination of the contract or of the service of the workers;

(f) Workmen's compensation benefits and war hazard protection, including life and accident insurance coverage during the term of employment;

(g) Immediate transportation of the worker's remains and property in case of death to the point of hire or if this is not possible under the circumstances, the proper disposition thereof, upon previous arrangement with the worker's next-of-kin and the nearest Philippine Embassy or Consulate; and

(h) Remittance of the worker's salaries, allowances and/or allotments to his beneficiaries through the Philippine banking system.

SECTION 21. (a) Allowable Salaries and Wages. — Workers hired for overseas employment shall receive salaries or wages in accordance with the standards promulgated by the Administration. The Administration shall undertake the periodic review of salaries and wages prevailing at worksites. (Sec. 3 Rule I, Book V, POEA Rules and Regulations)

SECTION 22. Renewal of contracts. — Every contract worker shall advise the Department of the renewal or extension of his employment contract in any of the following manner:

(a) Through the labor attaché, or in his absence through a duly designated foreign service official in the area of employment who is authorized to renew the contract; or

(b) By furnishing the Bureau directly with a copy of the renewed contract.

SECTION 23. Allowable fees chargeable against the workers. —

(a) Unless otherwise provided by the Secretary, private employment agencies may collect a placement fee from every worker in accordance with a schedule to be approved by him. Such fee shall be paid only when the employment contract of the worker has been approved by the Bureau and he is about to commence employment through the efforts of the agency. Every payment shall be covered by an appropriate receipt indicating the amount paid and the purpose of such payment. In addition and subject to the approval of the Secretary the applicant workers may be required to post a bond to guarantee compliance with the employment contract.

(b) A recruit may be required to shoulder the cost of the following requirements provided that the same shall be covered by an appropriate receipt and unless paid by the employer of principal:

(1) Medical and psychological examination;

(2) Inoculation certificate;

(3) Passport.

(c) Records of payment shall be available for inspection by an authorized representative of the Bureau any time during regular office hours. (Amended by Sec. 2 Rule IV, Book II, POEA Rules and Regulations)

SECTION 24. Fees chargeable against the employer. — A private employment agency shall charge a minimum mobilization fee to cover costs of recruitment, processing and documentation in accordance with a schedule approved by the Secretary in addition to service charges which may be negotiated with a foreign employer or principal.

(a) Fees Chargeable Against Principals. Agencies shall charge from their principals a service of manning fee to cover services rendered in the recruitment, documentation and placement of workers. (Sec. 1 Rule IV, Book II, POEA Rules and Regulations)

(b) Charges deductible from Fees Paid by Withdrawing Workers. In case of the withdrawal of the worker within one hundred twenty (120) days from the signing of the employment contracts the agency or entity shall refund the amount paid by him after deducting such actual expenses incurred in the documentation of the worker as may be supported by receipts. (Sec. 3 Rule IV, Book II, POEA Rules and Regulations)

(c) Prohibition on Charging of Other Fees. No other fees or charges shall be imposed against any worker. (Sec. 4 Rule IV, Book II, POEA Rules and Regulations)

(d) Processing Fees and Welfare Fund Contribution. Contract processing fees and the Welfare Fund contributions shall in no case be charged to the worker. However, this shall not apply in the case of Seafarers' Welfare Fund which is contributory in nature.

SECTION 25. Recruitment Advertisement. —

(a) No advertisement for overseas recruitment including training or review activities for overseas employment shall be placed in any newspaper by a private employment agency without prior authorization by the Bureau. Such advertisement shall contain the following information, among others:

(1) The number and nature of jobs available, including wage and benefit schedule;

(2) A brief description of the skills needed;

(3) The name, nationality and address of the employer; and

(4) The name, address and license number of the agency.

(b) No press notice or announcement regarding the availability of overseas jobs shall be released by the agency prior to the accreditation of one principal. (As amended by Sec. 2 Rule II Book III, POEA Rules and Regulations)

SECTION 25. (a) Recruitment from the Administration's Manpower Registry. Agencies or entities may recruit workers for their accredited principals or projects from the manpower registry of the Administration in accordance with the guidelines set by it. (Sec. 1, Rule II Book III, POEA Rules and Regulations)

(b) Advertisement for Manpower Pooling By Agencies or Entities. Agencies or entities desiring to generate qualified applicants for prospective principal or project may advertise in accordance with the format prescribed by the Administration. Such undertakings shall not involve payment of any fee by applicants. (Sec. 3, Rule II Book III, POEA Rules and Regulations)

(c) Press Releases on Recruitment. For purposes of these rules, press releases on negotiations with principals or contracting partners and/or involving overseas job openings shall be considered as advertisements. (Sec. 4, Rule II Book III, POEA Rules and Regulations)

(d) Sanctions. False and deceptive advertisements published by agencies or entities including those published not in accordance with the prescribed format shall be valid ground for suspension or cancellation of license or authority. (Sec. 3, Rule I, Book III, POEA Rules and Regulations)

SECTION 26. Application for license for local recruitment and placement.

(a) Every applicant for license to operate a private employment agency for local recruitment and placement shall submit the following documents in support of the application;

(1) A certified copy of the Articles of Incorporation in the case of a corporation or the registration with the Bureau of Domestic Trade in the case of a single proprietorship or partnership; and

(2) Clearance from the Philippine Constabulary and the Bureau of Internal Revenue for all the incorporators, partners or single proprietor.

(3) List of officers/personnel and corresponding bio-data.

(b) An agency licensed to recruit and place workers overseas need not apply for a separate license to engage in domestic recruitment and placement.

SECTION 27. Action on application. — Within thirty (30) days from receipt of the application for license, the Bureau Director shall either deny or approve the same. The denial by the Bureau Director may be appealed by the applicant to the Secretary within ten (10) days from the receipt of the notice of denial.

SECTION 28. Notice of approval or denial. — The Bureau shall immediately transmit the notice of denial or approval of the application to the applicant.

SECTION 29. Fees and bonds. — Upon approval of the application, the applicant shall pay to the Department a license fee of P1,000.00 and post cash and surety bonds of P5,000.00 and P25,000.00, respectively.

The bonds shall guarantee compliance with the provisions of the Code, its implementing rules and the terms and conditions of the employment contracts.

SECTION 30. Issuance of License. — Upon payment of the license fee and the posting of the appropriate bonds, the Bureau Director shall issue the corresponding license to the applicant.

SECTION 31. Duration of license. — The license shall be valid for one year from the date of approval unless sooner cancelled, revoked or suspended by the Bureau Director for violation of any of the conditions prescribed in the license or applicable provisions of the Code or these Rules.

SECTION 32. Non-transferability of license. — No license shall be transferred, conveyed or assigned to any other person or entity, or used in any place other than that stated in the license. Any transfer of business address, appointment, or designation of any agent or representatives, including the establishment of additional offices elsewhere shall be subject to the prior approval of the Bureau.

SECTION 33. Registration of local private recruitment entities. — Educational institutions and civic organizations setting up placement offices to service their students or members shall register their operations with the nearest public employment office or the Bureau under such guidelines as may be prescribed by the Secretary. Such entities shall coordinate their recruitment activities with the public employment offices in the area where they operate.

SECTION 34. Allowable fees. — An employment agency which recruits a domestic worker for an employer may charge the latter a service fee to be determined by the Bureau which shall cover the maintenance of the recruit including board and lodging prior to placement. The transportation fare of the recruit from place of work may be charged against the latter.

Every payment shall be covered by an appropriate receipt indicating the amount paid and purpose of such payment.

SECTION 35. Replacement without costs. — An employer shall be entitled to a replacement without additional charges within one (1) month from the date of engagement of the first recruit on any of the following grounds:

- (a) The recruit is found to be suffering from an incurable or contagious disease;
- (b) The recruit is physically or mentally incapable of discharging the minimum normal requirements of the job;
- (c) The recruit abandons the job, voluntarily resigns, commits theft or any other act prejudicial to the employer or to any immediate members of his family; and
- (d) Other grounds analogous to the foregoing.

SECTION 36. Acknowledgment of contracts. — Every recruitment contract shall be acknowledged before the appropriate Regional Director or his duly authorized representative, or in his absence, before the municipal mayor, judge, notaries public or any person authorized by law to administer oath of the place where the recruit resides. If the recruit is a minor, the consent of the parent or guardian, similarly acknowledged, shall be attached to the contract.

RULE VI

Cancellation or Suspension of License

SECTION 1. Scope of Application. — These Rules shall apply to all persons, agencies or entities duly licensed or authorized to recruit and deploy Filipino workers for overseas employment. (Sec. 1, Rule VI Book I, POEA Rules and Regulations)

SECTION 2. Grounds for Suspension, Cancellation or Revocation. — A license or authority shall be cancelled, suspended or revoked on any of the following grounds, among others:

- a. Imposing or accepting directly or indirectly any amount of money, goods or services, or any fee or bond in excess of what is prescribed by the Administration;
- b. Engaging in act(s) of misrepresentation, such as publication or advertisement of false or deceptive notices or information in relation to the recruitment and placement of workers;
- c. Engaging in act(s) of misrepresentation, such as giving false statements, false testimonies or falsified documents;
- d. Inducing or attempting to induce an already employed worker to transfer from or leave his employment to another unless such transfer is advantageous or beneficial to the worker;
- e. Influencing or attempting to influence any person or entity to prevent employment of any worker;
- f. Engaging in the recruitment and placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;
- g. Obstructing or attempting to obstruct inspection by the Secretary, the Administrator or by their duly authorized representatives;
- h. Substituting or altering employment contracts and other documents approved and verified by the Administration from the time of actual signing thereof by the parties up to and including the period of expiration of the same without the Administration's approval;
- i. Failure to file report on the remittance of foreign exchange earnings and such matters as may be required by the Administration;
- j. Where the owner, partner or majority stockholder, licensee or holder of authority, or principal officers become officer or member of the Board of any corporation or partnership engaged in travel or engaged directly or indirectly in the management of a travel agency;
- k. Withholding or denying travel and other documents from workers for monetary considerations or reasons other than those authorized under the Labor Code and its implementing Rules and Regulations;
- l. Engaging in recruitment activities in places other than specified in the license or authority without previous authorization from the Administration;
- m. Appointing or designating agents or representatives without prior approval of the Administration;
- n. Falsifying or altering workers' employment contracts or travel documents;
- o. Deploying workers or seamen to vessels or principals not accredited by the Administrator;

- p. Deploying workers whose employment and travel documents were not processed by the Administration;
- q. Publishing or causing the publication of overseas job vacancies in violation of the prescribed rules;
- r. Failure to deploy workers without valid reasons within the prescribed period as provided under Section 5, Rule III, Book III hereof;
- s. Failure to pay or replenish cash bond and renew surety bond;
- t. Disregard of lawful orders, summons, etc;
- u. Withholding of workers' salaries or remittances without justifiable reasons;
- v. Coercing workers overseas to accept prejudicial arrangements in exchange of certain benefits that rightfully belong to the worker; and
- w. Violation of other pertinent provisions of the Labor Code and other relevant laws, rules and regulations. (Sec. 2, Rule Sec. 4, Rule II Book III, POEA Rules and Regulations)I Book II, POEA Rules and Regulations)

SECTION 3. Complaints against private employment agency. — Any complaint or report against private employment agency shall be filed with the Bureau. If the complainant or report shows any violation of the conditions of the license or the pertinent provisions of the Code or of these rules, the Bureau shall immediately conduct an investigation and require the private employment agency concerned to submit its comments or explanation within five (5) working days upon receipt of the copy of order/notice of the Bureau. (Amended by Sec. 3, Rule VI Book II, POEA Rules and Regulations)

(a) Contents of the Complaint. The complaint shall state the name and address of the complainant as well as that of the respondent, the specific offense or omission, the date when the offense was committed, and the relief(s) sought. (Sec. 4, Rule VI Book I, POEA Rules and Regulations)

(b) Action on the Complaint. Upon receipt of the complaint, the Administration shall furnish the respondent with a copy of the complaint and its supporting documents, if any, and require him to file his answer within ten (10) working days from receipt thereof.

The respondent's answer should be filed with the Licensing and Regulation Office within the reglementary period, attaching thereto proof of service of a copy thereof to the complainant.

Within five (5) days from receipt of the last responsive pleading, the Hearing Officer, shall schedule the hearing of the case if he finds from the submitted pleadings that there is a prima facie case of violation of the rules. Should there be a finding to the contrary, a minute resolution/summary judgment can be rendered motu proprio. (Amended by Sec. 5, Rule VI Book II, POEA Rules and Regulations)

(c) Failure to Answer/Appear During Hearing. Failure of the respondent to file an answer within the period prescribed or appear during the hearing, as the case may be, shall render the respondent in default and hearing or investigation may proceed ex parte. Decision/resolution of the case shall be based on the evidence presented by the complainant. (Amended by Sec. 6, Rule VI Book II, POEA Rules and Regulations)

SECTION 4. Suspension of license pending investigation. — (a) Pending investigation of the complaint or report, the Secretary may suspend the license of the private employment agency concerned upon recommendation of the Bureau on any of the following grounds:

(1) Failure on the part of the agency to submit its comments or explanation within five (5) days;

(2) There is a strong prima facie case for violation of the Labor Code as amended, its implementing Rules and Regulations and the Bureau's policies, memoranda and circulars; or

(3) There exists reasonable ground showing that the continued operations of the agency will lead to further violation of the conditions of the license or the exploitation of the workers being recruited, or imperil friendly relations with any country or otherwise prejudice national interest or security.

(b) Similar action may be taken by the Bureau Director in the case of private agencies licensed for domestic recruitment and placement.

SECTION 5. Conduct of investigation. — The Bureau shall summon the owner or official of the private employment agency and other parties concerned if any, receive such evidence as may be relevant and necessary, and otherwise take such other actions as may be warranted to inform itself of true facts and circumstances of the case. The investigation shall be terminated not later than thirty (30) working days from the first hearing. The Bureau shall submit its findings and recommendations to the Department of Labor and Employment within fifteen (15) days from the termination of the investigation. (Amended by Sec. 7, Rule VI Book II, POEA Rules and Regulations)

SECTION 6. Duration of Suspension. — The order of suspension may carry with it the period of effectivity which shall be in accordance with the scale of penalties which the Administration may promulgate. (Sec. 11, Rule VI Book II, POEA Rules and Regulations)

SECTION 7. Effects of Settlement. — A mutually agreed settlement of the case or the desistance of the complainant shall not bar the Administration from proceeding with the investigation. The Secretary or the Administrator shall act on the case as may be merited by the results of the investigation and impose such penalties on the erring agency or entity as may be deemed appropriate. Such settlement when reached to the full satisfaction of the complainant may, however, mitigate the liability of the respondent. (Sec. 12, Rule VI Book II, POEA Rules and Regulations)

SECTION 8. Imposition of Fines. — In addition to or in lieu of the penalties of suspension or cancellation the Secretary or the Administrator may impose fines. (Sec. 13, Rule VI Book II, POEA Rules and Regulations)

SECTION 9. Suspension of Documentary Processing. — The Administration may order the suspension of the processing of documents pertaining to a respondent agency or entity on any of the grounds under Section 2 of this Rule or for violation of any provision of these Rules. (Sec. 14, Rule VI Book II, POEA Rules and Regulations)

SECTION 10. Who May Issue Orders. — Orders of cancellation shall be issued by the Secretary. Orders for suspension of license or authority or the lifting thereof shall be issued by the Administrator, or in his absence by the Acting Administrator, in behalf of the Secretary. All other orders or resolutions which do not involve the suspension, cancellation or revocation of license or authority may be issued by the Director, LRO. (Sec. 14, Rule VI Book II, POEA Rules and Regulations)

SECTION 11. Effect of Order of Suspension of License. — An order suspending a license or authority shall be immediately executory and shall have the effect of suspending all activities of the agency or entity which fall under the definitions of recruitment and placement. The Administration may seek the assistance of other government institutions, agencies, or offices to ensure that suspension or revocation orders are carried out. (Sec. 16, Rule VI Book II, POEA Rules and Regulations)

SECTION 12. Authority to Administer Oath, Issue Subpoena, Etc. — The Administrator, the Director, LRO and the Hearing Officers shall have the authority to administer oath and/or affirmations, issue subpoena, take evidence, compel the attendance of the parties and/or witnesses and require the production of any book, paper, correspondence, memoranda and other records relevant or material to the case or inquiry. (Sec. 17, Rule VI Book II, POEA Rules and Regulations)

SECTION 13. Motion for Reconsideration or Appeal. — A motion for the reconsideration of an order of suspension or an appeal to the Secretary from an order cancelling a license or authority may be entertained only when filed with the LRO within ten (10) working days from service of the order or decision.

The filing of a motion for reconsideration or appeal shall not automatically stay the execution of the order. The Secretary or the Administrator may order the stay of execution and require the posting of supersedeas bond. (Sec. 18, Rule VI Book II, POEA Rules and Regulations)

SECTION 14. Action by the Secretary or Bureau Director. — (a) Where the case arises from overseas recruitment and placement activities, the Bureau shall submit its findings and recommendations to the Secretary within fifteen (15) days from the termination of the investigation, on the basis of which the Secretary may lift the suspension of the license or maintain the same until the violation are corrected, or cancel the license. (Repealed by POEA Rules and Regulations)

(b) Where the case involves domestic recruitment and placement activities, the Bureau Director may take similar action as provided for in paragraph (a) hereof. His decision may be appealed to the Secretary by an aggrieved party within ten (10) days from receipt of decision.

(c) The decision of the Secretary in both cases shall be final and unappealable.

(d) Where the decision of the Secretary is to suspend the license/authority, the duration of said suspension shall not be less than sixty (60) days, unless sooner lifted by him.

SECTION 15. Inspection and enforcement. — (a) The Bureau shall establish an inspectorate system to ensure effective supervision of the activities of all license and authority holders as well as of aliens employed in the Philippines and the implementation of the understudy training program of the employers of such aliens.

(b) The Bureau Director or his duly authorized representative may, during regular office hours, inspect the premises, books and records of license and authority holders and of establishments employing aliens to determine compliance with the Code and of these Rules. (Amended by Sec. 3, Rule III Book II, POEA Rules and Regulations)

SECTION 16. Inspection Before Licensing. — Before issuance or renewal of license or authority the Administration shall conduct an inspection of the premises and pertinent documents of the applicant. (Sec. 1, Rule III, Book II, POEA Rules and Regulations)

SECTION 17. Inspection of Agencies and Entities. — All Agencies and entities shall be subject to periodic inspection by the Administration to determine compliance with existing rules and regulations. Inspection shall likewise be conducted by the Administration in case of transfer of office or establishment of a branch office or upon complaint or report of violations of existing rules and regulations. (Sec. 2, Rule III, Book II, POEA Rules and Regulations)

SECTION 18. Subject of Inspection. — Depending on the purpose of inspection, the authorized representative(s) of the Administration shall require the presentation of and examine the necessary documents, records and premises of an agency or entity. (Sec. 4, Rule III, Book II, POEA Rules and Regulations)

SECTION 19. Inspection Procedures. —

a) Inspection shall be conducted by a team of at least two duly authorized persons during office hours, unless otherwise authorized in accordance with Section 3 of this Rules;

b) Inspection shall be conducted in the presence of the Manager of the office or any office personnel;

c) Inspection reports shall be submitted to the Administrator or the Director, LRO, within 24 hours after the inspection. (Sec. 5, Rule III, Book II, POEA Rules and Regulations)

SECTION 20. Violations Found in the Course of Inspection. — Violations found in the course of inspection such as non-compliance with the Administration's rules, issuances,

directives, etc. may be grounds for the imposition of appropriate sanctions or for the denial of application for renewal of license. (Sec. 6, Rule III, Book II, POEA Rules and Regulations)

SECTION 21. Issuance of Policy Guidelines on Inspection. — The Director, LRO, shall issue appropriate guidelines which shall ensure an effective and comprehensive system of inspection. (Sec. 7, Rule III, Book II, POEA Rules and Regulations)

SECTION 22. Guidelines on functions and responsibilities. — Consistent with these rules and regulations and appropriate instructions of the Secretary, the Bureau shall issue guidelines governing its functions and responsibilities.

RULE VII

The Overseas Construction Industry and the Corporate Export Program

SECTION 1. Registration of Filipino Construction Contractors. — Subject to guidelines issued jointly by the Secretary and the Construction Industry Authority of the Philippines, construction contractors shall be issued authority to operate as private recruitment entities.

SECTION 2. Corporate Export Program. — The Bureau, in coordination with other relevant agencies and entities shall develop programs for the hiring of workers in organized or corporate groups.

RULE VIII

Private Recruitment Entities

SECTION 1. Qualifications of applicants. — All applicants for authority to operate private recruitment entities for overseas work other than construction contractors shall possess the following qualifications:

(a) Citizenship requirement as provided for in Rule IV of these Rules;

(b) Appropriate capitalization as follows:

1. A minimum networth of P300,000 in the case of single proprietorship; and a paid-up capital or networth of P300,000 in the case of a corporation or partnership, as the case may be.

SECTION 2. Application for authority for overseas private recruitment. — Every applicant for authority to operate a private recruitment entity shall submit the following documents in support of the application:

(a) A certified copy of the Articles of Incorporation in the case of a corporation, or the registration with the Bureau of Domestic Trade in the case of a single proprietorship or partnership;

(b) If the applicant is a corporation, proof of financial capacity of the major stockholders such as sworn statements of assets and liabilities and verified income tax returns for the last two years;

(c) If the applicant is a single proprietorship or a partnership, proof of financial capacity of proprietor or partners such as sworn statements of assets and liabilities and verified income tax returns for the last two years;

(d) Clearance from the Philippine Constabulary and the Bureau of Internal Revenue for all the incorporators, partners or single proprietor;

(e) A verified statement that the applicant has in its employ persons with adequate competence to evaluate and test recruits and to consider them for employment strictly on the basis of merit and fitness, without any undue discrimination and in accordance with the qualifications prescribed by the employers;

(f) A verified undertaking to assume all responsibilities for the proper use of its authority and the implementation of the contract of employment with the workers; and

(g) Such other requirements that the Secretary may require upon recommendation of the Director.

SECTION 3. Action on application. — Within thirty (30) days from the receipt of the application for authority, the Bureau shall recommend its denial or approval to the Secretary. Upon considering the findings and recommendations of the Bureau, the Secretary may either deny or approve the application.

SECTION 4. Fees and bonds. — Upon approval of the application, the applicant shall pay to the Department a registration fee of P2,000.00, and post a performance bond of P200,000.00 from an accredited bonding company to answer for valid and legal claims arising from violations of the conditions of the authority of the contracts of employment and guarantee compliance with the provisions of the Code, its implementing rules and appropriate issuances of the Department.

SECTION 5. Action on application. — Within thirty (30) days from the receipt of the application for authority, the Bureau shall recommend its denial or approval to the Secretary. Upon considering the findings and recommendations of the Bureau, the Secretary may either deny or approve the application.

SECTION 6. Issuance of authority. — Upon payment of the registration fee and the posting of the appropriate bonds the Secretary shall issue the corresponding authority to the applicant.

SECTION 7. Duration/renewal and non-transferability of Authority. — (a) Every authority shall be valid for one year from the date of approval, unless sooner cancelled, revoked or suspended by the Secretary for violations of any of the conditions of the authority or any applicable provisions of the Code or these Rules.

(b) No authority shall be transferred, conveyed or assigned to any other person or entity or used in any place other than that stated in the authority. Any transfer of business address, appointment or designation of any agency or representative, including the establishment of additional offices elsewhere, shall be subject to the prior approval of the Bureau.

(c) The Secretary shall issue appropriate guidelines on the renewal of authority in accordance with the applicable provisions of these Rules and which may be similar to those provided for licensed holders.

SECTION 8. Recruitment, hiring and employment of workers. — Every private recruitment entity shall recruit, hire and employ workers for overseas job in accordance with the applicable provisions of these Rules. All applications for passport or travel of recruited and hired workers shall be properly endorsed by the Bureau.

SECTION 9. Allowable fees and charges. — (a) A private recruitment entity shall charge a minimum mobilization fee to cover costs of recruitment, processing and documentation in accordance with a schedule approved by the Secretary in addition to service charges it may negotiate with its principal.

(b) Subject to approval by the Secretary the recruited workers may be required to post a bond to guarantee compliance with the employment contract.

RULE IX

Overseas Employment Development Board
(Abolished by EO 797)

SECTION 1. Coverage. — This Rule shall cover the functions and responsibilities of the OEDB. It shall apply to employers hiring through the OEDB and to workers processed and placed by said agency.

SECTION 2. Role of the OEDB. — The OEDB shall be the government placement agency for overseas employment. In cooperation with other relevant agencies and entities, it shall also be responsible for developing employment and wage standards and such support services as may be necessary for the government's overseas employment program. (Modified by Sec. 1, Rule II, Bk. IV POEA Rules and Regulations)

SECTION 3. Employment development. — The promotion and development of employment opportunities abroad shall be undertaken by the OEDB, in cooperation with relevant government agencies and entities, through organized and systematic activities and services which shall include among others, the following:

(a) A comprehensive manpower marketing strategy and to dispatch OEDB development officers abroad for this purpose;

(b) Develop and promote programs or arrangements that would encourage the hiring of Filipinos in organized or corporate groups;

(c) Scout for labor market for unskilled workers, among others; and

(d) Promote Filipino manpower through advertising in appropriate media overseas. (Modified by Sec. 1, Rule I, Bk. IV POEA Rules and Regulations)

SECTION 4. Recruitment and placement. — a) The OEDB shall recruit and place workers primarily on government-to-government arrangements, and shall therefore service the hiring of foreign governments and their instrumentalities and, in addition:

(1) Recruit and place workers of particular skills categories as may be directed by the Secretary;

(2) Administer employment programs or projects as may be directed by the Secretary; and

(3) In cooperation with the Regional Offices of the Department, undertake organized recruitment activities in the provinces in aid of the employment dispersal policy of the Department.

b) The employer shall enter into a bilateral recruitment agreement with the OEDB. The employer shall directly assist the OEDB in selecting appropriate workers from its manpower pool.

c) The OEDB shall ensure that the worker through appropriate undertakings complies with his obligations arising from the employment contract.

SECTION 5. Documents requirements. — An employer hiring through the OEDB shall submit the following documents:

a) Authority from the government of the employer to hire Filipino workers;

b) Work permit or visa assurance of workers; and

c) Recruitment Order which shall state the number and categories of workers needed, compensation benefits, qualification guidelines, testing procedures and a model employment contract. (Modified by Sec. 2, Rule II, POEA Rules and Regulations)

SECTION 6. Formalization of a Recruitment Agreement. — Employers hiring through the Administration shall be required to formalize a Recruitment Agreement which shall be in accordance with existing bilateral labor agreements, if any. The Recruitment Agreement shall, among others, contain the following provisions:

a. Responsibilities of the parties to the agreement;

b. Selection and documentation procedures;

c. Fee schedules and terms of payment;

d. Manner and facilities for remittance of workers' salary;

e. Grievance Machinery for workers; and

f. Validity and revocation of the agreement.

The standards and requirements set by the Administration for the recruitment and placement of workers overseas shall apply to hiring thru the Administration. (Sec. 3, Rule II, Bk. IV POEA Rules and Regulations)

SECTION 7. Recruitment and Placement Procedures. — a) Interview and Selection — An employer hiring through the Administration shall select his workers from the manpower pool developed and maintained by the Administration;

b) Medical Examination. — Selected workers shall undergo and pass a standard pre-employment medical examination conducted by a duly accredited medical retainer of the Administration;

c) Ticketing and Flight Arrangements. — The employer shall assume the full cost of workers' transportation to and from the place of work, For this purpose, the Administration shall handle the flight arrangements and/or ticketing of workers hired. Should the employer decide to handle its own ticketing, he shall be required to course pre-paid tickets through the Administration for appropriate flight booking.

d) Orientation. — Before the worksite, hired workers shall undergo the required Pre-Departure Orientation Seminar (PDOS). (Sec. 4, Rule II, Bk. IV POEA Rules and Regulations)

SECTION 8. Documentation of Workers. — a) Contract Processing — Workers hired through the Administration shall be issued the following documents:

(1) Individual Employment Contract duly signed by the employer or the proper administration official where appropriate;

(2) Travel Exit Pass;

(3) Endorsement letter to PTA, and

(4) Such other documents as may be necessary for travel.

b) Passport Documentation. — The Administration may secure directly the selected worker's passport from the Department of Foreign Affairs. All transmittals and endorsements for passport issuance shall be undertaken directly by the Administration.

c) Visa Arrangements. — The Administration may assist employers and selected workers secure their visas from the appropriate Embassy. Visa forms may be accomplished by the worker at the Administration. The accomplished visa forms together with the passport shall be endorsed by the Administration directly to the Embassy.

SECTION 9. Workers protection. — The OEDB shall protect and enhance the interest, well-being and welfare of workers and, for this purpose, it shall undertake:

- a) To establish wage and compensation standards, employments and conditions, by region or by country, which shall be prescribed by the Secretary;
- b) To provide facilities for skills development and testing, pre-employment medical examination, pre-departure work/or language orientation, foreign exchange remittance assistance, re-entry and re-employment assistance, accident insurance, among others, and
- c) To implement a grievance procedure in accordance with the provisions of this Title and the development objectives of the OEDB.

SECTION 10. Dispute settlement. — The following shall be adhered to in handling employee-employer disputes:

- a) In the event of a dispute between employee and employer, the complainant and/or respondent shall submit such dispute to the OEDB for conciliation or mediation. If the dispute is not settled at this stage, the OEDB shall certify the case to the Secretary for final decision.
- b) The OEDB, under appropriate circumstances, may suspend, prohibit or prevent an employer from further recruitment activities in the country. The OEDB also under appropriate circumstances, may suspend, prohibit or prevent workers from being placed overseas.
- c) Whenever circumstances warrant, the OEDB may dispatch an officer to the worksite to conciliate or mediate employee-employer disputes, in coordination with other appropriate government agencies.

SECTION 11. Welfare Services. — The OEDB shall establish and support a Secretariat for the Welfare Fund for Overseas Workers (Welfund) in accordance with P. D. 1412 and P. D. 1691. Upon the operationalization of the Welfare Fund under P. D. 1694, the functions and responsibilities of such Secretariat shall be assumed by the Welfund.

SECTION 12. Foreign exchange. — The OEDB shall develop and monitor the compliance with the foreign exchange remittance requirements under this Title by employers and workers. It shall establish an office in the OEDB for this purpose in coordination with relevant government agencies.

SECTION 13. Auxiliary services. — The OEDB may, upon approval of its Board, initiate, organize, and establish auxiliary services in support of the overseas employment development program.

SECTION 14. Overseas information system. — The OEDB shall, in coordination with relevant agencies, establish a system of gathering, collating, evaluating and disseminating data and information concerning the Department's overseas employment program.

SECTION 15. Fees and other charges. — The OEDB shall collect reasonable administrative or service fees from employers. It shall not collect service fee from workers.

SECTION 16. Authority to issue rules. — The OEDB shall issue rules and regulations, instructions or orders governing its functions and responsibilities.

RULE X

National Seamen Board

SECTION 1. Recruitment and placement of seamen. — Foreign shipping companies and domestic shipping companies owning or operating vessels engaged in overseas shipping shall hire Filipino seamen through the National Seamen Board. For this purpose, the Board shall maintain a complete registry of seamen indicating their categories or ratings and such other qualifications as may be appropriate.

SECTION 2. Requirements for hiring through agents or representatives. — Foreign shipping companies may hire through duly authorized shipping or manning agents if the latter comply with the following requirements:

- (a) Registration with the Securities and Exchange Commission or the Bureau of Domestic Trade, as the case may be;
- (b) Submission to the Board of a special power of attorney from their foreign principals which shall include the power to sue and be sued in their behalf;
- (c) Submission to the Board for approval of the employment contracts, salary scales and other documents the Board may require;
- (d) Submission to the Board of their agency or manning contracts with their foreign principals; and
- (e) Other requirements the Board may impose.

SECTION 3. Power to modify and revise hiring procedures. — The Board may amend, alter or modify the manner and/or procedure of recruitment, hiring and placement of seamen to make them more responsive to the demands for Filipino seamen.

SECTION 4. Registration of Seamen. — All seamen applicants should register with the Board when applying with an authorized shipping or manning agent for employment on board a foreign-going vessel.

SECTION 5. Qualifications for registration. — To qualify for registration, an applicant must:

- (a) Be a Filipino citizen;
- (b) Be at least 18 years of age;
- (c) Be physically and mentally fit for employment as a seaman; and
- (d) Have adequate training or experience for employment as seaman.

SECTION 6. Supporting documents. — The applicant shall also submit the following documents to complete his registration:

- (a) Professional license;
- (b) Diploma or certification of educational and other training;
- (c) Seaman Continuous Discharge Book;
- (d) Certificate of employment and/or service record; and
- (e) Other documents the Board may require.

SECTION 7. Power to hear and decide cases. — The Board shall have original and exclusive jurisdiction over disputes arising out of or in connection with, the employment of all Filipino seamen on board vessels engaged in overseas trade. Its decision in such cases shall be appealable by any aggrieved party to the National Labor Relations Commission within the same period and upon the same grounds provided in Article 223 of the Code.

SECTION 8. Model contract of employment. — The Board shall adopt a standard format of service agreement in accordance with pertinent labor and special legislations and the prevailing standards set by applicable International Labor Organization Conventions. The standard format shall set the minimum standards of the terms and conditions to govern the employment of Filipino seafarers, but in no case shall a shipboard employment contract be allowed where the same provides for benefits less than those enumerated in the model employment contract, or in any way conflict with any other provision embodied in the standard format.

SECTION 9. Sanctions. — The Board may ban, prohibit or prevent foreign shipping companies, their agents or representatives from hiring Filipino seamen if they are shown to have repeatedly or grossly violated pertinent provisions of the Code, these rules and regulations and issuances of the Department of Labor and Employment, the Board and the Central Bank of the Philippines.

SECTION 10. No service charge. — No fees shall be charged from the seamen for services in connection with their recruitment and placement. All expenses for hiring seamen shall be shouldered by foreign shipping principals.

SECTION 11. Fees from employers. — The Board shall collect from shipping companies fees to cover reasonable expenses of recruitment and placement of seamen hired through the Board.

SECTION 12. Board to issue rules and regulations. — The Board shall issue rules and regulations governing its functions and responsibilities.

RULE XI

Disputes Involving Land-Based Overseas Contract Workers

SECTION 1. Scope. — This Rule shall govern the adjudication of complaints for violations of contracts or employer-employee relations dispute arising from the recruitment, placement and employment of land-based overseas contract workers, except cases involving workers recruited through the OEDB.

SECTION 2. Jurisdiction. — The regional offices of the Department shall have the original and exclusive jurisdiction over all matters or cases involving Filipino workers for overseas employment except seamen: Provided, that the Bureau shall, in the case of the National Capital Region, exercise such power. The decisions of the regional offices or the Bureau shall be appealable to the National Labor Relations Commission within the same period and upon the same grounds provided in Article 223 of the Code.

SECTION 3. Who may file. — Any aggrieved worker or his beneficiaries may file a complaint against any placement agency, authority holder construction contractor or foreign based employer-principal or the latter's authorized agent or representative. The employer or his representative may also file a complaint against a worker for breach of the employment contract or for other violations of the terms and conditions of the employment contract.

SECTION 4. Venue. — Any complainant may file a complaint with the Bureau or with the Regional Office where the contract of employment was originally executed.

SECTION 5. Action of complaints. — Upon receipt of the complaint the Bureau or the Regional Office shall immediately summon the parties for the purpose of conciliating the dispute. If the dispute is not settled within fifteen (15) days from the date of the first conciliation meeting, the Bureau Director shall hear and decide the case; where the case falls under the jurisdiction of the Regional Office, the Regional Director shall assign the same to a Labor Arbiter for compulsory arbitration.

RULE XII

Illegal Recruitment

SECTION 1. Basis for recommending arrest and detention. — The Secretary may recommend to the appropriate authority the arrest and detention of any person for illegal recruitment if he is satisfied from the preliminary examination conducted by him or by his duly authorized representative that the act constituting illegal recruitment has been committed and that the particular person has committed it.

SECTION 2. Preliminary examination. — Preliminary examination shall be considered as sufficient basis for recommending arrest and detention if the witness or witnesses have been examined personally by the Secretary or his duly authorized representative and the examination is reduced to writing under oath in the form of searching questions and answers.

SECTION 3. Secretariat on illegal recruitment. — The Bureau shall serve as the secretariat of the inter-agency Council on Illegal Recruitment established under LOI 324. It shall provide the necessary personnel, facilities and support services to the campaign against illegal

recruitment and shall coordinate activities for the council for such purpose.

RULE XIII

Foreign Exchange Remittance

SECTION 1. Coverage. — This Rule shall apply to every contract worker and seaman recruits. It shall also apply to licensed or authorized recruiters and/or their foreign principals or employers.

SECTION 2. Obligation to remit. — It shall be mandatory for a worker or seaman to remit regularly a portion of his foreign exchange earnings abroad to his beneficiary, through the Philippine banking system. This obligation shall be stipulated in the following documents:

- a) Contract of employment and/or service between foreign based employer and a worker;
- b) Affidavit of undertaking whereby a worker obligates himself to remit a portion of his earnings to his beneficiaries; and
- c) Application for a license or authority to recruit workers.

SECTION 2-A. Obligation to Report. — Agencies and entities shall submit periodic reports to the Central Bank of the Philippines on their foreign exchange earnings, copies of which shall be furnished by the Administration.

SECTION 3. Amount of foreign exchange remittances. — The amount of foreign exchange remittance referred to in Section 2 hereof, shall be a minimum of 70% of the overseas workers basic salary in foreign exchange in the case of construction and sea-based workers; and a minimum of 50% in the case of other workers.

SECTION 4. Form of Remittance. — Remittance of foreign exchange may be done individually by a worker or collectively through an employer under a payroll deduction scheme, to be approved by the Bureau, NSB, OEDB as appropriate.

SECTION 5. Procedure of remittance. — (a) The workers, prior to departure, shall open a deposit account in favor of his beneficiary in any Philippine bank. A foreign currency account may also be opened by the worker.

The applicant shall inform the Bureau, the OEDB or NSB, as the case may be his deposit account number.

(b) In the case of seamen, construction workers and other organized work crews involving at least twenty-five (25) workers, the foreign currency/peso account shall be opened by the employer with any Philippine bank upon the signing of the employment contract. The account shall be accompanied by a covering letter of nomination of beneficiaries and the date of payment of the allotment to the beneficiary as may be stipulated by the employee and the licensed agency, manning agent or construction contractor.

(c) At the end of every period as may be stipulated in the notice as payment, the licensed agency, construction contractor or manning agent shall prepare a payroll sheet indicating the names of workers covered by the scheme, their beneficiaries, their individual bank account numbers, the amount of foreign currency remitted and the peso equivalent thereof. This payroll sheet, together with the peso check representing the remittances, shall be forwarded to the bank concerned with instruction to credit the account of the worker or beneficiaries. A copy of the payroll sheet shall be furnished to the Bureau, OEDB or NSB as the case may be, on a monthly basis.

SECTION 6. Permanent Secretariat. — A permanent inter-agency Secretariat in the Department of Labor and Employment to direct and monitor implementation of this Rule is hereby established. It shall have the power and duty to:

- (a) Avail itself of the assistance of the agencies represented in the Foreign Exchange Remittance Committee created under Letter of Instruction No. 90 to enable it to effectively carry out its duties.
- (b) Assist the committee in carrying out a continuing informational and educational campaign to promote foreign exchange remittance by workers.
- (c) Establish and maintain an information monitoring system to determine periodically the status of remittances, particularly the number of remitters, amount and nature of remittances, amounts actually received by the beneficiaries, etc.

SECTION 7. Responsibility of employer or his representative. — The employer or his representative shall undertake the proper implementation of this Rule by providing facilities to effect the remittances and monitoring of foreign exchange earnings. Failure to do so shall be subject to appropriate sanctions specified in the Code and Central Bank regulations.

SECTION 8. Failure or refusal to remit and trafficking in foreign currency. — A worker who willfully fails or refuses to remit the assigned portion of his foreign exchange earnings or is found to be engaged or is engaging in the illegal traffic or blackmarket of foreign exchange shall be liable under this Code and existing Central Bank rules.

RULE XIV

Employment of Aliens

SECTION 1. Coverage. — This Rule shall apply to all aliens employed or seeking employment in the Philippines, and their present or prospective employers.

SECTION 2. Submission of list. — All employers employing foreign nationals, whether resident or non-resident shall submit a list of such nationals to the Bureau indicating their names, citizenship, foreign and local addresses; nature of employment and status of stay in the Philippines.

SECTION 3. Registration of resident aliens. — All employed resident aliens shall register with the Bureau under such guidelines as may be issued by it.

SECTION 4. Employment permit required for entry. — No alien seeking employment, whether on resident or non-resident status, may enter the Philippines without first securing an employment permit from the Department of Labor and Employment. If an alien enters the country under a non-working visa and wishes to be employed thereafter, he may only be allowed to be employed upon presentation of a duly approved employment permit.

SECTION 5. Requirements for employment permit application. — The application for an employment permit shall be accompanied by the following:

(a) Curriculum vitae duly signed by the applicant indicating his educational background, his work experience and other data showing that he possesses high technical skills in his trade or profession;

(b) Contract of employment between the employer and the principal which shall embody the following, among others:

(1) That the non-resident alien worker shall comply with all applicable laws and rules and regulations of the Philippines;

(2) That the non-resident alien worker and the employer shall bind themselves to train at least two (2) Filipino understudies for a period to be determined by the Secretary of Labor and Employment; and

(3) That he shall not engage in any gainful employment other than that for which he was issued a permit.

(c) A designation by the employer of at least two (2) understudies for every alien worker. Such understudies must be the most ranking regular employees in the section or department for which the expatriates are being hired to ensure the actual transfer of technology.

SECTION 6. Issuances of employment permit. — The Secretary of Labor and Employment may issue an employment permit to the applicant based on:

a) Compliance by the applicant and his employer with the requirements of Section 2 hereof;

b) Report of the Bureau Director as to the availability or non-availability of any person in the Philippines who is competent, able, and willing to do the job for which the services of the applicant are desired;

c) His assessment as to whether or not the employment of the applicant will redound to the national interest;

d) Admissibility of the alien as certified by the Commission on Immigration and Deportation;

e) The recommendation of the Board of Investments or other appropriate government agencies if the applicant will be employed in preferred areas of investments or in accordance with imperatives of economic developments; and

f) Payments of a P100.00 fee.

SECTION 7. Duration of employment permit. — Subject to renewal upon showing of good cause, the employment permit shall be valid for a minimum period of one (1) year starting from the date of its issuance unless sooner revoked by the Secretary of Labor and Employment for violation of any provisions of the Code or of these Rules.

SECTION 8. Advice to Commission on Immigration and Deportation. — The Bureau shall advise the Commission on Immigration and Deportation on the issuance of an employment permit to an applicant.

SECTION 9. Understudy Training Program. — The employer shall submit a training program for his understudies to the Bureau within thirty (30) days upon arrival of the alien workers. The supervision of the training program shall be the responsibility of the Bureau and shall be in accordance with standards established by the Secretary of Labor and Employment.

BOOK TWO

National Manpower Development Program

RULE I

Definition of Terms

SECTION 1. Definition of terms. —

(a) "Council" refers to National Manpower and Youth Council.

(b) "Human resources development" refers to the process by which the actual and potential labor force is made to systematically acquire greater knowledge, skills or capabilities for the nation's sustained economic and social growth.

(c) "Manpower" is that portion of the population which has actual or potential capability to contribute to the production of goods and services.

(d) "National Manpower Plan" refers to the plan formulated by the Council on the systematic determination of manpower requirements and supply of the sectors of the economy over a future period of time. It shall embody policies and strategies on how human resources can be improved in quality and productivity, how they can be efficiently allocated to various employments, with a view to accelerating the attainment of the country's overall economic and social objectives.

(e) "Training" is the systematic development of the attitude/knowledge/skill/behavior pattern required for the adequate performance of a given job or task.

(f) "Training in vocation" refers to a range of activities aimed at providing the skills, knowledge, and attitudes required for employment in a particular occupation, group, group of related occupations or functions in a field of economic activity.

(g) "Basic skills training" refers to the first stage of the learning process of a vocational character for a given task, job, occupation or group of occupations, aimed at developing the fundamental attitude/knowledge/ skill/behavior pattern to specified standards. This covers any of the following:

(1) "Pre-entry training" is a basic skills training for immediate entry into the working environment.

(2) "Accelerated training" is basic skills training of a short-term nature for jobs with a defined level of qualifications. This usually refers to a rapid paced, condensed vocational training to fill immediate manpower needs.

(h) "Further training" refers to that part of vocational training which follows basic training, usually within the framework of a training program or scheme, for recognized qualifications. This covers any or all of the following:

(1) Upgrading — training for supplementary skills and knowledge in order to increase the versatility and occupational mobility of a worker or to improve his standard of performance.

(2) Updating — training to improve the performance of people in their occupation in respect to modern developments; new materials, tools, processes.

(3) Refresher — process of further training in work currently performed in order to improve job performance. This also refers to training to regain skills and knowledge which may have been partly forgotten as a result of length interruptions in the performance of an occupation.

(4) Specialization — training to consolidate, deepen and broaden skills and knowledge for a particular task, function or aspect of a worker's occupation.

(5) Retraining for the acquisition of skills and knowledge required in an occupation other than the one for which the person originally trained.

(i) "Entrepreneurship training" refers to the training schemes to develop persons for self-employment or for organizing, financing and/or managing an enterprise.

(j) "Cooperative settlement training" refers to the training of a group of young people or farmer families in modern methods in agriculture and cooperative living and subsequently to organize and locate them in cooperative settlement.

(k) "Instructor training" is aimed at developing capacities of persons for imparting attitudes, knowledge, skills and behavior patterns, required for specific jobs, tasks, occupations or group of related occupations.

(l) "Vocational preparation training" refers to a range of training activities primarily aimed at the youth and covering any or all of the following:

(1) First introduction to work of a vocational character covering a range of occupational activities;

(2) Preparing the youth for choosing an occupation or a line of training;

(3) Acquainting the youth with different materials, tools, machines, procedures and elementary theoretical knowledge relevant to a group of occupations;

(4) Providing the youth with working methods and standards expected at work; and

(5) Giving the youth basic knowledge about contributions which they may be able to make to the economic and social development of the country.

(m) "Special project training" refers to an organized activity or sets of activities in aid of human resources development which do not fall squarely under any of the previously described types of activities.

(n) "Skills standards" refers to a level or graduated levels of proficiency generally accepted by industry in specific jobs, tasks, trades or occupations.

(o) "Trade" refers to any industrial craft or artisan occupation which is officially or traditionally recognized as requiring special qualifications which can only be acquired through lengthy training, experience, and practical and theoretical instruction.

(p) "Trade test" refers to examination or test to determine whether a person meets the standards of a particular trade.

(q) "Employment" refers to remunerative work either for an employer or self-employment.

(r) "Occupation" refers to the collection of jobs which is sufficiently similar with regard to their main task to be grouped together under a common title.

(s) "Job" refers to all the tasks carried out by a particular person in the completion of his prescribed duties.

(t) "Task" refers to a major element of work or combination of elements by means of which a specific result is achieved.

RULE II

Functions and Areas of Responsibility

SECTION 1. Functions of the Council. — The Council shall take charge of the training and development of human resources, institutions, and formulate such integrated plans, policies, programs, and projects that will ensure efficient and proper allocation, accelerated development and optimum utilization of the nation's manpower, and thereby promote employment and accelerate economic and social growth.

SECTION 2. National manpower plan. — The Council shall:

(a) Formulate a long term plan which shall be the controlling plan for the development of manpower resources for the entire country;

(b) Carry out the approved manpower plan, and promulgate policies and standards for manpower and youth development calculated to develop and upgrade occupational skills of the labor force.

SECTION 3. Administration of training programs. — To integrate national manpower development efforts, the Council shall coordinate all manpower training schemes, except apprenticeship and learnership programs, particularly those having to do with the setting of skills standards. The Council may regulate existing manpower training programs of the government and the private sector to make them conform with national development programs, and for this purpose all manpower training programs shall be reported to the Council.

SECTION 4. Regional manpower development offices. — The Council shall establish regional manpower development offices for the effective supervision, coordination and integration of manpower training centers, programs and projects, and all human resources development efforts in their respective jurisdictions.

SECTION 5. Industry boards. — The Council shall set up industry boards to assist in the establishment of manpower development schemes, trade and skills standards and such other functions as will provide direct participation of employers and workers in the fulfillment of Council objectives.

SECTION 6. Incentive scheme. — The Council shall establish an incentive scheme which shall provide additional tax deduction to persons or enterprises undertaking development programs, other than apprenticeship, as approved by the Council.

SECTION 7. Research. — The Council shall conduct continuous assessment and study of the nature, behavior and use of the country's stock of human resources and study areas directly or indirectly related to human resources development. This it shall do by way of:

(a) Engaging directly in studies, researches and surveys; and

(b) Engaging the services of duly recognized and competent individuals, groups of individuals, institutions, schools and universities or research outfits, through contracts, grants or any appropriate arrangement.

In any case, documents, materials or whatever output or results from the activities above shall form part of the property of the Council.

SECTION 8. Evaluation. — The Council shall evaluate the output of human resources development programs to gear educational and training objectives to requirements of the annual investment priorities plan and maximum economic growth.

SECTION 9. Training assistance. — The Council shall provide training assistance to any employer or organization upon approval of an appropriate project proposal.

SECTION 10. Employment promotion schemes. — The Council shall adopt employment promotion schemes to channel unemployed youth to meet manpower shortages or other occupations.

SECTION 11. Director-General authorized to enter into agreements. — The Director-General, acting on behalf of the Council, shall enter into agreements necessary to implement manpower programs, and act upon nominations of Philippine citizens for training in other countries.

SECTION 12. Coordination of employment service. — The Council shall coordinate employment service activities with the Bureau of Employment Services particularly in the measurement of unemployment and under-employment, the conduct of local manpower resources surveys and occupational studies including an inventory of the labor force, and the establishment as well as maintenance without charge of a national register of technicians and other skilled manpower who have successfully completed training programs under the Council, including its periodic publication, and the maintenance of an adequate and up-to-date system of employment information.

SECTION 13. National standards of trade skills. — The Council shall establish and implement a national standards of trade skills, testing and certification.

SECTION 14. Administration of technical assistance programs. — The Council shall exercise authority, administration, and jurisdiction over ongoing technical assistance programs and grants-in-aids for manpower and youth development, both local and foreign, through a system that shall be formulated by the Council.

SECTION 15. Annual report to the President. — The Council shall report annually to the President on the progress of the Manpower Plan.

RULE III

Training and Development

SECTION 1. Responsibility of the NMYC for training and development. — The NMYC shall provide, through its Secretariat, instructor training, entrepreneurship development, training in vocations, trades and other fields of employment, and assist any employer or organization in developing training schemes under such rules and regulations as the Council may establish for this purpose.

SECTION 2. Integration of training programs. — The Council shall coordinate all manpower training schemes, apprenticeship and learnership programs, particularly the setting of skills standards. It may regulate existing manpower training programs of the government and the private sector to make them conform with the national development programs.

SECTION 3. Obligation to report. — All manpower training programs, whether in the government or in the private sector shall be reported to the Council in a form to be prescribed by it.

SECTION 4. Application for NMYC assistance. — Any person or entity, private or public, that is engaged or desires to engage in training may request the NMYC for assistance by filing with its Director-General an appropriate project proposal.

SECTION 5. Requirements of training program proposal. — The training program proposal shall be submitted in the form prescribed by the NMYC. The proposal shall include, among others the following:

- (a) Objectives of training;
- (b) Type of training, whether for basic skills training, further training, instructor training, cooperative settlement training, entrepreneurship training, vocational preparation training, and special projects training;
- (c) Training schedules and program of activities;
- (d) Educational background of the trainee;
- (e) Course content or syllabus;
- (f) Personnel requirements (training staff);
- (g) Estimate of supplies and materials required;
- (h) Training facilities and equipment;
- (i) Cost estimates and budgetary allocation.

SECTION 6. Actions on application for training assistance. — The Director-General shall approve or disapprove the application within ninety (90) calendar days from submission thereof.

SECTION 7. Criteria for approval. — The applicant shall qualify for assistance if he can establish to the satisfaction of the Director-General that the project for which training assistance is being sought falls under NMYC priorities, is feasible, is labor-intensive, has the built-in-capacity for job creation and placement, and that the applicant is in a position to comply with the minimum requirements set by NMYC on training facilities, training staff, course syllabus and training methodology.

SECTION 8. Allowable training expenses. — The training assistance of NMYC shall be in the form of personal services, travelling expenses, equipment, training tools, training supplies and materials, and a reasonable amount for contingencies.

SECTION 9. Termination of training project. — The Director-General may terminate any training program or project should evaluation prove that the training center/project has not

complied with any of the requirements of the approved project proposal or should there be violation of any of the provisions of the relevant Memorandum Agreement.

SECTION 10. Incentive scheme. — An additional deduction from taxable income of one-half of the value of labor training expenses incurred for developing or upgrading the productivity and efficiency of unskilled labor or for management development programs shall be granted to the person or enterprise concerned, provided such training program is approved by the Council and provided further that such deduction shall not exceed 10 percent of direct labor wage.

There shall be a review of the said scheme two years after its implementation.

SECTION 11. Coverage of the incentive scheme. — Subject to the limitations prescribed by law and these Rules, training expenses incurred in connection with organized manpower training programs may be deducted from the taxable income of the person or enterprise concerned, provided such training programs shall have been submitted to the NMYC for evaluation and approval except those covered by the apprenticeship program. Training programs undertaken by training institutions and/or associations operating for profit shall not qualify under this incentive scheme.

RULE IV

Industry Boards

SECTION 1. NMYC to establish industry boards. — The Council shall establish industry boards to assist in the establishment of manpower development schemes, trades and skills standards and such other functions as will provide direct participation of employers and workers in the fulfillment of the Council's objectives in accordance with the guidelines to be established by the Council in consultation with the National Economic and Development Authority.

The maintenance and operation of the Industry Boards shall be financed through a funding scheme under such rates of fees and manner of collection and disbursement as may be determined by the Council.

SECTION 2. Preparatory activities. — In setting up such industry boards as may be necessary, the NMYC shall:

- (a) Establish in consultation with industry and appropriate government agencies an Industry Classification Scheme for the whole economy;
- (b) Determine priority industries where Industry Boards should be set up; and
- (c) Establish criteria for determining to which industry board a certain firm or establishment properly belongs.

SECTION 3. Powers of the NMYC over the industry boards. — The NMYC shall have the power and authority:

- (a) To determine the composition of the industry boards;
- (b) To establish the scope of authority, functions and relationships of the boards vis-a-vis other agencies and organizations; and
- (c) To determine the mode of financing for the boards.

RULE V

National Skills Standards

SECTION 1. Establishment of skills standards. — There shall be national skills standards for industry trades to be established by the Council in consultation with employers' and workers' organizations and appropriate government authorities. The Council shall thereafter administer the national skills standards.

- SECTION 2. Objectives. —
- (a) To improve the level of skills of workers in industry;
 - (b) To assist in the development of human resources by providing a precise means of assessing the skilled manpower of the country, both qualitatively and quantitatively; and
 - (c) To improve industrial relations by providing common ground for negotiations between employers and workers relating to terms and conditions of skilled workers.

SECTION 3. Composition. — There shall be set up a National Committee on Trade Skills Standards, Testing and Certification, composed of the Director-General as Chairman, the Director of the National Manpower Skills Center, the Director of the Bureau of Apprenticeship, and one representative each from industrial employers, industrial workers, Department of Education, Culture and Sports, Department of Trade and Industry, organizations of mechanical engineers, electrical/electronic engineers, and civil engineers.

SECTION 4. Functions. — The National Committee on Trade Skills Standards, Testing and Certification shall have the following functions and responsibilities:

- (a) To propose for the approval of the Council national trade skills standards for various trades and occupations;
- (b) To approve trade tests appropriate to each national trade skill standards;
- (c) To appoint trade committees of experts to advise the National Committee on the content of national trade skills standards and the form of the trade tests; and
- (d) To advise generally on the implementation of the national trade skills standards, testing and certification program.

SECTION 5. Trade committees. — There shall be created trade committees to be composed of experts from government, employers, and employees' sectors, to advise the National Committee on the content of the standards and the appropriate trade tests.

SECTION 6. Trade testing board. — Trade testing and certification shall be carried out by a Trade Testing Board composed of three persons representing government, employers and workers to be chosen by the National Committee.

RULE VI

Apprenticeship Training and Employment of Special Workers

SECTION 1. Objectives. — The promotion, development, and maintenance of apprenticeship programs shall have the following objectives:

- (a) To meet the needs of the economy for training manpower in the widest possible range of employment;
- (b) To establish a national apprenticeship program through the participation of employers, workers, government, civic and other groups; and
- (c) To establish apprenticeship standards for the protection of apprentices and upgrading of skills.

SECTION 2. Definition of terms. —

- (a) "Apprenticeship" means any training on the job supplemented by related theoretical instructions involving apprenticeable occupations and trades as may be approved by the Secretary of Labor and Employment.
- (b) "Apprentice" is a worker who is covered by a written apprenticeship agreement with an employer.
- (c) "Apprenticeship agreement" is a written employment contract wherein the employer binds himself to train the apprentice and the latter in turn agrees to work for the employer.
- (d) "Apprenticeable occupation" means any trade, form of employment or occupation approved for apprenticeship by the Secretary of Labor and Employment, which requires for proficiency more than three months of practical training on the job supplemented by related theoretical instructions.
- (e) "Apprenticeship standards" means the written implementing plans and conditions of an apprenticeship program.
- (f) "Bureau" means the Bureau of Apprenticeship.
- (g) "Employer" means the individual firm or any other entity qualified to hire apprentice under the Code.
- (h) "On the job training" is the practical work experience through actual participation in productive activities given to or acquired by an apprentice.

(i) "Related theoretical instructions" means technical information based on apprenticeship standards approved by the Bureau designed to provide the apprentice theoretical competence in his trade.

(j) "Highly Technical Industries" means trade, business, enterprise, industry, or other activity, which is engaged in the application of advanced technology.

SECTION 3. Voluntary nature of apprenticeship program. — The organization of apprenticeship program shall be primarily a voluntary undertaking of employers, except as otherwise provided.

SECTION 4. Venue of on-the-job training. — The practical aspect of on-the-job training of apprentices may be undertaken:

(a) In the plant, shop or premises of the employer or firm concerned if the apprenticeship program is organized by an individual employer or firm;

(b) In the premises of one or several firms designated for the purpose by the organizer of the program if such organizer is an association of employers, civic group and the like; and

(c) In a Department of Labor and Employment Training Center or other public training institutions with which the Bureau has made appropriate arrangements.

SECTION 5. On-the-job training to be explicitly described. — The manner in which practical or on-the-job training shall be provided must be specifically described in the apprenticeship standards of a particular program.

SECTION 6. Recognition of apprenticeship programs. — To enjoy the benefits which the Bureau or other government agencies may extend to duly recognized apprenticeship programs, an employer shall submit in quadruplicate to the Training Section of the appropriate Apprenticeship Division of the appropriate Regional Office the apprenticeship standards of the proposed program prepared in accordance with guidelines set by the Bureau.

If the apprenticeship standards are found in order, a certificate of recognition shall be issued by the Apprenticeship Division concerned within five (5) days from receipt thereof.

SECTION 7. Benefits accruing to recognition. — An entity with a recognized apprenticeship program shall be entitled to technical and other assistance from the Bureau and other government agencies and to the corresponding training-expense deduction from its income tax. The rate of such tax deduction incentive and the procedure of availment thereof are provided in Section 42 of this Rule.

SECTION 8. Trades to be included in apprenticeship programs. — Only trades and occupations declared apprenticeable by the Secretary of Labor and Employment may be included in apprenticeship programs.

SECTION 9. Who may establish programs. — Any entity, whether or not organized for profit may establish or sponsor apprenticeship programs and employ apprentices.

SECTION 10. Assistance by non-profit entities. — In lieu of organizing programs, non-profit entities may:

- (a) Execute an agreement with firms of their choice with on-going apprenticeship programs, directly or through the Department of Labor and Employment, assuming responsibility for training deserving apprentices selected by an employer who shall pay the apprentices;
- (b) Give financial and other contributions for the promotion of apprenticeship programs; or
- (c) Provide other forms of assistance.

Apprentices who train under such programs shall be properly identified in apprenticeship agreements with the employer. However, responsibility for compliance with employees' compensation, social security, medicare and other labor laws shall remain with the employer who benefits from the productive efforts of the apprentices.

SECTION 11. Qualifications of apprentices. — To qualify as apprentice, an applicant shall:

- (a) Be at least fifteen years of age; provided those who are at least fifteen years of age but less than eighteen may be eligible for apprenticeship only in non-hazardous occupations;
- (b) Be physically fit for the occupation in which he desires to be trained;
- (c) Possess vocational aptitude and capacity for the particular occupation as established through appropriate tests; and
- (d) Possess the ability to comprehend and follow oral and written instructions.

Trade and industry associations may, however, recommend to the Secretary of Labor and Employment appropriate educational qualifications for apprentices in certain occupations. Such qualifications, if approved, shall be the educational requirements for apprenticeship in such occupations unless waived by an employer in favor of an applicant who has demonstrated exceptional ability. A certification explaining briefly the ground for such waiver, and signed by the person in charge of the program, shall be attached to the apprenticeship agreement of the applicant concerned.

SECTION 12. Aptitude tests. — An employer who has a recognized apprenticeship program shall provide aptitude tests to apprentice-applicants. However, if the employer does not have adequate facilities, the Department of Labor and Employment may provide the service free of charge.

SECTION 13. Physical fitness. — Total physical fitness need not be required of an apprentice-applicant unless it is essential to the expeditious and effective learning of the occupation. Only physical defects which constitute real impediments to effective performance as determined by the plant apprenticeship committee may disqualify an applicant.

SECTION 14. Free physical examination. — Physical examination of apprentice-applicant preparatory to employment shall be provided free of charge by the Department of Health or any government hospital. If this is not feasible, the firm or entity screening the applicant shall extend such service free of charge.

Any entity with an apprenticeship program may elect to assume the responsibility for physical examination provided its facilities are adequate and all expenses are borne exclusively by it.

SECTION 15. Apprenticeable trades. — The Bureau shall evaluate crafts and operative, technical, nautical, commercial, clerical, technological, supervisory, service and managerial activities which may be declared apprenticeable by the Secretary of Labor and Employment and shall have exclusive jurisdiction to formulate model national apprenticeship standards therefor.

SECTION 16. Model standards. — Model apprenticeship standards to be set by the Bureau shall include the following:

- (a) Those affecting employment of apprentices under different occupational conditions;
- (b) Those involving theoretical and proficiency tests for apprentices during their training;
- (c) Areas and duration of work and study covered by on-the-job training and theoretical instructions of apprenticeable trades and occupations; and
- (d) Those referring to the qualifications of trainers of apprentices.

SECTION 17. Participation in standards setting. — The Bureau may request any legitimate worker's and employer's organizations, civic and professional groups, and other entities whether public or private, to assist in the formulation of national apprenticeship standards.

SECTION 18. Contents of agreement. — Every apprenticeship agreement shall include the following:

- (a) The full names and addresses of the contracting parties;
- (b) Date of birth of the apprentice;
- (c) Name of the trade, occupation or job in which the apprentice will be trained and the dates on which such training will begin and will approximately end;
- (d) The approximate number of hours of on-the-job training as well as of supplementary theoretical instructions which the apprentice shall undergo during his training;
- (e) A schedule of the work processes of the trade/occupation in which the apprentice shall be trained and the approximate time to be spent on the job in each process;
- (f) The graduated scale of wages to be paid the apprentice;

(g) The probationary period of the apprentice during which either party may summarily terminate their agreement; and

(h) A clause that if the employer is unable to fulfill his training obligation, he may transfer the agreement, with the consent of the apprentice, to any other employer who is willing to assume such obligation.

SECTION 19. Apprenticeship period. — The period of apprenticeship shall not exceed six (6) months.

(a) Four hundred (400) hours or two (2) months for trades or occupations which normally require a year or more for proficiency; and

(b) Two hundred (200) hours or one (1) month for occupations and jobs which require more than three months but less than one year for proficiency.

At least five (5) working days before the actual date of termination, the party terminating shall serve a written notice on the other, stating the reason for such decision and a copy of said notice shall be furnished the Apprenticeship Division concerned.

SECTION 20. Hours of work. — Hours of work of the apprentice shall not exceed the maximum number of hours of work prescribed by law, if any, for a worker of his age and sex. Time spent in related theoretical instructions shall be considered as hours of work and shall be reckoned jointly with on-the-job training time in computing in the agreement the appropriate periods for giving wage increases to the apprentice.

An apprentice not otherwise barred by law from working eight hours a day may be requested by his employer to work overtime and paid accordingly, provided there are no available regular workers to do the job, and the overtime work thus rendered is duly credited toward his training time.

SECTION 21. Previous training or experience. — A prospective apprentice who has completed or otherwise attended a vocational course in a duly recognized trade or vocational school or training center or who has had previous experience in the trade or occupation in which he desires to be apprenticed shall be given due credit therefor.

Both practical and theoretical knowledge shall be evaluated and the credit shall appear in the apprenticeship agreement which shall have the effect of shortening the training and servicing as a basis for promoting him to a higher wage level. Such credit shall be expressed in terms of hours.

SECTION 22. Parties to agreement. — Every apprenticeship agreement shall be signed by the employer or his duly authorized representative and by the apprentice.

An apprenticeship agreement with a minor shall be signed in his behalf by his parent or guardian, or if the latter is not available, by an authorized representative of the Department of Labor and Employment.

SECTION 23. Bureau and Apprenticeship Division of Regional Office concerned to be furnished copy of agreement. — The employer shall furnish a copy of the apprenticeship agreement to the Bureau and Apprenticeship Division of Regional Office concerned and the agency which shall provide related theoretical instructions if the employer is not the one who will give such instructions. The copies shall be sent by the employer within five (5) working days from the date of execution thereof. If the agreement is found defective and serious damage would be sustained by either party if such defect is not corrected, the Apprenticeship Division shall advise the employer within five (5) working days not to implement the agreement pending amendment thereof. Other defects may be correlated without suspending the effectivity of the agreement.

SECTION 24. Enforcement of agreement. — No person shall institute any action for the enforcement of any apprenticeship agreement or for damages for breach thereof, unless he has exhausted all available administrative remedies. The plant apprenticeship committee shall have initial responsibility for settling differences arising out of apprenticeship agreements.

SECTION 25. Valid cause to terminate agreement. — Either party to an agreement may terminate the same after the probationary period only for a valid cause. The following are valid causes for termination:

By the employer — (a) Habitual absenteeism in on-the-job training and related theoretical instructions;

(b) Willful disobedience of company rules or insubordination to lawful order of a superior;

(c) Poor physical condition, permanent disability or prolonged illness which incapacitates the apprentice from working;

(d) Theft or malicious destruction of company property and/or equipment;

(e) Poor efficiency or performance on the job or in the classroom for a prolonged period despite warnings duly given to the apprentice; and

(f) Engaging in violence or other forms of gross misconduct inside the employer's premises.

By the apprentice — (a) Substandard or deleterious working conditions within the employer's premises:

(b) Repeated violations by the employer of the terms of the apprenticeship agreement;

(c) Cruel or inhuman treatment by the employer or his subordinates;

(d) Personal problems which in the opinion of the apprentice shall prevent him from a satisfactory performance of his job; and

(e) Bad health or continuing illness.

SECTION 26. Procedure of termination. — The procedure for effecting termination shall be embodied in appropriate instructions to be prepared by the Bureau and approved by the Secretary of Labor and Employment.

SECTION 27. Theoretical instructions by employer. — Related theoretical instructions to apprentices may be undertaken by the employer himself if he has adequate facilities and qualified instructors for the purpose. He shall indicate his intention to assume such responsibility in the apprenticeship standard of his program. The course outline and the bio-data of the instructors who will conduct the course shall conform with the standards set by the Department.

SECTION 28. Ratio of theoretical instruction and on-the-job training. — The normal ratio is one hundred (100) hours of theoretical instructions for every two thousand (2,000) hours of practical or on-the-job training. Theoretical instructions time for occupations requiring less than two thousand hours for proficiency shall be computed on the basis of such ratio.

SECTION 29. Wages. — The wage rate of the apprentice shall start at seventy five (75%) per cent of the statutory minimum wage for the first six (6) months; thereafter, he shall be paid the full minimum wage, including the full cost of living allowance.

SECTION 30. Tripartite apprenticeship committees. — The creation of a plant apprenticeship committee for every apprenticeship program shall be necessary. The Department of Labor and Employment shall encourage the organization of apprenticeship committees at trade, industry or other levels. As much as possible these committees shall consist of management, labor and government representatives.

SECTION 31. Non-tripartite committees. — Where tripartism is not feasible, the apprenticeship committee may be composed of:

- (a) Technical personnel in the plant, trade or industry concerned;
- (b) Labor and management representatives.

Representatives of cooperative, civic and other groups may also participate in such committees.

SECTION 32. Duties of apprenticeship committees. — An apprenticeship committee at any level shall be responsible for the following duties:

- (a) Act as liaison between the apprentice and the employees;
- (b) Mediate and/or settle in the first instance differences between the employer and the apprentices arising out of an apprenticeship agreement;
- (c) Maintain a constant follow-up on the technical progress of the program and of the apprentices in particular;

(d) Recommend to the Apprenticeship Division of the Regional Office concerned the issuance of certificates of completion to apprentices.

SECTION 33. Creation of ad hoc advisory committees. — The Secretary of Labor and Employment may create ad hoc committees consisting of representatives of management, labor and government on the national, regional and local levels to advise and assist him in the formulation of policy, promotion of apprenticeship and other matters he may deem appropriate to refer to them.

SECTION 34. Use of training centers. — The Department may utilize the facilities and services of the National Manpower and Youth Council, the Department of Education, Culture and Sports and other public training institutions for the training of apprentices.

SECTION 35. Coordination of training activities. — The apprenticeship Division shall coordinate with the above training centers all activities relating to apprenticeship. The Bureau, through the Apprenticeship Division, shall provide technical guidance and advice to the centers.

SECTION 36. Priority in use of training centers. — Priority in the use of training centers shall be given to recognized apprenticeship programs in skills which are highly in demand in specific regions or localities as determined through surveys. The Bureau shall recommend to the Secretary of Labor and Employment the establishment of priorities based on data supplied by the Bureau of Local Employment, Labor Statistics Service, the National Manpower and Youth Council, and its own fundings. The Secretary of Labor and Employment may, however, also act on the basis of petitions presented by qualified entities which are willing to bear the costs of training.

SECTION 37. Issuance of certificates. — Upon completion of his training, the apprentice shall be issued a certificate of completion of apprenticeship by the Apprenticeship Division of the Regional Office concerned.

SECTION 38. Certificate of meritorious service. — A certificate of meritorious service may be awarded by the Secretary of Labor and Employment to apprenticeship committees or other entities which have rendered outstanding service to the cause of apprenticeship.

SECTION 39. Certificate, evidence of skills. — A certificate of completion of apprenticeship shall be evidence of the skills specified therein in accordance with national skills standards established by the Department.

SECTION 40. Apprenticeship without compensation. — The Secretary of Labor and Employment through the Apprenticeship Division, may authorize the hiring of apprentices without compensation whose training on the job is required by the school curriculum as a prerequisite for graduation or for taking a government board examination.

SECTION 41. Compulsory apprenticeship. — (a) When grave national emergencies, particularly those involving the security of the state, arise or particular requirements of economic development so demand, the Secretary of Labor and Employment may recommend

to the President of the Philippines the compulsory training of apprentices required in a certain trades, occupations, jobs or employment levels where shortage of trained manpower is deemed critical;

(b) Where services of foreign technicians are utilized by private companies in apprenticeable trades said companies are required to set up appropriate apprenticeship programs.

SECTION 42. Certification from Apprenticeship Division. — An employer desiring to avail of the tax deduction provided under the Code shall secure from the Apprenticeship Division a certification that his apprenticeship program was operational during the taxable year concerned. Such certification shall be attached to the employer's income tax returns for the particular year. Guidelines for the issuance of such certification shall be prepared by the Bureau and approved by the Secretary of Labor and Employment.

RULE VII

Learners

SECTION 1. Definition of terms. — (a) "Learner" is a person hired as a trainee in industrial occupations which are non-apprenticeable and which may be learned through practical training on the job for a period not exceeding three (3) months, whether or not such practical training is supplemented by theoretical instructions.

(b) "Learnership agreement" refers to the employment and training contract entered into between the employer and the learner.

SECTION 2. When learners may be employed. — Learners may be employed when no experienced workers are available, the employment of learners being necessary to prevent curtailment of employment opportunities, and such employment will not create unfair competition in terms of labor costs nor impair working standards.

SECTION 3. Approval of learnership program. — Any employer who intends to employ learners shall submit in writing to the Apprenticeship Division of the Regional Office concerned, copy furnished the Bureau, his learnership program, which the Division shall evaluate to determine if the occupation involved is learnable and the program is sufficient for the purpose of training. Within five (5) working days from receipt of the program, the Division shall make known its decision to the employer concerned. A learnership program shall be subject to periodic inspection by the Secretary of Labor and Employment or his duly authorized representative.

SECTION 4. Contents of learnership agreement. — A learnership agreement, shall include:

(a) The names and addresses of the employer and the learner;

(b) The occupation to be learned and the duration of the training period which shall not exceed three (3) months;

(c) The wage of learner which shall be at least 75 percent of the applicable minimum wage; and

(d) A commitment to employ the learner, if he so desires, as a regular employee upon completion of training.

A learner who has worked during the first two months shall be deemed a regular employee if training is terminated by the employer before the end of the stipulated period through no fault of the learner.

SECTION 5. Parties to learnership agreement. — Every learnership agreement shall be signed by the employer or his duly authorized agent and by the learner. A learnership agreement with a minor shall be signed by the learner with the conformity of his parent or guardian.

The employer shall furnish a copy each of the learnership agreement to the learner, the Bureau, and the Apprenticeship Division of the appropriate Regional Office within five (5) working days following its execution by the parties.

SECTION 6. Employment of minors as learners. — A minor below fifteen (15) years of age shall not be eligible for employment as a learner. Those below eighteen (18) years of age may only be employed in non-hazardous occupations.

SECTION 7. Cancellation of learnership programs. — The Secretary of Labor and Employment may cancel any learnership program if upon inquiry it is found that the justification for the program no longer exists.

RULE VIII

Handicapped Workers

SECTION 1. Definition of terms. — (a) "Handicapped workers" are those whose earning capacity is impaired by age or physical or mental deficiency or injury.

(b) "Employment agreement" is the contract of employment entered into between the employer and the handicapped worker.

SECTION 2. When handicapped workers may be employed. — Handicapped workers may be employed when their employment is necessary to prevent curtailment of employment opportunities and when it does not create unfair competition in labor costs or impair working standards.

SECTION 3. Contents of employment agreement. — An employer who hires a handicapped worker shall enter into an employment agreement with the latter which shall include:

(a) The names and addresses of the employer and the handicapped worker;

(b) The rate of pay of the handicapped worker which shall not be less than seventy-five (75%) percent of the legal minimum wage;

(c) The nature of work to be performed by the handicapped worker; and

(d) The duration of the employment.

SECTION 4. Copy of agreement to be furnished to Division. — A copy each of the employment agreement shall be furnished by the employer to the handicapped worker and the Apprenticeship Division involved. The Secretary of Labor and Employment or his duly authorized representative may inspect from time to time the working conditions of handicapped workers to verify compliance by the parties with their employment agreement.

SECTION 5. Eligibility for apprenticeship. — Handicapped workers shall not be precluded from employment as apprentices or learners if their handicap is not such as to effectively impede the performance of job operations in the particular trade or occupation which is the subject of the apprenticeship or learnership program.

BOOK THREE

Conditions of Employment

RULE I

Hours of Work

SECTION 1. General statement on coverage. — The provisions of this Rule shall apply to all employees in all establishments and undertakings, whether operated for profit or not, except to those specifically exempted under Section 2 hereof.

SECTION 2. Exemption. — The provisions of this Rule shall not apply to the following persons if they qualify for exemption under the conditions set forth herein:

(a) Government employees whether employed by the National Government or any of its political subdivision, including those employed in government-owned and/or controlled corporations;

(b) Managerial employees, if they meet all of the following conditions:

(1) Their primary duty consists of the management of the establishment in which they are employed or of a department or sub-division thereof.

(2) They customarily and regularly direct the work of two or more employees therein.

(3) They have the authority to hire or fire employees of lower rank; or their suggestions and recommendations as to hiring and firing and as to the promotion or any other change of status of other employees, are given particular weight.

(c) Officers or members of a managerial staff if they perform the following duties and responsibilities:

(1) The primary duty consists of the performance of work directly related to management policies of their employer;

(2) Customarily and regularly exercise discretion and independent judgment; and

(3) (i) Regularly and directly assist a proprietor or a managerial employee whose primary duty consists of the management of the establishment in which he is employed or subdivision thereof; or (ii) execute under general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or (iii) execute, under general supervision, special assignments and tasks; and

(4) Who do not devote more than 20 percent of their hours worked in a work week to activities which are not directly and closely related to the performance of the work described in paragraphs (1), (2) and (3) above.

(d) Domestic servants and persons in the personal service of another if they perform such services in the employer's home which are usually necessary or desirable for the maintenance and enjoyment thereof, or minister to the personal comfort, convenience, or safety of the employer as well as the members of his employer's household.

(e) Workers who are paid by results, including those who are paid on piece-work, "takay," "pakiao" or task basis, and other non-time work if their output rates are in accordance with the standards prescribed under Section 8, Rule VII, Book Three of these regulations, or where such rates have been fixed by the Secretary of Labor and Employment in accordance with the aforesaid Section.

(f) Non-agricultural field personnel if they regularly perform their duties away from the principal or branch office or place of business of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.

SECTION 3. Hours worked. — The following shall be considered as compensable hours worked:

(a) All time during which an employee is required to be on duty or to be at the employer's premises or to be at a prescribed work place; and

(b) All time during which an employee is suffered or permitted to work.

SECTION 4. Principles in determining hours worked. — The following general principles shall govern in determining whether the time spent by an employee is considered hours worked for purposes of this Rule:

(a) All hours are hours worked which the employee is required to give his employer, regardless of whether or not such hours are spent in productive labor or involve physical or mental exertion.

(b) An employee need not leave the premises of the work place in order that his rest period shall not be counted, it being enough that he stops working, may rest completely and may leave his work place, to go elsewhere, whether within or outside the premises of his work place.

(c) If the work performed was necessary, or it benefited the employer, or the employee could not abandon his work at the end of his normal working hours because he had no replacement,

all time spent for such work shall be considered as hours worked, if the work was with the knowledge of his employer or immediate supervisor.

(d) The time during which an employee is inactive by reason of interruptions in his work beyond his control shall be considered working time either if the imminence of the resumption of work requires the employee's presence at the place of work or if the interval is too brief to be utilized effectively and gainfully in the employee's own interest.

SECTION 5. Waiting time. — (a) Waiting time spent by an employee shall be considered as working time if waiting is an integral part of his work or the employee is required or engaged by the employer to wait.

(b) An employee who is required to remain on call in the employer's premises or so close thereto that he cannot use the time effectively and gainfully for his own purpose shall be considered as working while on call. An employee who is not required to leave word at his home or with company officials where he may be reached is not working while on call.

SECTION 6. Lectures, meetings, training programs. — Attendance at lectures, meetings, training programs, and other similar activities shall not be counted as working time if all of the following conditions are met:

(a) Attendance is outside of the employee's regular working hours;

(b) Attendance is in fact voluntary; and

(c) The employee does not perform any productive work during such attendance.

SECTION 7. Meal and Rest Periods. — Every employer shall give his employees, regardless of sex, not less than one (1) hour time-off for regular meals, except in the following cases when a meal period of not less than twenty (20) minutes may be given by the employer provided that such shorter meal period is credited as compensable hours worked of the employee:

(a) Where the work is non-manual work in nature or does not involve strenuous physical exertion;

(b) Where the establishment regularly operates not less than sixteen (16) hours a day;

(c) In case of actual or impending emergencies or there is urgent work to be performed on machineries, equipment or installations to avoid serious loss which the employer would otherwise suffer; and

(d) Where the work is necessary to prevent serious loss of perishable goods.

Rest periods or coffee breaks running from five (5) to twenty (20) minutes shall be considered as compensable working time.

SECTION 8. Overtime pay. — Any employee covered by this Rule who is permitted or required to work beyond eight (8) hours on ordinary working days shall be paid an additional

compensation for the overtime work in the amount equivalent to his regular wage plus at least twenty-five percent (25%) thereof.

SECTION 9. Premium and overtime pay for holiday and rest day work. — (a) Except employees referred to under Section 2 of this Rule, an employee who is permitted or suffered to work on special holidays or on his designated rest days not falling on regular holidays, shall be paid with an additional compensation as premium pay of not less than thirty percent (30%) of his regular wage. For work performed in excess of eight (8) hours on special holidays and rest days not falling on regular holidays, an employee shall be paid an additional compensation for the overtime work equivalent to his rate for the first eight hours on a special holiday or rest day plus at least thirty percent (30%) thereof.

(b) Employees of public utility enterprises as well as those employed in non-profit institutions and organizations shall be entitled to the premium and overtime pay provided herein, unless they are specifically excluded from the coverage of this Rule as provided in Section 2 hereof.

(c) The payment of additional compensation for work performed on regular holidays shall be governed by Rule IV, Book Three, of these Rules.

SECTION 10. Compulsory overtime work. — In any of the following cases, an employer may require any of his employees to work beyond eight (8) hours a day, provided that the employee required to render overtime work is paid the additional compensation required by these regulations:

(a) When the country is at war or when any other national or local emergency has been declared by Congress or the Chief Executive;

(b) When overtime work is necessary to prevent loss of life or property, or in case of imminent danger to public safety due to actual or impending emergency in the locality caused by serious accident, fire, floods, typhoons, earthquake, epidemic or other disaster or calamities;

(c) When there is urgent work to be performed on machines, installations, or equipment, in order to avoid serious loss or damage to the employer or some other causes of similar nature;

(d) When the work is necessary to prevent loss or damage to perishable goods;

(e) When the completion or continuation of work started before the 8th hour is necessary to prevent serious obstruction or prejudice to the business or operations of the employer; or

(f) When overtime work is necessary to avail of favorable weather or environmental conditions where performance or quality of work is dependent thereon.

In cases not falling within any of these enumerated in this Section, no employee may be made to work beyond eight hours a day against his will.

RULE I-A

Hours of Work of Hospital and Clinic Personnel

SECTION 1. General statement on coverage. — This Rule shall apply to:

(a) All hospitals and clinics, including those with a bed capacity of less than one hundred (100) which are situated in cities or municipalities with a population of one million or more; and

(b) All hospitals and clinics with a bed capacity of at least one hundred (100), irrespective of the size of the population of the city or municipality where they may be situated.

SECTION 2. Hospitals or clinics within the meaning of this Rule. — The terms "hospitals" and "clinics" as used in this Rule shall mean a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment and care of individuals suffering from illness, disease, injury, or deformity, or in need of obstetrical or other medical and nursing care. Either term shall also be construed as any institution, building, or place where there are installed beds, or cribs, or bassinets for twenty-four (24) hours use or longer by patients in the treatment of disease, injuries, deformities, or abnormal physical and mental states, maternity cases or sanitorial care; or infirmaries, nurseries, dispensaries, and such other similar names by which they may be designated.

SECTION 3. Determination of bed capacity and population. — (a) For purposes of determining the applicability of this Rule, the actual bed capacity of the hospital or clinic at the time of such determination shall be considered, regardless of the actual or bed occupancy. The bed capacity of hospital or clinic as determined by the Bureau of Medical Services pursuant to Republic Act No. 4226, otherwise known as the Hospital Licensure Act, shall prima facie be considered as the actual bed capacity of such hospital or clinic.

(b) The size of the population of the city or municipality shall be determined from the latest official census issued by the Bureau of the Census and Statistics.

SECTION 4. Personnel covered by this Rule. — This Rule applies to all persons employed by any private or public hospital or clinic mentioned in Section 1 hereof, and shall include, but not limited to, resident physicians, nurses, nutritionists, dieticians, pharmacists, social workers, laboratory technicians paramedical technicians, psychologists, midwives, and attendants.

SECTION 5. Regular working hours. — The regular working hours of any person covered by this Rule shall not be more than eight (8) hours in any one day nor more than forty (40) hours in any one week.

For purposes of this Rule a "day" shall mean a work day of twenty-four (24) consecutive hours beginning at the same time each calendar year. A "week" shall mean the work of 168 consecutive hours, or seven consecutive 24-hour work days, beginning at the same hour and on the same calendar day each calendar week.

SECTION 6. Regular working days. — The regular working days of covered employees shall not be more than five days in a work week. The work week may begin at any hour and on any day, including Saturday or Sunday, designated by the employer.

Employers are not precluded from changing the time at which the work day or work week begins, provided that the change is not intended to evade the requirements of this Rule.

SECTION 7. Overtime work. — Where the exigencies of the service so require as determined by the employer, any employee covered by this Rule may be scheduled to work for more than five (5) days or forty (40) hours a week, provided that the employee is paid for the overtime work an additional compensation equivalent to his regular wage plus at least thirty percent (30%) thereof, subject to the provisions of this Book on the payment of additional compensation for work performed on special and regular holidays and on rest days.

SECTION 8. Hours worked. — In determining the compensable hours of work of hospital and clinic personnel covered by this Rule, the pertinent provisions of Rule 1 of this Book shall apply.

SECTION 9. Additional compensation. — Hospital and clinic personnel covered by this Rule, with the exception of those employed by the Government, shall be entitled to an additional compensation for work performed on regular and special holidays and rest days as provided in this Book. Such employees shall also be entitled to overtime pay for services rendered in excess of forty hours a week, or in excess of eight hours a day, whichever will yield the higher additional compensation to the employee in the work week.

SECTION 10. Relation to Rule I. — All provisions of Rule I of this Book which are not inconsistent with this Rule shall be deemed applicable to hospital and clinic personnel.

RULE II

Night Shift Differential

SECTION 1. Coverage. — This Rule shall apply to all employees except:

- (a) Those of the government and any of its political subdivisions, including government-owned and/or controlled corporations;
- (b) Those of retail and service establishments regularly employing not more than five (5) workers;
- (c) Domestic helpers and persons in the personal service of another;
- (d) Managerial employees as defined in Book Three of this Code;
- (e) Field personnel and other employees whose time and performance is unsupervised by the employer including those who are engaged on task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof.

SECTION 2. Night shift differential. — An employee shall be paid night shift differential of no less than ten per cent (10%) of his regular wage for each hour of work performed between ten o'clock in the evening and six o'clock in the morning.

SECTION 3. Additional compensation. — Where an employee is permitted or suffered to work on the period covered after his work schedule, he shall be entitled to his regular wage plus at least twenty-five per cent (25%) and an additional amount of no less than ten per cent (10%) of such overtime rate for each hour or work performed between 10 p.m. to 6 a.m.

SECTION 4. Additional compensation on scheduled rest day/special holiday. — An employee who is required or permitted to work on the period covered during rest days and/or special holidays not falling on regular holidays, shall be paid a compensation equivalent to his regular wage plus at least thirty (30%) per cent and an additional amount of not less than ten (10%) per cent of such premium pay rate for each hour of work performed.

SECTION 5. Additional compensation on regular holidays. — For work on the period covered during regular holidays, an employee shall be entitled to his regular wage during these days plus an additional compensation of no less than ten (10%) per cent of such premium rate for each hour of work performed.

SECTION 6. Relation to agreements. — Nothing in this Rule shall justify an employer in withdrawing or reducing any benefits, supplements or payments as provided in existing individual or collective agreements or employer practice or policy.

RULE III

Weekly Rest Periods

SECTION 1. General statement on coverage. — This Rule shall apply to all employers whether operating for profit or not, including public utilities operated by private persons.

SECTION 2. Business on Sundays/Holidays. — All establishments and enterprises may operate or open for business on Sundays and holidays provided that the employees are given the weekly rest day and the benefits as provided in this Rule.

SECTION 3. Weekly rest day. — Every employer shall give his employees a rest period of not less than twenty-four (24) consecutive hours after every six consecutive normal work days.

SECTION 4. Preference of employee. — The preference of the employee as to his weekly day of rest shall be respected by the employer if the same is based on religious grounds. The employee shall make known his preference to the employer in writing at least seven (7) days before the desired effectivity of the initial rest day so preferred.

Where, however, the choice of the employee as to his rest day based on religious grounds will inevitably result in serious prejudice or obstruction to the operations of the undertaking and the employer cannot normally be expected to resort to other remedial measures, the employer may so schedule the weekly rest day of his choice for at least two (2) days in a month.

SECTION 5. Schedule of rest day. — (a) Where the weekly rest is given to all employees simultaneously, the employer shall make known such rest period by means of a written notice posted conspicuously in the work place at least one week before it becomes effective.

(b) Where the rest period is not granted to all employees simultaneously and collectively, the employer shall make known to the employees their respective schedules of weekly rest through written notices posted conspicuously in the work place at least one week before they become effective.

SECTION 6. When work on rest day authorized. — An employer may require any of his employees to work on his scheduled rest day for the duration of the following emergencies and exceptional conditions:

(a) In case of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disaster or calamity, to prevent loss of life or property, or in cases of force majeure or imminent danger to public safety;

(b) In case of urgent work to be performed on machineries, equipment or installations to avoid serious loss which the employer would otherwise suffer;

(c) In the event of abnormal pressure of work due to special circumstances, where the employer cannot ordinarily be expected to resort to other measures;

(d) To prevent serious loss of perishable goods;

(e) Where the nature of the work is such that the employees have to work continuously for seven (7) days in a week or more, as in the case of the crew members of a vessel to complete a voyage and in other similar cases; and

(f) When the work is necessary to avail of favorable weather or environmental conditions where performance or quality of work is dependent thereon.

No employee shall be required against his will to work on his scheduled rest day except under circumstances provided in this Section: Provided, However, that where an employee volunteers to work on his rest day under other circumstances, he shall express such desire in writing, subject to the provisions of Section 7 hereof regarding additional compensation.

SECTION 7. Compensation on rest day/Sunday/holiday. — (a) Except those employees referred to under Section 2, Rule I, Book Three, an employee who is made or permitted to work on his scheduled rest day shall be paid with an additional compensation of at least 30% of his regular wage. An employee shall be entitled to such additional compensation for work performed on a Sunday only when it is his established rest day.

(b) Where the nature of the work of the employee is such that he has no regular work days and no regular rest days can be scheduled, he shall be paid an additional compensation of at least 30% of his regular wage for work performed on Sundays and holidays.

(c) Work performed on any special holiday shall be paid with an additional compensation of at least 30% of the regular wage of the employees. Where such holiday work falls on the employee's scheduled rest day, he shall be entitled to additional compensation of at least 50% of his regular wage.

(d) The payment of additional compensation for work performed on regular holiday shall be governed by Rule IV, Book Three, of these regulations.

(e) Where the collective bargaining agreement or other applicable employment contract stipulates the payment of a higher premium pay than that prescribed under this Section, the employer shall pay such higher rate.

SECTION 8. Paid-off days. — Nothing in this Rule shall justify an employer in reducing the compensation of his employees for the unworked Sundays, holidays, or other rest days which are considered paid-off days or holidays by agreement or practice subsisting upon the effectivity of the Code.

SECTION 9. Relation to agreements. — Nothing herein shall prevent the employer and his employees or their representatives in entering into any agreement with terms more favorable to the employees than those provided herein, or be used to diminish any benefit granted to the employees under existing laws, agreements, and voluntary employer practices.

RULE IV

Holidays with Pay

SECTION 1. Coverage. — This rule shall apply to all employees except:

(a) Those of the government and any of the political subdivision, including government-owned and controlled corporation;

(b) Those of retail and service establishments regularly employing less than ten (10) workers;

(c) Domestic helpers and persons in the personal service of another;

(d) Managerial employees as defined in Book Three of the Code;

(e) Field personnel and other employees whose time and performance is unsupervised by the employer including those who are engaged on task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof.

SECTION 2. Status of employees paid by the month. — Employees who are uniformly paid by the month, irrespective of the number of working days therein, with a salary of not less than the statutory or established minimum wage shall be paid for all days in the month whether worked or not.

For this purpose, the monthly minimum wage shall not be less than the statutory minimum wage multiplied by 365 days divided by twelve.

SECTION 3. Holiday Pay. — Every employer shall pay his employees their regular daily wage for any worked regular holidays.

As used in the rule, the term 'regular holiday' shall exclusively refer to: New Year's Day, Maundy Thursday, Good Friday, the ninth of April, the first of May, the twelfth of June, the last Sunday of August, the thirtieth of November, the twenty-fifth and thirtieth of December. Nationwide special days shall include the first of November and the last day of December.

As used in this Rule legal or regular holiday and special holiday shall now be referred to as 'regular holiday' and 'special day', respectively.

SECTION 4. Compensation for holiday work. — Any employee who is permitted or suffered to work on any regular holiday, not exceeding eight (8) hours, shall be paid at least two hundred percent (200%) of his regular daily wage. If the holiday work falls on the scheduled rest day of the employee, he shall be entitled to an additional premium pay of at least 30% of his regular holiday rate of 200% based on his regular wage rate.

SECTION 5. Overtime pay for holiday work. — For work performed in excess of eight hours on a regular holiday, an employee shall be paid an additional compensation for the overtime work equivalent to his rate for the first eight hours on such holiday work plus at least 30% thereof.

Where the regular holiday work exceeding eight hours falls on the scheduled rest day of the employee, he shall be paid an additional compensation for the overtime work equivalent to his regular holiday-rest day for the first 8 hours plus 30% thereof. The regular holiday rest day rate of an employee shall consist of 200% of his regular daily wage rate plus 30% thereof.

SECTION 6. Absences. — (a) All covered employees shall be entitled to the benefit provided herein when they are on leave of absence with pay. Employees who are on leave of absence without pay on the day immediately preceding a regular holiday may not be paid the required holiday pay if he has not worked on such regular holiday.

(b) Employees shall grant the same percentage of the holiday pay as the benefit granted by competent authority in the form of employee's compensation or social security payment, whichever is higher, if they are not reporting for work while on such benefits.

(c) Where the day immediately preceding the holiday is a non-working day in the establishment or the scheduled rest day of the employee, he shall not be deemed to be on leave of absence on that day, in which case he shall be entitled to the holiday pay if he worked on the day immediately preceding the non-working day or rest day.

SECTION 7. Temporary or periodic shutdown and temporary cessation of work. — (a) In cases of temporary or periodic shutdown and temporary cessation of work of an establishment, as when a yearly inventory or when the repair or cleaning of machineries and equipment is undertaken, the regular holidays falling within the period shall be compensated in accordance with this Rule.

(b) The regular holiday during the cessation of operation of an enterprise due to business reverses as authorized by the Secretary of Labor and Employment may not be paid by the employer.

SECTION 8. Holiday pay of certain employees. — (a) Private school teachers, including faculty members of colleges and universities, may not be paid for the regular holidays during semestral vacations. They shall, however, be paid for the regular holidays during Christmas vacation;

(b) Where a covered employee, is paid by results or output, such as payment on piece work, his holiday pay shall not be less than his average daily earnings for the last seven (7) actual working days preceding the regular holiday; Provided, However, that in no case shall the holiday pay be less than the applicable statutory minimum wage rate.

(c) Seasonal workers may not be paid the required holiday pay during off-season when they are not at work.

(d) Workers who have no regular working days shall be entitled to the benefits provided in this Rule.

SECTION 9. Regular holiday falling on rest days or Sundays. — (a) A regular holiday falling on the employee's rest day shall be compensated accordingly.

(b) Where a regular holiday falls on a Sunday, the following day shall be considered a special holiday for purposes of the Labor Code, unless said day is also a regular holiday.

SECTION 10. Successive regular holidays. — Where there are two (2) successive regular holidays, like Holy Thursday and Good Friday, an employee may not be paid for both holidays if he absents himself from work on the day immediately preceding the first holiday, unless he works on the first holiday, in which case he is entitled to his holiday pay on the second holiday.

SECTION 11. Relation to agreements. — Nothing in this Rule shall justify an employer in withdrawing or reducing any benefits, supplements or payments for unworked holidays as provided in existing individual or collective agreement or employer practice or policy.

RULE V

Service Incentive Leave

SECTION 1. Coverage. — This rule shall apply to all employees except:

(a) Those of the government and any of its political subdivisions, including government-owned and controlled corporations;

(b) Domestic helpers and persons in the personal service of another;

(c) Managerial employees as defined in Book Three of this Code;

(d) Field personnel and other employees whose performance is unsupervised by the employer including those who are engaged on task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof;

(e) Those who are already enjoying the benefit herein provided;

(f) Those enjoying vacation leave with pay of at least five days; and

(g) Those employed in establishments regularly employing less than ten employees.

SECTION 2. Right to service incentive leave. — Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

SECTION 3. Definition of certain terms. — The term "at least one-year service" shall mean service for not less than 12 months, whether continuous or broken reckoned from the date the employee started working, including authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contract is less than 12 months, in which case said period shall be considered as one year.

SECTION 4. Accrual of benefit. — Entitlement to the benefit provided in this Rule shall start December 16, 1975, the date the amendatory provision of the Code took effect.

SECTION 5. Treatment of benefit. — The service incentive leave shall be commutable to its money equivalent if not used or exhausted at the end of the year.

SECTION 6. Relation to agreements. — Nothing in the Rule shall justify an employer from withdrawing or reducing any benefits, supplements or payments as provided in existing individual or collective agreements or employer's practices or policies.

RULE VI

Service Charges

SECTION 1. Coverage. — This rule shall apply only to establishments collecting service charges such as hotels, restaurants, lodging houses, night clubs, cocktail lounge, massage clinics, bars, casinos and gambling houses, and similar enterprises, including those entities operating primarily as private subsidiaries of the Government.

SECTION 2. Employees covered. — This rule shall apply to all employees of covered employers, regardless of their positions, designations or employment status, and irrespective of the method by which their wages are paid except to managerial employees.

As used herein, a "managerial employee" shall mean one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign, or discipline employees or to effectively recommend such managerial actions. All employees not falling within this definition shall be considered rank-and-file employees.

SECTION 3. Distribution of service charges. — All service charges collected by covered employers shall be distributed at the rate of 85% for the employees and 15% for the management. The 85% shall be distributed equally among the covered employees. The 15% shall be for the disposition by management to answer for losses and breakages and distribution to managerial employees at the discretion of the management in the latter case.

SECTION 4. Frequency of distribution. — The shares referred to herein shall be distributed and paid to the employees not less than once every two (2) weeks or twice a month at intervals not exceeding sixteen (16) days.

SECTION 5. Integration of service charges. — In case the service charges is abolished the share of covered employees shall be considered integrated in their wages. The basis of the amount to be integrated shall be the average monthly share of each employee for the past twelve (12) months immediately preceding the abolition of withdrawal of such charges.

SECTION 6. Relation to agreements. — Nothing in this Rule shall prevent the employer and his employees from entering into any agreement with terms more favorable to the employees than those provided herein, or be used to diminish any benefit granted to the employees under existing laws, agreement and voluntary employer practice.

SECTION 7. This rule shall be without prejudice to existing, future collective bargaining agreements.

Nothing in this rule shall be construed to justify the reduction or diminution of any benefit being enjoyed by any employee at the time of effectivity of this rule.

RULE VII

Wages

SECTION 1. Definition of Terms. As used in this Rules —

a) "Act" means Republic Act No. 6727;

b) "Commission" means the National Wages and Productivity Commission;

c) "Board" means the Regional Tripartite Wages and Productivity Board;

d) "Agriculture" refers to all farming activities in all its branches and includes among others, the cultivation and tillage of the soil, production, cultivation, growing and harvesting of any agricultural or horticultural commodities, dairying, raising of livestock or poultry, the culture of fish and other aquatic products in farms or ponds, and any activities performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, but does not include the manufacturing and/or processing of sugar, coconut, abaca, tobacco, pineapple, aquatic or other farm products;

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

- f) "Retail Establishment" is one principally engaged in the sale of goods to end-users for personal or household use;
- g) "Service Establishment" is one primarily engaged in the sale of service to individuals for their own or household use and is generally recognized as such;
- h) "Cottage/Handicraft Establishment" is one engaged in an economic endeavor in which the products are primarily done in the home or such other places for profit which requires manual dexterity and craftsmanship and whose capitalization does not exceed P500,000, regardless of previous registration with the defunct NACIDA;
- i) "National Capital Region" covers the cities of Kalookan, Manila, Pasay and Quezon and the municipalities of Las Piñas, Makati, Malabon, Mandaluyong, Marikina, Muntinlupa, Navotas, Parañaque, Pasig, Pateros, San Juan, Taguig and Valenzuela;
- j) "Region III" covers the provinces of Bataan, Bulacan, Nueva Ecija, Pampanga, Tarlac, and Zambales and the cities of Angeles, Cabanatuan, Olongapo, Palayan and San Jose;
- k) "Region IV" covers the provinces of Aurora, Batangas, Cavite, Laguna, Marinduque, Occidental Mindoro, Palawan, Quezon, Rizal and Romblon and the cities of Batangas, Cavite, Lipa, Lucena, Puerto Princesa, San Pablo, Tagaytay and Trece Martires;
- l) "Department" refers to the Department of Labor and Employment;
- m) "Secretary" means the Secretary of Labor and Employment;
- n) "Basic Wage" means all remuneration or earnings paid by an employer to a worker for services rendered on normal working days and hours but does not include cost-of-living allowances, profit sharing payments, premium 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 Act became effective."
- o) "Statutory Minimum Wage" is the lowest wage fixed by law that an employer can pay his workers;
- p) "Wage Distortion" means a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation;
- q) "Capitalization" means paid-up capital, in the case of a corporation, and total invested capital, in the case of a partnership or single proprietorship.

CHAPTER I

Wage Increase

SECTION 1. Coverage. — The wage increase prescribed under the Act shall apply to all workers and employees in the private sector regardless of their position, designation or status, and irrespective of the method by which their wages are paid, except:

- a) Household or domestic helpers, including family drivers and workers in the personal service of another;
- b) Workers and employees in retail/service establishments regularly employing not more than 10 workers, when exempted from compliance with the Act, for a period fixed by the Commission/Boards in accordance with Section 4 (c) of the Act and Section 15, Chapter 1 of these Rules;
- c) Workers and employees in new business enterprises outside the National Capital Region and export processing zones for a period of not more than two or three years, as the case may be, from the start of operations when exempted in accordance with Section 5 of the Act and Section 15, Chapter I of these Rules;
- d) Workers and employees receiving a basic wage of more than P100.00 per day.

SECTION 2. Effectivity. — The Act takes effect on July 1, 1989, 15 days following its complete publication in two newspapers of general circulation on June 15, 1989 pursuant to Section 15 thereof.

SECTION 3. Amount of Minimum Wage Increase. — Effective July 1, 1989, the daily statutory minimum wage rates of covered workers and employees shall be increased as follows:

a) P25.00 for those in the National Capital Region;

b) P25.00 for those outside the National Capital Region, except for the following:

P20.00 for those in plantation agricultural enterprises with an annual gross sales of less than P5 million in the fiscal year immediately preceding the effectivity of the Act;

P15.00 for those in the following enterprises:

1. Non-plantation agriculture
2. Cottage/handicraft
3. Retail/Service regularly employing not more than 10 workers
4. Business enterprises with a capitalization of not more than P500,000 and employing not more than 20 workers.

SECTION 4. When Wage Increase Due Other Workers. — a) All workers and employees who, prior to July 1, 1989, were already receiving a basic wage above the statutory minimum wage rates provided under Republic Act 6640 but not over P100.00 per day shall receive a wage increase equivalent to that provided in the preceding Section.

b) Those receiving not more than the following monthly basic wage rates prior to July 1, 1989 shall be deemed covered by the preceding subsection:

(i) P3,257.50 — where the workers and employees work everyday, including premium payments for Sundays or rest days, special days and regular holidays.

(ii) P3,041.67 — where the workers and employees do not work but considered paid on rest days, special days and regular holidays.

(iii) P2,616.67 — where the workers and employees do not work and are not considered paid on Sundays or rest days.

(iv) P2,183.33 — where the workers and employees do not work and are not considered paid on Saturdays and Sundays or rest days.

c) Workers and employees who, prior to July 1, 1989, were receiving a basic wage of more than P100.00 per day or its monthly equivalent, are not by law entitled to the wage increase provided under the Act. They may however, receive wage increases through the correction of wage distortions in accordance with Section 16, Chapter I of these Rules.

SECTION 5. Daily Statutory Minimum Wage Rates. — The daily minimum wage rates of workers and employees shall be as follows:

| Sector/Industry | Under R. A. 6640 (Effective Dec. 14, 1987) | Under R. A. 6727 (Effective July 1, 1989) |
|-----------------|--|---|
|-----------------|--|---|

A. NATIONAL CAPITAL REGION

| | | |
|------------------------------------|--------|--------|
| Non-Agriculture | P64.00 | P89.00 |
| Agriculture | | |
| Plantation | 54.00 | 79.00 |
| Non-Plantation | 43.50 | 68.50 |
| Cottage/Handicraft | | |
| Employing more than 30 workers | 52.00 | 77.00 |
| Employing not more than 30 workers | 50.00 | 75.00 |
| Private Hospitals | | |
| With bed capacity of more than 100 | 64.00 | 89.00 |

| | | |
|-------------------------------------|-------|-------|
| With bed capacity of 100 or less | 60.00 | 85.00 |
|-------------------------------------|-------|-------|

| | | |
|---|-------|-------|
| Retail/Service Employing more than 15 workers | 64.00 | 89.00 |
|---|-------|-------|

| | | |
|-------------------------------|-------|-------|
| Employing 11 to 15 workers | 60.00 | 85.00 |
|-------------------------------|-------|-------|

| | | |
|---------------------------------------|-------|-------|
| Employing not more than 10 workers | 43.00 | 68.00 |
|---------------------------------------|-------|-------|

B. OUTSIDE NATIONAL CAPITAL REGION

| | | |
|-----------------|-------|-------|
| Non-Agriculture | 64.00 | 89.00 |
|-----------------|-------|-------|

| | | |
|---|-------|-------|
| Agriculture Plantation with annual gross sales of P5M or more | 54.00 | 79.00 |
|---|-------|-------|

| | | |
|--|-------|-------|
| Plantation with annual gross sales of less than P5M | 54.00 | 74.00 |
|--|-------|-------|

| | | |
|----------------|-------|-------|
| Non-plantation | 43.50 | 58.50 |
|----------------|-------|-------|

| | | |
|---|-------|-------|
| Cottage/Handicraft Employing more than 30 workers | 52.00 | 67.00 |
|---|-------|-------|

| | | |
|---------------------------------------|-------|-------|
| Employing not more than 30 workers | 50.00 | 65.00 |
|---------------------------------------|-------|-------|

| | | |
|-------------------|-------|-------|
| Private Hospitals | 60.00 | 85.00 |
|-------------------|-------|-------|

| | | |
|--|--|--|
| Retail/Service Cities w/ population of more than 150,000 | | |
|--|--|--|

| | | |
|-----------------------------------|-------|-------|
| Employing more than 15 workers | 64.00 | 89.00 |
|-----------------------------------|-------|-------|

| | | |
|----------------------------|-------|-------|
| Employing 11 to 15 workers | 60.00 | 85.00 |
|----------------------------|-------|-------|

| | | |
|---------------------------------------|-------|-------|
| Employing not more than 10 workers | 43.00 | 58.00 |
|---------------------------------------|-------|-------|

Sugar Mills

Agriculture

| | | |
|---|-------|-------|
| Plantation w/ annual gross sales of P5M or more | 48.50 | 73.50 |
| Plantation w/ annual gross sales of less than P5M | 48.50 | 68.50 |
| Non-plantation | 43.50 | 58.50 |
| Business Enterprises w/ Capitalization of not more than P500,000 and employing not more than 20 workers | | |
| Non-Agriculture | 64.00 | 79.00 |
| Agriculture Plantation Products Other than Sugar | 54.00 | 69.00 |
| Sugar | 48.50 | 63.50 |
| Private Hospitals | 60.00 | 75.00 |
| Retail/Service Cities w/ population of more than 150,000 | | |
| Employing more than 15 workers | 64.00 | 79.00 |
| Employing 11 to 15 workers | 60.00 | 75.00 |
| Municipalities and Cities w/ population of not more than 150,000 | | |
| Employing more than 10 workers | 60.00 | 75.00 |

SECTION 6. Suggested Formula in Determining the Equivalent Monthly Statutory 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 statutory minimum wage rates:

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

Equivalent Applicable daily wage rate (ADR) x 390.90 days

Monthly = _____

Rate (EMR) 12

Where 390.90 days =

302 days Ordinary working days

20 days 10 regular holidays x 200%

66.30 days 51 rest days x 130%

2.60 days 2 special days x 130%

390.90 days Total equivalent number of days.

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

ADR x 365 days

EMR = _____

12

Where 365 days =

302 days Ordinary working days

51 days Rest days

10 days Regular holidays

2 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:

ADR x 314 days

EMR = _____

12

Where 314 days =

302 days Ordinary working days

10 days Regular holidays

2 days Special days (If considered

paid; If actually worked,

this is equivalent to 2.6 days)

314 days Total equivalent number of days

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

ADR x 262 days

EMR = _____

12

Where 262 days =

250 days Ordinary working days

10 days Regular holidays

2 days Special days (If considered paid; If actually worked, this is equivalent to 2.6 days)

262 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 a regular holiday under Executive Order No. 201. 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 do not fall on Sundays, the number of rest days is 52 days, as there are 52 weeks in a year.

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

SECTION 7. Basis of Minimum Wages Rates. — The statutory minimum wage rules prescribed under the Act shall be for the normal working hours, which shall not exceed eight hours work a day.

SECTION 8. Creditable Wage Increase. —

a) No wage increase shall be credited as compliance with the increases prescribed under the Act unless expressly provided under collective bargaining agreements; and, such wage increase was granted not earlier than April 1, 1989 but not later than July 1, 1989. Where the wage increase granted is less than the prescribed increase under the Act, the employer shall pay the difference.

b) Anniversary wage increase provided in collective agreements, merit wage increase, and those resulting from the regularization or promotion of employees shall not be credited as compliance thereto.

SECTION 9. Workers Paid by Results. —

a) All workers paid by results, including those who are paid on piecework, takay, pakyaw, or task basis, shall receive not less than the applicable statutory minimum wage rates prescribed under the Act for the normal working hours which shall not exceed eight hours work a day, or a proportion thereof for work of less than the normal working hours.

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

1) Amount of increase in AMW - Previous AMW x 100 = % Increase;

2) Existing rate/piece x % increase = increase in rate/piece;

3) Existing rate/piece + increase in rate/piece = Adjusted rate/piece.

Where AMW is the applicable minimum wage rate.

b) 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 10. Wages of Special Groups of Workers. — Wages of apprentices, learners and handicapped workers shall in no case be less than 75 percent of the applicable statutory minimum wage rates.

All recognized learnership and apprenticeship agreements entered into before July 1, 1989 shall be considered as automatically modified insofar as their wage clauses are concerned to reflect the increases prescribed under the Act.

SECTION 11. Application to Contractors. — In the case of contracts for construction projects and for security, janitorial and similar services, the prescribed 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 his principal or client.

SECTION 12. Application to Private Educational Institution. — Private educational institutions which increased tuition fees beginning school year 1989-1990 shall comply with the P25.00 per day wage increase prescribed under the Act effective as follows:

a) In cases where the tuition fee increase was effected before the effectivity of the Act, the wage increase shall take effect only July 1, 1989.

b) In cases where the tuition fee increase was effected on or after the effectivity of the Act, the wage increase shall take effect not later than the date the school actually increased tuition but in the latter case, such wage increase may not be made retroactive in July 1, 1989.

Beginning school year 1990-1991, all schools shall implement the wage increase regardless of whether or not they have actually increased tuition fees.

SECTION 13. Mobile and Branch Workers. — The statutory minimum wage rates 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 14. Transfer of Personnel. — The transfer of personnel to areas outside the National Capital Region 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 the National Capital Region shall be entitled to the minimum wage rate applicable therein.

SECTION 15. Exemptions. —

a) The following establishments may be exempted from compliance with the wage increase prescribed under the Act:

1) Retail/Service establishments regularly employing not more than 10 workers upon application with and as determined by the appropriate Board in accordance with applicable guidelines to be issued by the Commission.

2) New business enterprises that may be established outside the National Capital Region and export processing zones from July 1, 1989 to June 30, 1993, whose operation or investments need initial assistance may be exempted for not more than three years from the start of operations, subject to guidelines to be issued by the Secretary in consultation with the Department of Trade and Industry and the Department of Agriculture.

New business enterprises in Region III (Central Luzon) and Region IV (Southern Tagalog) may be exempted for two years only from start of operations, except those that may be established in the provinces of Palawan, Oriental Mindoro, Occidental Mindoro, Marinduque, Romblon, Quezon and Aurora, which may also be exempted for not more than three years from the start of operations.

b) Whenever an application for exemption has been duly filed with the appropriate office in the Department/Board, action by the Regional Office of the Department on any complaints for alleged non-compliance with the Act shall be deferred pending resolution of the applicant for exemption.

c) In the event that the application for exemption is not granted, the workers and employees shall receive the appropriate compensation due them as provided for under the Act plus interest of one percent per month retroactive to July 1, 1989 or the start of operations whichever is applicable.

SECTION 16. Effects on Existing Wage Structure. — Where the application of the wage increase prescribed herein results in distortions in the wage structure within an establishment which gives rise to a dispute therein, such dispute shall first be settled voluntarily between the

parties. In the event of a deadlock, such dispute shall be finally resolved through compulsory arbitration by the regional arbitration branch of the National Labor Relations Commission (NLRC) having jurisdiction over the workplace.

The NLRC shall conduct continuous hearings and decide any dispute arising from wage distortions within twenty calendar days from the time said dispute is formally submitted to it for arbitration. The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of the increases in the wage rates prescribed under the Act.

Any issue involving wage distortion shall not be a ground for a strike/lockout.

SECTION 17. Complaints for Non-Compliance. — Complaints for non-compliance with the wage increases prescribed under the Act shall be filed with the Regional Offices of the Department having jurisdiction over the workplace and shall be the subject of enforcement proceedings under Articles 128 and 129 of the Labor Code, as amended.

SECTION 18. 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 shall accompany the inspector.

The worker's 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 19. Payment of Wages. — Upon written petition of the majority of the workers and employees concerned, all private establishments, companies, businesses and other entities with at least twenty 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 said banks, within the period and in the manner and form prescribed under the Labor Code as amended.

SECTION 20. Duty of Bank. — Whenever applicable and upon request of concerned worker or union, the bank through which wages and other benefits are paid issue a certification of the record of payment of said wages and benefits of a particular worker or workers for a particular payroll period.

CHAPTER II

The National Wages and Productivity Commission and Regional Tripartite Wages and Productivity Boards

SECTION 1. Commission. — The National Wages and Productivity Commission created under the Act shall hold office in the National Capital Region. The Commission shall be attached to the Department for policy and program coordination.

SECTION 2. Powers and Functions of the Commission. — The Commission shall have the following powers and functions:

- a) To act as the national consultative and advisory body to the President of the Philippines and Congress on matters relating to wages, incomes and productivity;
- b) To formulate policies and guidelines on wages, incomes and productivity improvement at the enterprise, industry and national levels;
- c) To prescribe rules and guidelines for the determination of appropriate minimum wage and productivity measures at the regional, provincial or industry levels;
- d) To review regional wage levels set by the Regional Tripartite Wages and Productivity Board to determine if these are in accordance with prescribed guidelines and national development plans;
- e) To undertake studies, researches and surveys necessary for the attainment of its functions and objectives, and to collect and compile data and periodically disseminate information on wages and productivity and other related information, including, but not limited to, employment, cost-of-living, labor costs, investments and returns;
- f) To review plans and programs of the Regional Tripartite Wages and Productivity Boards to determine whether these are consistent with national development plans;
- g) To exercise technical and administrative supervision over the Regional Tripartite Wages and Productivity Boards;
- h) To call, from time to time, a national tripartite conference of representatives of government, workers and employers for the consideration of measures to promote wage rationalization and productivity; and
- i) To exercise such powers and functions as may be necessary to implement this Act.

SECTION 3. Composition of the Commission. — The Commission shall be composed of the Secretary as ex-officio Chairman, the Director General of the National Economic and Development Authority (NEDA) as ex-officio Vice-Chairman and two members each from workers and employers sectors who shall be appointed by the President for a term of five years upon recommendation of the Secretary. The recommendees shall be selected from the lists of nominees submitted by the workers' and employers' sectors. The Executive Director of the Commission Secretariat shall be also a member of the Commission.

The members of the Commission representing labor and management shall have the same rank, emoluments, allowances and other benefits as those prescribed by law for labor and management representatives in the Employees' Compensation Commission.

SECTION 4. Commission Secretariat. — The Commission shall be assisted by a Secretariat to be headed by an Executive Director and two Deputy Directors who shall be appointed by the President upon recommendation of the Secretary.

The Executive Director shall have the rank of a Department Assistant Secretary, while the Deputy Directors that of a Bureau Director. The Executive Director and Deputy Directors shall receive the corresponding salary, benefits and other emoluments of the positions.

SECTION 5. Regional Tripartite Wages and Productivity Boards. — The Regional Wages and Productivity Boards created under the Act in all regions, including autonomous regions as may be established by law, shall hold offices in areas where the Regional Offices of the Department are located.

SECTION 6. Powers and Functions of the Boards. — The Boards shall have the following powers and functions:

- a) To develop plans, programs and projects relative to wages, incomes and productivity improvement for their respective regions;
- b) To determine and fix minimum wage rates applicable in their region, provinces or industries therein and to issue the corresponding wage orders, subject to guidelines issued by the Commission;
- c) To undertake studies, researches, and surveys necessary for the attainment of their functions, objectives and programs, and to collect and compile data on wages, incomes, productivity and other related information and periodically disseminate the same;
- d) To coordinate with the other Boards as may be necessary to attain the policy and intention of the Labor Code;
- e) To receive, process and act on applications for exemption from prescribed wage rates as may be provided by law or any Wage Order; and
- f) To exercise such other powers and functions as may be necessary to carry out their mandate under the Labor Code.

Implementation of the plans, programs and projects of the Boards shall be through the respective Regional Offices of the Department, provided, however, that the Boards shall have technical supervision over the Regional Office of the Department with respect to the implementation of these plans, programs and projects.

SECTION 7. Compositions of the Boards. — Each Board shall be composed of the Regional Director of the Department as Chairman, the Regional Directors of the National Economic and Development Authority (NEDA) and Department of Trade and Industry (DTI) as Vice-Chairmen and two members each of workers and employers sectors who shall be appointed by the President for a term of five years upon the recommendation of the Secretary. The recommendees shall be selected from the list of nominees submitted by the workers and employers sectors.

Each Board shall be assisted by a Secretariat.

SECTION 8. Authority to Organize and Appoint Personnel. — The Chairman of the Commission shall organize such units and appoint the necessary personnel of the Commission and Board Secretaries, subject to pertinent laws, rules and regulations.

CHAPTER III

Minimum Wage Determination

SECTION 1. Regional Minimum Wages. — The minimum wage rates for agricultural and non-agricultural workers and employees in every region shall be those prescribed by the Boards which shall in no case be lower than the statutory minimum wage rates. These wage rates may include wages by industry, province or locality as may be deemed necessary by the Boards.

SECTION 2. Standards/Criteria for Minimum Wage Fixing. — The regional minimum wages to be established by the Boards shall be as nearly adequate as is economically feasible to maintain the minimum standards of living necessary for the health, efficiency and general well-being of the workers within the framework of the national economic and social development programs. In the determination of regional minimum wages, the Boards, shall, among other relevant factors, consider the following:

- a) The demand for living wages;
- b) Wage adjustment vis-a-vis the consumer price index;
- c) The cost of living and changes or increases therein;
- d) The needs of workers and their families;
- e) The need to induce industries to invest in countryside;
- f) Improvements in standards of living;
- g) The prevailing wage levels;
- h) Fair return of the capital invested and capacity to pay of employers;
- i) Effects on employment generation and family income; and
- j) The equitable distribution of income and wealth along the imperatives of economic and social development.

SECTION 3. Wage Order. — Whenever conditions in the region so warrant, the Board shall investigate and study all pertinent facts; and, based on standards and criteria prescribed herein, shall determine whether a Wage Order should be issued.

In the performance of its wage determining functions, the Board shall conduct public hearings and consultations giving notices to employees' and employers' groups, provincial, city and municipal officials and other interested parties.

SECTION 4. Effectivity of Wage Order. — Any Wage Order issued by the Board shall take effect 15 days after its complete publication in at least one newspaper of general circulation in the region.

SECTION 5. Appeal to the Commission. — Any party aggrieved by the Wage Order issued by the Board may file an appeal with the Commission within ten calendar days from the publication of the Order. The Commission shall decide the appeal within sixty calendar days from the date of filing.

SECTION 6. Effect of Appeal. — The filing of the appeal shall not suspend the effectivity of the Wage Order unless the person appealing such order files with the Commission an undertaking with a surety or sureties in such amount as may be fixed by the Commission.

SECTION 7. Wage Distortions. — Where the application of any wage increase resulting from a Wage Order issued by any Board results in distortions in the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions using the grievance procedure under their collective bargaining agreement. If it remains unresolved, it shall be decided through voluntary arbitration ten calendar days from the time the dispute was referred for voluntary arbitration, unless otherwise agreed by the parties in writing.

Where there are no collective agreements or recognized labor unions, the employer and workers shall endeavor to correct the wage distortion. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and if it remains unresolved after ten calendar days of conciliation, it 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 calendar days from the time said dispute is submitted for compulsory arbitration.

The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of any wage increase prescribed pursuant to the provisions of law or Wage Order.

SECTION 8. Non-Diminution of Benefits. — Nothing in the Act and in these Rules shall be construed to reduce any existing laws, decrees, issuances, executive orders, and/or under any contract or agreement between the workers and employers.

SECTION 9. 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 Commission or Boards.

SECTION 10. Penal Provisions. — Any person, corporation trust, firm, partnership, association or entity which refuses or fails to pay any of the prescribed increases or adjustments in the wage rates made in accordance with the Act shall be punished by a fine not exceeding P25,000 and/or imprisonment of not less than one year nor more than two years: Provided, that any person convicted under the Act shall not be entitled to the benefits provided for under the Probation Law.

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

SECTION 11. Registration/Reporting Requirement. — Any person, company, corporation, partnership or any other entity engaged in business shall submit annually a verified itemized listing of their labor component to the appropriate Board and the National Statistics Office not later than January 31 of each year, starting on January 31, 1990 in accordance with the form to be prescribed by the Commission. The listing shall specify the names, salaries and wages of their workers and employees below the managerial level including learners, apprentices and disabled/handicapped workers.

CHAPTER IV

Transitory Provisions

SECTION 1. Abolition of the National Wages Council and the National Productivity Commission. — The National Wages Council created under Executive Order No. 614 and the National Productivity Commission created under Executive Order No. 615 are abolished. All properties, records, equipment, buildings, facilities, and other assets, liabilities and appropriations of and belonging to the abovementioned offices, as well as other matters pending herein, shall be transferred to the Commission. All personnel of the above abolished offices shall continue to function in a hold-over capacity and shall be preferentially considered for appointments to or placements in the Commission/Boards.

Any official or employee separated from the service as a result of the abolition of offices pursuant to the Act shall be entitled to appropriate separation pay of one month salary for every year of service and/or retirement and other benefits accruing to them under existing laws. In lieu thereof, at the option of the employee, he shall be preferentially considered for employment in the government or in any of its subdivisions, instrumentalities, or agencies, including government owned or controlled corporations and their subsidiaries.

SECTION 2. Interim Processing of Applications for Exemption and Submission of Reports. — Pending the operationalization of the Commission and Boards, the National Wages Council shall, in the interim, receive and process applications for exemption subject to guidelines to be issued by the Secretary, in accordance with Section 11 of the Act.

Reports of establishments on their labor component, including wages and salaries of their workers prescribed under the Act, shall be submitted to the National Wages Council through the Regional Offices of the Department.

SECTION 3. Funding Requirement. — The funds necessary to carry out the provisions of the Act shall be taken from the Compensation and Organization Adjustment Fund, the Contingent Fund, and other savings under Republic Act No. 6688, otherwise known as the General Appropriations Act of 1989, or from any unappropriated funds of the National

Treasury; Provided, that the funding requirements necessary to implement the Act shall be included in the annual General Appropriations Act for the succeeding years.

SECTION 4. Repealing Clause. — All laws, orders, issuances, rules and regulations or parts thereof inconsistent with the provisions of the Act and this Rules are hereby repealed, amended or modified accordingly. If any provision or part of the Act and this Rules, or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of the Act and these Rules or the application of such provision or part thereof to other persons or circumstance shall not be affected thereby.

SECTION 5. Effectivity. — These rules shall take effect on July 1, 1989.

RULE VIII

Payment of Wages

SECTION 1. Manner of wage payment. — As a general rule, wages shall be paid in legal tender and the use of tokens, promissory notes, vouchers, coupons, or any other form alleged to represent legal tender is absolutely prohibited even when expressly requested by the employee.

SECTION 2. Payment by check. — Payment of wages by bank checks, postal checks or money orders is allowed where such manner of wage payment is customary on the date of the effectivity of the Code, where it is so stipulated in a collective agreement, or where all of the following conditions are met:

- (a) There is a bank or other facility for encashment within a radius of one (1) kilometer from the workplace;
- (b) The employer or any of his agents or representatives does not receive any pecuniary benefit directly or indirectly from the arrangement;
- (c) The employees are given reasonable time during banking hours to withdraw their wages from the bank which time shall be considered as compensable hours worked if done during working hours; and
- (d) The payment by check is with the written consent of the employees concerned if there is no collective agreement authorizing the payment of wages by bank checks.

SECTION 3. Time of payment. — (a) Wages shall be paid not less than once every two (2) weeks or twice a month at intervals not exceeding sixteen (16) days, unless payment cannot be made with such regularity due to force majeure or circumstances beyond the employer's control in which case the employer shall pay the wages immediately after such force majeure or circumstances have ceased.

(b) In case of payment of wages by results involving work which cannot be finished in two (2) weeks, payment shall be made at intervals not exceeding sixteen days in proportion to the amount of work completed. Final settlement shall be made immediately upon completion of the work.

SECTION 4. Place of payment. — As a general rule, the place of payment shall be at or near the place of undertaking. Payment in a place other than the work place shall be permissible only under the following circumstances:

- (a) When payment cannot be effected at or near the place of work by reason of the deterioration of peace and order conditions, or by reason of actual or impending emergencies caused by fire, flood, epidemic or other calamity rendering payment thereat impossible;
- (b) When the employer provides free transportation to the employees back and forth; and
- (c) Under any other analogous circumstances; Provided, That the time spent by the employees in collecting their wages shall be considered as compensable hours worked;
- (d) No employer shall pay his employees in any bar, night or day club, drinking establishment, massage clinic, dance hall, or other similar places or in places where games are played with stakes of money or things representing money except in the case of persons employed in said places.

SECTION 5. Direct payment of wages. — Payment of wages shall be made direct to the employee entitled thereto except in the following cases:

- (a) Where the employer is authorized in writing by the employee to pay his wages to a member of his family;
- (b) Where payment to another person of any part of the employee's wages is authorized by existing law, including payments for the insurance premiums of the employee and union dues where the right to check-off has been recognized by the employer in accordance with a collective agreement or authorized in writing by the individual employees concerned; or
- (c) In case of death of the employee as provided in the succeeding Section.

SECTION 6. Wages of deceased employee. — The payment of the wages of a deceased employee shall be made to his heirs without the necessity of intestate proceedings. When the heirs are of age, they shall execute an affidavit attesting to their relationship to the deceased and the fact that they are his heirs to the exclusion of all other persons. In case any of the heirs is a minor, such affidavit shall be executed in his behalf by his natural guardian or next of kin. Upon presentation of the affidavit to the employer, he shall make payment to the heirs as representative of the Secretary of Labor and Employment.

SECTION 7. Civil liability of employer and contractors. — Every employer or indirect employer shall be jointly and severally liable with his contractor or sub-contractor for the unpaid wages of the employees of the latter. Such employer or indirect employer may require the contractor or sub-contractor to furnish a bond equal to the cost of labor under contract on condition that the bond will answer for the wages due the employees should the contractor or subcontractor, as the case may be, fail to pay the same.

SECTION 8. Job Contracting. — There is job contracting permissible under the Code if the following conditions are met:

(a) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and

(b) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.

SECTION 9. Labor-only contracting. — (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

(c) For cases not falling under this Rule, the Secretary of Labor and Employment shall determine through appropriate orders whether or not the contracting out of labor is permissible in the light of the circumstances of each case and after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to insure the protection and welfare of the workers.

SECTION 10. Payment of wages in case of bankruptcy. — Unpaid wages earned by the employees before the declaration of bankruptcy or judicial liquidation of the employer's business shall be given first preference and shall be paid in full before other creditors may establish any claim to a share in the assets of the employer.

SECTION 11. Attorney's fees. — Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10 percent of the amount awarded. The fees may be deducted from the total amount due the winning party.

SECTION 12. Non-interference in disposal of wages. — No employer shall limit or otherwise interfere with the freedom of any employee to dispose of his wages and no employer shall in any manner oblige any of his employees to patronize any store or avail of the services offered by any person.

SECTION 13. Wages deduction. — Deductions from the wages of the employees may be made by the employer in any of the following cases:

(a) When the deductions are authorized by law, including deductions for the insurance premiums advanced by the employer in behalf of the employee as well as union dues where the right to check-off has been recognized by the employer or authorized in writing by the individual employee himself.

(b) When the deductions are with the written authorization of the employees for payment to the third person and the employer agrees to do so; Provided, That the latter does not receive any pecuniary benefit, directly or indirectly, from the transaction.

SECTION 14. Deduction for loss or damage. — Where the employer is engaged in a trade, occupation or business where the practice of making deductions or requiring deposits is recognized to answer for the reimbursement of loss or damage to tools, materials, or equipment supplied by the employer to the employee, the employer may make wage deductions or require the employees to make deposits from which deductions shall be made, subject to the following conditions:

(a) That the employee concerned is clearly shown to be responsible for the loss or damage;

(b) That the employee is given reasonable opportunity to show cause why deduction should not be made;

(c) That the amount of such deduction is fair and reasonable and shall not exceed the actual loss or damage; and

(d) That the deduction from the wages of the employee does not exceed 20 percent of the employee's wages in a week.

RULE IX

Wage Studies and Determination

SECTION 1. Definition of terms. — (a) "Industry" shall mean any identifiable group of productive units or enterprises, whether operated for profit or not, engaged in similar or allied economic activities in which individuals are gainfully employed.

(b) A "branch" of an industry is a work, product or service grouping thereof which can be considered a distinct division for wage-fixing purposes.

(c) "Substantial number" shall mean such an appreciable number of employees in an industry as, in the Commission's opinion, considering all relevant facts, may require action under Art. 121 of the Code to effectuate the purposes of wage determination, regardless of the proportion of such employees to the total number of employees in the industry.

SECTION 2. Wage studies. — The National Wages Council shall conduct a continuing study of wage rates and other economic conditions in all industries, agricultural and non-agricultural. The results of such study shall be periodically disseminated to the government, labor and management sectors for their information and guidance.

SECTION 3. Wages recommendation. — If after such study, the Commission is of the opinion that a substantial number of employees in any given industry or branch thereof are receiving wages, which although complying with the minimum provided by law, are less than sufficient to maintain them in health, efficiency and general well-being, taking into account, among others, the peculiar circumstances of the industry and its geographical location, the Commission shall, with the approval of the Secretary of Labor and Employment, proceed to determine whether a wage recommendation should be issued.

SECTION 4. Criteria for wage fixing. — (a) In addition to the criteria established by Art. 123 of the Code for minimum wage fixing, the Commission shall consider, among other factors, social services and benefits given free to workers and the possible effect of a given increase in the minimum wage on prices, money supply, employment, labor mobility and productivity, labor organization efficacy, domestic and foreign trade, and other relevant indicators of social and economic development.

(b) Where a fair return to capital invested cannot be reasonably determined, or where the industry concerned is not operated for profit, its capacity to pay, taking into account all resources available to it, shall be considered.

SECTION 5. Quorum. — Three (3) members of the Commission, including its Chairman, shall constitute a quorum to transact the Commission's business.

SECTION 6. Commission actions, number of votes required. — The votes of at least three (3) members of the Commission shall be necessary to effect any decision or recommendation it is authorized to issue under the Code and this rule: Provided, That in the internal regulation and direction of the functions of the Commission's staff including the conduct of administrative processes and the maintenance of proper liaison and coordination with other organizations, the Chairman shall not need the consent of the Commission or any member thereof.

SECTION 7. Outside assistance. — The Commission may call upon the assistance and cooperation of any government agency or official, and may invite any private person or organization to furnish information in connection with industry studies and wage fixing hearings or in aid of the Commission's deliberations.

SECTION 8. Schedule of hearings and notices. — The Commission shall prepare a schedule of hearings for the reception of evidence necessary for wage fixing in an industry, including a list of witnesses that it will invite and the date, time and place of the hearings. A notice thereof to all sectors of the industry shall be given in the most expeditious manner. It may have prior consultations with labor and management leaders in the industry for the above purpose.

SECTION 9. Unsolicited testimony. — Persons who offer to testify before the Commission shall be heard only after the Commission is satisfied, upon brief preliminary examination, that they are in possession of facts relevant to the subject of inquiry. The Chairman, or in

other cases, the person conducting the hearing, shall revise the schedule of hearings whenever necessary to achieve logical sequence of testimony.

SECTION 10. Compulsory processes. — Recourse to compulsory processes under the Revised Administrative Code to ensure the attendance of witnesses and/or the production of relevant documentary evidence shall be used only on occasions of extreme importance and after other means shall have failed, subject to the approval of the Secretary of Labor and Employment.

SECTION 11. Hearings; where, by whom conducted. — Commission hearings may be conducted by the Commission en banc, or, when authorized by the Commission, by any member or hearing officer designated by the Chairman. The hearings may be held wherever the industry or branches thereof are situated; otherwise they shall be held in the Greater Manila Area. The hearings shall be open to the public.

SECTION 12. Hearings before single member or hearing officer. — Hearings conducted by a duly authorized member or hearing officer shall be considered as hearings before the Commission. The records of such hearings shall be submitted to the Commission as soon as they are completed, indicating the time and place of the hearings and the appearances thereat, together with a brief statement of the findings and recommendations of the member or hearing officer concerned.

SECTION 13. Testimony under oath. — The testimony of all witnesses shall be made under oath or affirmation and shall be taken down and transcribed by a duly appointed stenographic reporter.

SECTION 14. Non-applicability of technical rules. — The technical rules of evidence applied by the courts in proceedings at law or equity shall not strictly apply in any proceedings conducted before the Commission.

SECTION 15. Stipulation of fact. — Stipulations of fact may be admitted with respect to any matter at issue in the proceedings.

SECTION 16. Documentary evidence. — Written evidence submitted to the Commission or any member or hearing officer shall be properly marked to facilitate identification.

SECTION 17. Submission of industry-report. — Within sixty (60) working days from the date of the first hearing, the Commission shall submit to the Secretary of Labor and Employment an "Industry Report" which shall relate in brief the operations that led thereto, the basic findings of economic facts about the industry and the recommendations made on the basis thereof.

SECTION 18. Action by the Secretary of Labor and Employment. — Within thirty (30) working days after the submission of the "Industry Report," the Secretary of Labor and Employment shall either reject or approve the recommendation of the Commission in accordance with Art. 122 of the Code. If he approves the recommendation, he shall issue a

Wage Order adopting the same, subject to the approval of the President of the Philippines, prescribing the minimum wage or wages for the industry concerned.

SECTION 19. Wage Order. — The Wage Order shall specify the industry or branch to which the minimum wages prescribed therein shall apply; Provided, That no definite rates shall be prescribed for specific job titles in the industry.

SECTION 20. Varying minimum wages. — To justify different minimum wages for different localities, the economic and other conditions found in a particular locality must not only be more or less uniform therein but also different from those prevailing in other localities.

SECTION 21. Publication of Wage Order. — Only such portions of a Wage Order shall be published as shall effectively give notice to all interested parties that such an Order has been issued, the industry affected, the minimum wages prescribed and the date of its effectivity.

SECTION 22. Effectivity. — A Wage Order shall become effective after fifteen (15) days from its publication as provided in Article 124 of the Code.

SECTION 23. Internal rules of the Commission. — Subject to the approval of the Secretary of Labor and Employment, the National Wages Council may issue rules and regulations governing its internal procedure.

RULE X

Administration and Enforcement

SECTION 1. Visitorial power. — The Secretary of Labor and Employment or his duly authorized representatives, including Labor Regulations Officers or Industrial Safety Engineers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and right to copy therefrom, to question any employee, and to investigate any fact, condition or matter relevant to the enforcement of any provision of the Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

SECTION 2. Enforcement power. — (a) The Regional Director in cases where employer relations shall exist, shall have the power to order and administer, after due notice and hearing, compliance with the labor standards provisions of the Code and other labor legislations based on the findings of the Labor Regulation Officers or Industrial Safety Engineers (Labor Standard and Welfare Officer) and made in the course of inspection, and to issue writs of execution to the appropriate authority of the enforcement of his order. In line with the provisions of Article 128 in relation to Articles 289 and 290 of the Labor Code as amended in cases, however, where the employer contests the findings of the Labor Standards and Welfare Officers and raises issues which cannot be resolved without considering evidentiary matters that are not verifiable in the normal course of inspection, the Regional Director concerned shall indorse the case to the appropriate arbitration branch of the National Labor Relations Commission for adjudication.

(b) The Regional Director shall give the employer fifteen (15) days within which to comply with his order before issuing a writ of execution. Copy of such order or writ of execution shall immediately be furnished the Secretary of Labor and Employment.

SECTION 3. Enforcement power on health and safety of workers. — (a) The Regional Director may likewise order stoppage of work or suspension of operations of any unit or department of an establishment when non-compliance with the law, safety order or implementing rules and regulations poses grave and imminent danger to the health and safety of workers in the workplace.

(b) Within 24 hours from issuance of the order of stoppage or suspension, a hearing shall be conducted to determine whether the order for the stoppage of work or suspension of operation shall be lifted or not. The proceedings shall be terminated within seventy-two (72) hours and a copy of such order or resolution shall be immediately furnished the Secretary of Labor and Employment. In case the violation is attributable to the fault of the employer, he shall pay the employees concerned their salaries or wages during the period of such stoppage of work or suspension of operation.

SECTION 4. Power to review. — (a) The Secretary of Labor and Employment, at his own initiative or upon request of the employer and/or employee, may review the order of the Regional Director. The order of the Regional Director shall be immediately final and executory unless stayed by the Secretary of Labor and Employment upon posting by the employer of a reasonable cash or surety bond as fixed by the Regional Director.

(b) In aid of his power of review, the Secretary of Labor and Employment may direct the Bureau of Working Conditions to evaluate the findings or orders of the Regional Director. The decision of the Secretary of Labor and Employment shall be final and executory.

SECTION 5. Interference and injunctions prohibited. — It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the exercise of the enforcement power of the Secretary of Labor and Employment, Regional Director or their duly authorized representatives pursuant to the authority granted by the Code and its implementing rules and regulations, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders issued in accordance with the Code. In addition to the penalties provided for by the Labor Code, any government employees found guilty of violation or abuse of authority, shall be subject to the provisions of Presidential Decree No. 6.

SECTION 6. Payrolls. — (a) Every employer shall pay his employees by means of a payroll wherein the following information and data shall be individually shown:

- (1) Length of time to be paid;
- (2) The rate of pay per month, week, day or hour piece, etc.;
- (3) The amount due for regular work;

- (4) The amount due for overtime work;
- (5) Deductions made from the wages of the employees; and
- (6) Amount actually paid.

(b) Every employee in the payroll shall sign or place his thumbmark, as the case may be, at the end of the line opposite his name where a blank space shall be provided for the purpose. His signature shall be made in ink, or his thumbmark placed with the use of the regular stamping ink and pad.

SECTION 7. Time records. — Every employer shall keep an individual time record of all his employees bearing the signature or thumbmark of the employee concerned for each daily entry therein by means of any of the following methods:

- (a) Through the use of Bundy clock by means of which an employee can punch in his individual card the time of arrival and departure from work;
- (b) Through the employment of a timekeeper whose duty is to time in and out every employee in a record book; and
- (c) By furnishing the employees individually with a daily time record form in which they can note the time of their respective arrival and departure from work.

SECTION 8. Entries in the filing of time records. — All entries in time books and daily time records shall be accomplished in ink. All filled-up Bundy clock cards, timekeeper's books and daily time record forms shall be kept on file in chronological order by the employer in or about the premises where the employee is employed, and open to inspection and verification by the Department of Labor and Employment as provided in this Rule.

SECTION 9. Time records of executives. — Managerial employees, officers or members of the managerial staff, as well as non-agricultural field personnel, need not be required to keep individual time records, provided that a record of their daily attendance is kept and maintained by the employer.

SECTION 10. Records of workers paid by results. — Where the employees are paid on piece, pakiao, takay, task, commission or other non-time basis, the employer shall keep production records showing their daily output, gross earnings and the actual number of working hours spent by the employees on the job, bearing the signature or thumbmark of the employee concerned. Where, however, the minimum output rates of non-time workers have been fixed by the Department of Labor and Employment or through certified collective agreements, or are in compliance with the standards prescribed in Section 8, Rule VII of this Book, the employer may dispense with the keeping of time records, except the daily production records showing their output or the work accomplished and gross earnings.

SECTION 11. Place of records. — All employment records of the employees shall be kept and maintained by the employer in or about the premises of the work place. The premises of a work-place shall be understood to mean the main or branch office of the establishment, if

any, depending upon where the employees are regularly assigned. The keeping of the employee's records in another place is prohibited.

SECTION 12. Preservation of records. — All employment records required to be kept and maintained by employers shall be preserved for at least three (3) years from the date of the last entry in the records.

SECTION 13. False reporting. — It shall be unlawful for any employer or any person to make any false statement, report or record on matters required to be kept or maintained pursuant to the provisions of this Rule.

SECTION 14. Working scholars. — There is no employer-employee relationship between students on one hand, and schools, colleges or universities on the other, where there is written agreement between them under which the former agree to work for the latter in exchange for the privilege to study free of charge, provided the students are given real opportunities, including such facilities as may be reasonable and necessary to finish their chosen courses under such agreement.

SECTION 15. Resident physicians in training. — There is employer-employee relationship between resident physicians and the training hospital unless:

- (1) There is a training agreement between them; and
- (2) The training program is duly accredited or approved by the appropriate government agency.

Nothing herein shall sanction the diminution or withdrawal of any existing allowances, benefits and facilities being enjoyed by training resident physicians at the time of the effectivity of this Rule.

RULE XI

Adjudicatory Powers

SECTION 1. Recovery of wages, simple money claims and other benefits. — (a) The Regional Director or any duly authorized Hearing Officer of the Department of Labor and Employment shall have the power through summary proceedings and after due notice to hear and decide any complaint involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person, employed in domestic or household service or househelper arising from employer-employee relations; Provided, that such complaint does not include a claim for reinstatement and; Provided, further, that the aggregate money claims of each employee or househelper does not exceed five thousand pesos (P5,000.00), inclusive of legal interest.

(b) When the claims of two or more claimants, each not exceeding five thousand pesos (P5,000.00), arising out of or involving the same cause of action and against the same respondent, are subject of separate complaints, the complaints may, upon motion or either party, be consolidated into one for purposes of the hearing and reception of evidence.

(c) When the evidence shows that the claim amounts to more than five thousand pesos (P5,000.00), the Regional Director or Hearing Officer shall advise the complainant to amend the complaint if the latter so desires and file the same with the appropriate regional branch of the National Labor Relations Commission.

SECTION 2. The complaint shall be in writing, under oath and shall substantially comply with the form prescribed by the Department. Within two (2) working days from receipt of the complaint, the Regional Director or Hearing Officer shall serve a copy of the complaint and all pertinent documents to the respondents who may, within five (5) calendar days, file an answer thereto.

SECTION 3. Any sum recovered on behalf of an employee or househelper pursuant to this Rule shall be held in a special deposit account by, and shall be paid, on order of the Secretary of Labor and Employment or the Regional Director, directly to the employee or househelper concerned or to his heirs, successors or assigns. Any such sum not paid to the employee or househelper, because he cannot be located after diligent and reasonable effort to locate him within a period of three (3) years, shall be held as a special fund of the Department of Labor and Employment to be used exclusively for the amelioration and benefit of workers: Provided, however, that thirty (30) calendar days before any sum is turned over to the fund, a notice of entitlement shall be posted conspicuously in at least two (2) public places in the locality where he is last known to have resided.

The Secretary of Labor and Employment or his duly authorized representative may supervise the payment of unpaid wages and other monetary claims and benefits, including legal interests, found owing to any employee or househelper.

SECTION 4. Any decision or resolution of the Regional Director or any of the duly authorized Hearing Officers of the Department of Labor and Employment may be appealed on the same grounds and following the procedure for perfecting an appeal provided in Article 223 of the Labor Code, within five (5) calendar days from receipt of a copy of said decision or resolution, to the National Labor Relations Commission which shall resolve the appeal within ten (10) calendar days from submission of the last pleading required or allowed under its rules.

RULE XII

Employment of Women and Minors

SECTION 1. General statement on coverage. — This Rule shall apply to all employers, whether operating for profit or not, including educational, religious and charitable institutions, except to the Government and to government-owned or controlled corporations and to employers of household helpers and persons in their personal service insofar as such workers are concerned.

SECTION 2. Employable age. — Children below fifteen (15) years of age may be allowed to work under the direct responsibility of their parents or guardians in any non-hazardous undertaking where the work will not in any way interfere with their schooling. In such cases,

the children shall not be considered as employees of the employers or their parents or guardians.

SECTION 3. Eligibility for employment. — Any person of either sex, between 15 and 18 years of age, may be employed in any non-hazardous work. No employer shall discriminate against such person in regard to terms and conditions of employment on account of his age.

For purposes of this Rule, a non-hazardous work or undertaking shall mean any work or activity in which the employee is not exposed to any risk which constitutes an imminent danger to his safety and health. The Secretary of Labor and Employment shall from time to time publish a list of hazardous work and activities in which persons 18 years of age and below cannot be employed.

SECTION 4. Status of women workers in certain work places. — Any woman who is permitted or suffered to work with or without compensation, in any night club, cocktail lounge, beer house, massage clinic, bar or similar establishments, under the effective control or supervision of the employer for a substantial period of time as determined by the Secretary of Labor and Employment, shall be considered as an employee of such establishments for purposes of labor and social legislation. No employer shall discriminate against such employees or in any manner reduce whatever benefits they are now enjoying by reason of the provisions of this Section.

SECTION 5. Night work of women employees. — Any woman employed in any industrial undertaking may be allowed to work beyond 10:00 o'clock at night, or beyond 12:00 o'clock midnight in the case of women employees of commercial or non-industrial enterprises, in any of the following cases:

- (a) In cases of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquakes, epidemic or other disaster or calamity, to prevent loss of life or property or in cases of force majeure or imminent danger to public safety;
- (b) In case of urgent work to be performed on machineries, equipment or installation, to avoid serious loss which the employer would otherwise suffer;
- (c) Where the work is necessary to prevent serious loss of perishable goods;
- (d) Where the woman employee holds a responsible position of a managerial or technical nature, or where the woman employee has been engaged to provide health and welfare services;
- (e) Where the nature of the work requires the manual skill and dexterity of women and the same cannot be performed with equal efficiency by male workers or where the employment of women is the established practice in the enterprises concerned on the date these Rules become effective; and
- (f) Where the women employees are immediate members of the family operating the establishment or undertaking.

The Secretary of Labor and Employment shall from time to time determine cases analogous to the foregoing for purposes of this Section.

SECTION 6. Agricultural work. — No woman, regardless of age, shall be permitted or suffered to work, with or without compensation, in any agricultural undertaking at night time unless she is given a rest period of not less than nine (9) consecutive hours, subject to the provisions of Section 5 of this Rule.

SECTION 7. Maternity leave benefits. — Every employer shall grant to a pregnant woman employee who has rendered an aggregate service of at least six (6) months for the last twelve (12) months immediately preceding the expected date of delivery, or the complete abortion or miscarriage, maternity leave of at least two (2) weeks before and four (4) weeks after the delivery, miscarriage or abortion, with full pay based on her regular or average weekly wages.

SECTION 8. Accreditation of leave credits. — Where the pregnant woman employee fails to avail of the two-week pre-delivery leave, or any portion thereof, the same shall be added to her post-delivery leave with pay.

SECTION 9. Payment of extended maternity leave. — When so requested by the woman employee, the extension of her maternity leave beyond the four-week post-delivery leave shall be paid by the employer from her unused vacation and/or sick leave credits, if any, or allowed without pay in the absence of such leave credits, where the extended leave is due to illness medically certified to arise out of her pregnancy, delivery, complete abortion or miscarriage which renders her unfit for work.

SECTION 10. Limitation on leave benefits. — The maternity benefits provided herein shall be paid by an employer only for the first four (4) deliveries, miscarriages, and/or complete abortions of the employee from March 13, 1973, regardless of the number of employees and deliveries, complete abortions or miscarriages the woman employee had before said date. For purposes of determining the entitlement of a woman employee to the maternity leave benefits as delimited herein, the total number of her deliveries, complete abortions, or miscarriages after said date shall be considered regardless of the identity or number of employers she has had at the time of such determination, provided that she enjoyed the minimum benefits therefor as provided in these regulations.

SECTION 11. Family planning services. — Employers who habitually employ more than two hundred (200) workers in any locality shall provide free family-planning services to their employees and their spouses which shall include but not limited to, the application or use of contraceptives.

Subject to the approval of the Secretary of Labor and Employment, the Bureau of Women and Young Workers shall, within thirty (30) days from the effective date of these Rules, prescribe the minimum requirements of family planning services to be given by employers to their employees.

SECTION 12. Relation to agreements. — Nothing herein shall prevent the employer and his employees or their representatives from entering into any agreement with terms more favorable to the employees than those provided herein, or be used to diminish any benefit granted to the employees under existing laws, agreements, and voluntary employer practices.

SECTION 13. Prohibited acts. — It shall be unlawful for any employer:

- (a) To discharge any woman employed by him for the purpose of preventing such woman from enjoying the maternity leave, facilities and other benefits provided under the Code;
- (b) To discharge such woman employee on account of her pregnancy, or while on leave or in confinement due to her pregnancy;
- (c) To discharge or refuse the admission of such woman upon returning to her work for fear that she may be pregnant;
- (d) To discharge any woman or child or any other employee for having filed a complaint or having testified or being about to testify under the Code; and
- (e) To require as a condition for a continuation of employment that a woman employee shall not get married or to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage.

SECTION 14. Facilities for woman employees. — Subject to the approval of the Secretary of Labor and Employment, the Bureau of Women and Young Workers shall, within thirty (30) days from the effective date of these Rules, determine in an appropriate issuance the work situations for which the facilities enumerated in Article 131 of the Code shall be provided, as well as the appropriate minimum age and other standards for retirement or termination of employment in special occupations in which women are employed.

RULE XIII

Employment of Househelpers

SECTION 1. General statement on coverage. — (a) The provisions of this Rule shall apply to all househelpers whether employed on full or part-time basis.

(b) The term "househelper" as used herein is synonymous to the term "domestic servant" and shall refer to any person, whether male or female, who renders services in and about the employer's home and which services are usually necessary or desirable for the maintenance and enjoyment thereof, and ministers exclusively to the personal comfort and enjoyment of the employer's family.

SECTION 2. Method of payment not determinant. — The provisions of this Rule shall apply irrespective of the method of payment of wages agreed upon by the employer and househelper, whether it be hourly, daily, weekly, or monthly, or by piece or output basis.

SECTION 3. Children of househelpers. — The children and relatives of a househelper who live under the employer's roof and who share the accommodations provided for the househelpers by the employer shall not be deemed as househelpers if they are not otherwise engaged as such and are not required to perform any substantial household work.

SECTION 4. Employment contract. — The initial contract for household service shall not last for more than two (2) years. However, such contract may be renewed from year to year.

SECTION 5. Minimum monthly wage. — The minimum compensation of househelpers shall not be less than the following rates:

(a) Sixty pesos (P60.00) a month for those employed in the cities of Manila, Quezon, Pasay and Caloocan, and in the municipalities of Makati, San Juan, Mandaluyong, Muntinlupa, Navotas, Malabon, Parañaque, Las Piñas, Pasig and Marikina, in the Province of Rizal.

(b) Forty-five pesos (P45.00) a month for those employed in other chartered cities and first class municipalities; and

(c) Thirty pesos (P30.00) a month for those in other municipalities.

SECTION 6. Equivalent daily rate. — The equivalent minimum daily wage rate of househelpers shall be determined by dividing the applicable minimum monthly rate by thirty (30) days.

SECTION 7. Payment by results. — Where the method of payment of wages agreed upon by the employer and the househelper is by piece or output basis, the piece or output rates shall be such as will assure the househelper of the minimum monthly or the equivalent daily rate as provided in this issuance.

SECTION 8. Minimum cash wage. — The minimum wage rates prescribed under this Rule shall be basic cash wages which shall be paid to the househelpers in addition to lodging, food and medical attendance.

SECTION 9. Time and manner of payment. — Wages shall be paid directly to the househelper to whom they are due at least once a month. No deductions therefrom shall be made by the employer unless authorized by the househelper himself or by existing laws.

SECTION 10. Assignment to non-household work. — No househelper shall be assigned to work in a commercial, industrial or agricultural enterprise at a wage or salary rate lower than that provided for agricultural and non-agricultural workers.

SECTION 11. Opportunity for education. — If the househelper is under the age of eighteen (18) years, the employer shall give him or her an opportunity for at least elementary education. The cost of such education shall be part of the househelper's compensation, unless there is a stipulation to the contrary.

SECTION 12. Treatment of househelpers. — The employer shall treat the househelper in a just and humane manner. In no case shall physical violence be inflicted upon the househelper.

SECTION 13. Board, lodging and medical attendance. — The employer shall furnish the househelper free suitable and sanitary living quarters as well as adequate food and medical attendance.

SECTION 14. Indemnity for unjust termination of service. — If the period for household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause. If the househelper is unjustly dismissed, he or she shall be paid the compensation already earned plus that for fifteen (15) days by way of indemnity.

If the househelper leaves without justifiable reason, he or she shall forfeit any unpaid salary due him or her not exceeding fifteen (15) days.

SECTION 15. Employment certification. — Upon the severance of the household service relationship, the househelper may demand from the employer a written statement of the nature and duration of the service and his or her efficiency and conduct as househelper.

SECTION 16. Funeral expenses. — In case of death of the househelper, the employer shall bear the funeral expenses commensurate to the standards of life of the deceased.

SECTION 17. Disposition of the househelper's body. — Unless so desired by the househelper or by his or her guardian with court approval, the transfer or use of the body of the deceased househelper for purposes other than burial is prohibited. When so authorized by the househelper, the transfer, use and disposition of the body shall be in accordance with the provisions of Republic Act No. 349.

SECTION 18. Employment records. — The employer may keep such records as he may deem necessary to reflect the actual terms and conditions of employment of his househelper which the latter shall authenticate by signature or thumbmark upon request of the employer.

SECTION 19. Prohibited reduction of pay. — When the compensation of the househelper before the promulgation of these regulations is higher than that prescribed in the Code and in this issuance, the same shall not be reduced or diminished by the employer on or after said date.

SECTION 20. Relation to other laws and agreements. — Nothing in this Rule shall deprive a househelper of the right to seek higher wages, shorter working hours and better working conditions than those prescribed herein, nor justify an employer in reducing any benefit or privilege granted to the househelper under existing laws, agreements or voluntary employer practices with terms more favorable to the househelpers than those prescribed in this Rule.

RULE XIV

Employment of Homeworkers

SECTION 1. General statement on coverage. — This Rule shall apply to any homeworker who performs in or about his home any processing of goods or materials, in whole or in part,

which have been furnished directly or indirectly by an employer and thereafter to be returned to the latter.

SECTION 2. Definitions. — As used in this Rule, the following terms shall have the meanings indicated hereunder:

(a) "Home" means any room, house, apartment, or other premises used regularly, in whole or in part, as a dwelling place, except those situated within the premises or compound of an employer, contractor, and the work performed therein is under the active or personal supervision by, or for, the latter.

(b) "Employer" means any natural or artificial person who, for his own account or benefit, or on behalf of any person residing outside the Philippines, directly or indirectly, or through any employee, agent, contractor, sub-contractor; or any other person:

(1) Delivers or causes to be delivered any goods or articles to be processed in or about a home and thereafter to be returned or to be disposed of or distributed in accordance with his direction; or

(2) Sells any goods or articles for the purpose of having such goods or articles processed in or about a home and then repurchases them himself or through another after such processing.

(c) "Contractor" or "sub-contractor" means any person who, for the account or benefit of an employer, delivers or caused to be delivered to a homeworker goods or articles to be processed in or about his home and thereafter to be returned, disposed of or distributed in accordance with the direction of the employer.

(d) "Processing" means manufacturing, fabricating, finishing, repairing, altering, packing, wrapping or handling any material.

SECTION 3. Payment for work. — (a) Immediately upon receipt of the finished goods or articles, the employer shall pay the homeworker or the contractor or sub-contractor, as the case may be, for the work performed; Provided, However, that where payment is made to a contractor or sub-contractor, the homeworker shall be paid within the week after the contractor or sub-contractor has collected the goods or articles from the homeworkers.

(b) The Secretary of Labor and Employment shall from time to time establish the standard minimum piece or output rate in appropriate orders for the particular work or processing to be performed by the homeworkers.

SECTION 4. Deductions. — No employee, contractor, or sub-contractor shall make any deduction from the homeworker's earnings for the value of materials which have been lost, destroyed, soiled or otherwise damaged unless the following conditions are met:

(a) The homeworker concerned is clearly shown to be responsible for the loss or damage;

(b) The employee is given reasonable opportunity to show cause why deductions should not be made;

(c) The amount of such deduction is fair and reasonable and shall not exceed the actual loss or damages; and

(d) The deduction is made at such rate that the amount deducted does not exceed 20% of the homeworker's earnings in a week.

SECTION 5. Conditions for payment of work. — (a) The employer may require the homeworker to re-do work which has been improperly executed without having to pay the stipulated rate more than once.

(b) An employer, contractor, or sub-contractor need not pay the homeworker for any work which has been done on goods and articles which have been returned for reasons attributable to the fault of the homeworker.

SECTION 6. Disagreement between homeworkers and employer. — In cases of disagreement between the homeworker and the employer, contractor or sub-contractor on matters falling under Section 4 (a), 5 and 6 of this Rule, either party may refer the case to the Regional Office having jurisdiction over the homeworker. The Regional Office shall decide the case within ten (10) working days from receipt of the case. Its decision shall be final and unappealable.

SECTION 7. Liability of employer and contractor. — Whenever an employer shall contract with another for the performance of the employer's work, it shall be the duty of such employer to provide in such contract that the employees or homeworkers of the contractor and the latter's sub-contractor shall be paid in accordance with the provisions of this Rule. In the event that such contractor or sub-contractor fails to pay the wages or earnings of his employees or homeworkers as specified in this Rule, such employer shall be jointly and severally liable with the contractor or sub-contractor to the workers of the latter, to the extent that such work is performed under such contract, in the same manner as if the employees or homeworkers were directly engaged by the employer.

BOOK FOUR

Health, Safety and Welfare Benefits

RULE I

Medical and Dental Services

SECTION 1. Coverage. — This Rule shall apply to all employers, whether operating for profit or not, including the Government and any of its political subdivisions and government-owned or controlled corporations, which employs in any workplace one or more workers.

The development and enforcement of dental standards shall continue to be under the responsibility of the Bureau of Dental Health Services of the Department of Health.

SECTION 2. Definitions. — As used in this Rule, the following terms shall have the meanings indicated hereunder unless the context clearly indicates otherwise:

(a) "First-aid treatment" means adequate, immediate and necessary medical and dental attention or remedy given in case of injury or sudden illness suffered by a worker during employment, irrespective of whether or not such injury or illness is work-connected, before more extensive medical and/or dental treatment can be secured. It does not include continued treatment or follow-up treatment for an injury or illness.

(b) "Work place" means the office, premises or work site where the workers are habitually employed and shall include the office or place where the workers who have no fixed or definite work site regularly report for assignment in the course of their employment.

(c) "First-aider" means any person trained and duly certified as qualified to administer first aid by the Philippine National Red Cross or by any other organization accredited by the former.

SECTION 3. Medicines and facilities. — Every employer shall keep in or about his work place the first-aid medicines, equipment and facilities that shall be prescribed by the Department of Labor and Employment within 5 days from the issuance of these regulations. The list of medicines, equipment and facilities may be revised from time to time by the Bureau of Working Conditions, subject to the approval of the Secretary of Labor and Employment.

SECTION 4. Emergency medical and dental services. — Any employer covered by this Rule shall provide his employees medical and dental services and facilities in the following cases and manner:

(a) When the number of workers is from 10 to 50 in a work place, the services of a graduate first-aider shall be provided who may be one of the workers in the work place and who has immediate access to the first-aid medicines prescribed in Section 3 of this Rule.

(b) Where the number of workers exceeds 50 but not more than 200, the services of a full-time registered nurse shall be provided. However, if the work place is non-hazardous, the services of a full-time first-aider may be provided if a nurse is not available.

(c) Where the number of workers in a work place exceeds 200 but not more than 300, the services of a full-time registered nurse, a part-time physician and a part-time dentist, and an emergency clinic shall be provided, regardless of the nature of the undertaking therein. The physician and dentist engaged for such work place shall stay in the premises for at least two (2) hours a day; Provided, However, that where the establishment has more than one (1) work shift a day, the required two-hour stay shall be devoted to the work shift which has the biggest number of workers and they shall, in addition to the requirements of this Rule, be subject to call at any time during the other work shifts to attend to emergency cases.

(d) Where the number of workers in a hazardous work place exceeds 300, the services of a full-time nurse, a full-time physician, a full-time dentist, a dental clinic and an infirmary or emergency hospital with one-bed capacity for every 100 workers shall be provided. The physician and dentist shall stay in the premises of the work place for at least eight (8) hours a day; Provided, However, that where the work place has more than one (1) work shift a day,

they shall be at work place during the work shift which has the biggest number of workers and they shall be subject to call at anytime during the other work shifts to attend to emergency cases. Where the undertaking in such a work place is non-hazardous in nature, the employer may engage the services of a part-time physician and a part-time dentist who shall have the same responsibilities as those provided in sub-section (c) of this Section, and shall engage the services of a full-time registered nurse.

(e) In all work places where there are more than one (1) work shift in a day, the employer shall, in addition to the requirements of this Rule, provide the services of a full-time first-aider for each workshift.

SECTION 5. Emergency hospital. — An employer need not put up an emergency hospital or dental clinic in the work place as required in these regulations where there is a hospital or dental clinic which is not more than five (5) kilometers away from the work place if situated in any urban area or which can be reached by motor vehicle in twenty-five (25) minutes of travel, if situated in a rural area and the employer has facilities readily available for transporting a worker to the hospital or clinic in case of emergency: Provided, That the employer shall enter into a written contract with the hospital or dental clinic for the use thereof in the treatment of workers in case of emergency.

SECTION 6. Training and qualifications of medical and dental personnel. — The health personnel required to be hired by an employer pursuant to the Code and these Rules shall have the following minimum qualifications:

(a) A first-aider must be able to read and write and must have completed a course in first-aid duly certified by the National Red Cross or any other organization accredited by the same.

(b) A nurse must have passed the examination given by the Board of Examiners and duly licensed to practice nursing in the Philippines and preferably with at least fifty (50) hours of training in occupational nursing conducted by the Department of Health, the Institute of Public Health of the University of the Philippines or by any organization accredited by the former.

(c) A physician, whether permanent or part-time, must have passed the examinations given by the Board of Examiners for physicians, is licensed to practice medicine in the Philippines, and is preferably a graduate of a training course in occupational medicine conducted by the Bureau of Working Conditions, the Institute of Public Health of the University of the Philippines or any organization duly accredited by the former.

(d) A dentist, whether permanent or part-time, must have passed the examinations given by the Board of Examiners for dentists, is licensed to practice dentistry in the Philippines, and preferably has completed a training course in occupational dentistry conducted by the Bureau of Dental Health Services of the Department of Health or any organization duly accredited by the former.

SECTION 7. Opportunity for training. — Nurses, physicians, and dentists employed by covered employers on the date the Code becomes effective and who do not possess the

special training qualifications provided in this Rule may attend the respective training courses pertinent to their field of specialization. The Bureau of Working Conditions shall initiate the organization and carrying out of appropriate training programs for nurses, physicians and dentists in coordination with the government agencies or private organizations referred to in the preceding Section.

SECTION 8. Hazardous work places. — The Bureau of Working Conditions, shall, with the approval of the Secretary of Labor and Employment, issue from time to time a detailed list of hazardous work places for purposes of this Rule, in addition to the following:

- (a) Where the nature of the work exposes the workers to dangerous environmental elements, contaminations or work conditions including ionizing radiations, chemicals, fire, flammable substances, noxious components and the like.
- (b) Where the workers are engaged in construction work, logging, fire-fighting, mining, quarrying, blasting, stevedoring, dock work, deep-sea fishing and mechanized farming.
- (c) Where the workers are engaged in the manufacture or handling of explosives and other pyrotechnic products.
- (d) Where the workers use or are exposed to heavy or power-driven machinery or equipment.
- (e) Where the workers use or are exposed to power-driven tools.

SECTION 9. Health program. — The physician engaged by an employer pursuant to this Rule shall, in addition to providing medical services to the workers in cases of emergency, perform among others, the following duties:

- (a) Conduct pre-employment medical examination, free of charge, for the proper selection and placement of workers;
- (b) Conduct free of charge annual physical examination of the workers;
- (c) Collaborate closely with the safety and technical personnel of the establishment to assure selection and placement of workers from the standpoint of physical, mental, physiological and psychological suitability, including investigation of accidents where the probable causes are exposure to occupational health hazards; and
- (d) Develop and implement a comprehensive occupational health program for the employees of the establishment. A report shall be submitted annually to the Bureau of Working Conditions describing the program established and the implementation thereof.

SECTION 10. Medical and dental records. — (a) The employer shall furnish the Bureau of Working Conditions with copies of all contracts of employment of medical personnel and contracts with hospitals or clinics as provided in Section 5 of this Rule.

- (b) The employer shall maintain a record of all medical examinations, treatments and medical activities undertaken.

(c) The employer shall submit reports in such form, and containing such information, as the Bureau of Working Conditions may require from time to time.

RULE II

Occupational Health and Safety

SECTION 1. General statement on coverage. — (a) This Rule shall apply to all establishments, workplaces, and other undertakings, including agricultural enterprises, whether operated for profit or not, except to: (1) those engaged in land, sea and air transportation: Provided, That their dry docks, garages, hangars, maintenance and repair shops and offices shall be covered by this Rule and (2) residential places exclusively devoted to dwelling purposes.

(b) Except as otherwise provided herein, all establishments, workplaces and undertakings located in all chartered cities as well as ordinary municipalities shall be subject to the jurisdiction of the Department of Labor and Employment in respect to the administration and enforcement of safety and health standards.

(c) Chartered cities may be allowed to assume responsibility for technical safety inspection by the Secretary of Labor and Employment upon compliance with such standards and guidelines as he may promulgate. As used herein, technical safety inspection includes inspection for purposes of safety determination of boilers, pressure vessels, internal combustion engines, elevators (passenger and freight), dumbwaiters, escalators, and electrical installation in all workplaces.

SECTION 2. General occupational health and safety standards. — Every employer covered by this Rule shall keep and maintain his workplace free from work hazards that are causing or likely to cause physical harm to the workers or damages to property. Subject to the approval of the Secretary of Labor and Employment, the Bureau of Working Conditions shall, from time to time, issue guidelines for compliance with general occupational health and safety standards.

SECTION 3. Occupational Health and Safety Code; effectivity of existing standards. — (a) Within six (6) months from the date of effectivity of this Rule, the Bureau of Working Conditions shall prepare and adopt an Occupational Health and Safety Code, subject to the approval of the Secretary of Labor and Employment.

(b) Until the final adoption and approval of an Occupational Health and Safety Code as provided herein, existing safety orders issued by the Department of Labor and Employment shall remain effective and enforceable and shall apply in full force and effect to all employers covered by this Rule.

SECTION 4. Work condition not covered by standards. — Any specific standards applicable to a condition, practice, means, method, operation or process shall also apply to other similar work situations for which no specific standards have been established.

SECTION 5. Training of personnel in safety and health. — Every employer shall take steps to train a sufficient number of his supervisors or technical personnel in occupational safety and health. An employer may observe the following guidelines in the training of his personnel:

(a) In every non-hazardous establishment or workplace having from fifty (50) to four hundred (400) workers each shift, at least one of the supervisors or technical personnel shall be trained in occupational health and safety and shall be assigned as part-time safety man. Such safety man shall be the secretary of the safety committee.

(b) In every non-hazardous establishment or workplace having over four hundred (400) workers per shift, at least two of its supervisors shall be trained and a full-time safety man shall be provided.

(c) In every hazardous establishment or workplace having from twenty (20) to two hundred (200) workers each shift, at least one of its supervisors or technical man shall be trained who shall work as part-time safety man. He shall be appointed as secretary of the safety committee therein.

(d) In every hazardous establishment or workplace having over two hundred (200) workers each shift, at least two of its supervisors or technical personnel shall be trained and one of them shall be appointed full-time safety man and secretary of the safety committee therein.

(e) The employment of a full-time safety man not be required where the employer enters into a written contract with a qualified consulting organization which shall develop and carry out his safety and health activities; Provided, That the consultant shall conduct plant visits at least four (4) hours a week and is subject to call anytime to conduct accident investigations and is available during scheduled inspections or surveys by the Secretary of Labor and Employment or his authorized representatives.

The provisions of this Section shall be made mandatory upon orders of the Secretary of Labor and Employment as soon as he is satisfied that adequate facilities on training in occupational safety and health are available in the Department of Labor and Employment and other public or private entities duly accredited by the Secretary of Labor and Employment.

SECTION 6. General duties of workers. — (a) Every worker shall cooperate with the employer in carrying out the provisions of this Rule. He shall report to his supervisors any work hazard that he may discover in his workplace, without prejudice to the right of the worker to report the matter to the Regional Office concerned.

(b) Every worker shall make proper use of all safeguards and safety devices furnished in accordance with the provisions of this Rule for his protection and the protection of others and shall follow all instructions made by the employer in compliance with the provisions of this Rule.

SECTION 7. Duties of other persons. — Any person, including builders or contractors, who visits, builds, innovates or installs devices in establishments or workplaces shall comply with

the provisions of this Rule and all regulations issued by the employer in compliance with the provisions of this Rule and other subsequent issuances of the Secretary of Labor and Employment.

SECTION 8. Administration and enforcement. — (a) Every employer shall give to the Secretary of Labor and Employment or his duly authorized representative access to its premises and records at any time of the day and night when there is work being undertaken therein for the purpose of determining compliance with the provisions of this Rule.

(b) Every establishment or workplace shall be inspected at least once a year to determine compliance with the provisions of this Rule. Special inspection visits, however, may be authorized by the Regional Office to investigate accidents, conduct surveys requested by the Bureau of Working Conditions, follow-up inspection, recommendations or to conduct investigations or inspections upon request of an employer, worker or a labor union in the establishment.

SECTION 9. Research. — (a) The Bureau of Working Conditions, on the basis of experiments, studies, and any other information available to it, shall develop criteria dealing with toxic materials and other harmful substances and conditions which will establish safe exposure levels for various periods of employment. Such studies and researches may be requested by the Secretary of Labor and Employment through grants, contracts or as priority projects in the programs of nationally recognized research organizations.

(b) The Bureau of Working Conditions shall conduct continuing studies and surveys of workplaces to study new problems in occupational safety and health including those created by new technology as well as the motivational and behavioral factors involved therein. The employer shall provide all the necessary assistance and facilities to carry out these activities.

SECTION 10. Training. — (a) The Bureau of Working Conditions shall conduct continuing programs to increase the competence of occupational health and safety personnel and to keep them informed of the latest trends, practices and technology in accidental prevention.

(b) The Bureau of Working Conditions shall conduct continuing programs of safety personnel in all establishments or workplaces, and for this purpose every employer shall in accordance with Section 7 hereof take such steps as may be necessary for the participation in such programs of at least two of his supervisors or technical personnel for every two hundred (200) workers per shift; Provided, That in establishments with less than two hundred (200) workers, at least one shall be assigned to participate in the training program.

(c) The training may be conducted by the Bureau or any other organization or group of persons accredited by the Secretary of Labor and Employment.

(d) Every training program shall include information on the importance and proper use of adequate safety and health equipment, and government policies and programs in occupational health and safety.

BOOK FIVE
Labor Relations

RULE I
Definition of Terms

SECTION 1. Definition of terms. —

- (a) "Commission" means the National Labor Relations Commission.
- (b) "Bureau" means the Bureau of Labor Relations and/or the Industrial Relations Division in the Regional Offices of the Department of Labor and Employment.
- (c) "Board" means the National Conciliation and Mediation Board.
- (d) "Code" means the Labor Code of the Philippines, as amended.
- (e) "Employer" includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.
- (f) "Employee" includes any person in the employ of a particular employer. The term shall not be limited to the employees of a particular employer, unless the Code so explicitly states. It shall include any individual whose work has ceased as a result of or in connection with any current labor dispute or because of any unfair labor practice if he has not obtained any other substantially equivalent and regular employment.
- (g) "Labor Organization" means any union or association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment.
- (h) "Local Union" means any labor organization operating at the enterprise level.
- (i) "National Union/Federation" means any labor organization with at least ten (10) locals or chapters each of which must be a duly recognized collective bargaining agent.
- (j) "Legitimate Labor Organization" means any labor organization duly registered with the Department of Labor and Employment and includes any branch, local or affiliate thereof.
- (k) "Company Union" means any labor organization whose formation, function or administration has been assisted by any act defined as unfair labor practice by the Code.
- (l) "Bargaining Representative" means a legitimate labor organization or any duly authorized officer or agent of such organization whether or not employed by the employer.
- (m) "Unfair Labor Practice" means any unfair labor practice as expressly defined in the Code.
- (n) "Labor or Industrial Dispute" includes any controversy or matter concerning terms or conditions of employment or the association or representation of persons in negotiating the fixing, maintaining, changing or arranging of terms and conditions of employment regardless

of whether or not the disputants stand in the proximate relationship of employers and employees.

(o) "Managerial Employee" is one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, layoff, recall, discharge, assign or discipline employees. Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but require the use of independent judgment. All employees not falling within any of the above definitions are considered rank-and-file employees for purposes of this Book.

(p) "Voluntary Arbitrator" means any person accredited by the Board as such, or any person named or designated in the collective bargaining agreement, by the parties to act as their voluntary arbitrator, or one chosen, with or without the assistance of the National Conciliation and Mediation Board, pursuant to a selection procedure agreed upon in the collective bargaining agreement, or any official that may be authorized by the Secretary of Labor and Employment to act as voluntary arbitrator upon the written request and agreement of the parties to a labor dispute.

(q) "Strike" means any temporary stoppage of work by the concerted action of employees as a result of a labor or industrial dispute.

(r) "Strike-Breaker" means any person who obstructs, impedes, or interferes with by force, violence, coercion, threats or intimidation any peaceful picketing by employees during any labor controversy affecting wages, hours or conditions of work or in the exercise of the right of self-organization or collective bargaining.

(s) "Strike Area" means the establishment, warehouse, depots, plants or offices, including the sites or premises used as run-away shops, of the employer struck against, as well as the immediate vicinity actually used by picketing strikers in moving to and fro before all points of entrance to and exits from said establishment.

(t) "Lockout" means the temporary refusal of an employer to furnish work as a result of a labor or industry dispute.

(u) "Internal Union Dispute" includes all disputes or grievances arising from any violation of or disagreement over any provision of the constitution and by-laws of a union, including any violation of the rights and conditions of union membership provided for in this Code.

(v) "Appeal" means the elevation by an aggrieved party of any decision, order or award of a lower body to a higher body, by means of a pleading which includes the assignment of errors, memorandum of arguments in support thereof, and the reliefs prayed for. A mere notice of appeal, therefore, does not constitute the appeal as herein defined and understood, and shall not stop the running of the period for perfecting an appeal.

(w) "Perfection of an Appeal" includes the filing within the prescribed period, of the memorandum of appeal containing, among others, the assignment of error/s, the argument in support thereof, the reliefs sought and posting of the appeal bond.

(x) "Certification Election" means the process of determining, through secret ballot, the sole and exclusive bargaining agent of the employees in an appropriate bargaining unit, for purposes of collective bargaining.

(y) "Consent Election" means the election voluntarily agreed upon by the parties to determine the issue of majority representation of all the workers in the appropriate collective bargaining unit.

(z) "Run-Off" refers to an election between the labor unions receiving the two (2) higher number of voters when a certification election which provides for three (3) or more choices results in no choice receiving a majority of the valid votes cast, where the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast.

(aa) "Registration of Agreement" refers to the filing of the collective bargaining agreement with the Regional Office or the Bureau accompanied by verified proof of posting and ratification and payment of fee.

(bb) "Organized Establishment" refers to a firm or company where there is a recognized or certified exclusive bargaining agent.

(cc) "Registration Proceedings" refer to proceedings involving the application for registration of labor organizations.

(dd) "Cancellation Proceeding" is the process leading to the revocation of the registration certificate of a labor organization after due process.

(ee) "Hearing Officers" are officers appointed/designated in the Regional Office and authorized to hear and decide cases under Section 2 of Republic Act No. 6715 and whose decision is appealable to the Commission.

(ff) "Union Accounts Examiners" are officials in the Bureau or the Industrial Relations Division in the Regional Office empowered to audit books of accounts of the union.

(gg) "Representation Officer" refer to a person duly authorized to conduct and supervise certification elections in accordance with Rule VI of this Book.

(hh) "Term of Office" means the tenure of office of elected officials of a labor organization which is for a fixed period of five (5) years.

(ii) "Cabo" refers to a person or group of persons or to a labor group which, in the guise of a labor organization, supplies workers to an employer, with or without any monetary or other consideration whether in the capacity of an agent of the employer or as an ostensible independent contractor.

(jj) "Collective Bargaining Agreement" refers to the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit, including mandatory provisions for grievances and arbitration machineries.

(kk) "Med-Arbiter" is an official in the Regional Office authorized to hear, conciliate, mediate and decide representation cases, internal union and inter-union disputes.

(ll) "Administrator" refers to the Administrator of the Philippine Overseas Employment Administration or the National Conciliation and Mediation Board as the context so indicates.

RULE II

Registration of Unions

SECTION 1. Who may join unions. — All persons employed in commercial, industrial and agricultural enterprises, including employees of government corporations established under the Corporation Code as well as employees of religious, medical or educational institutions whether operating for profit or not, except managerial employees, shall have the right to self-organization and to form, join or assist labor organizations for purposes of collective bargaining. Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection.

Supervisory employees and security guards shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own; Provided, that those supervisory employees who are included in an existing rank-and-file bargaining unit, upon the effectivity of Republic Act No. 6715, shall remain in that unit; Provided, further, that alien employees with valid working permits issued by the Department of Labor and Employment may exercise the right to self-organization and join or assist labor organizations for purposes of collective bargaining if they are nationals of a country which grants the same or similar rights to Filipino workers, as certified by the Department of Foreign Affairs.

For the purpose of this Section, any employee, whether employed for a definite period or not, shall, beginning on the first day of his service, be eligible for membership in the union.

SECTION 2. Where to file application; procedure. — Any national labor organization or labor federation or local union may file an application for registration with the Bureau or the Regional Office where the applicant's principal office is located. The Bureau or the Regional Office shall immediately process and approve or deny the application. In case of approval, the Bureau or the Regional Office shall issue the registration certificate within thirty (30) calendar days from receipt of the application, together with all the requirements for registration as hereinafter provided.

SECTION 3. Union affiliation; direct membership with national union. — An affiliate of a labor federation or national union may be a local or chapter thereof or an independently registered union.

(a) The labor federation or national union concerned shall issue a charter certificate indicating the creation or establishment of a local or chapter, copy of which shall be submitted to the Bureau of Labor Relations within thirty (30) days from issuance of such charter certificate.

(b) An independently registered union shall be considered an affiliate of a labor federation or national union after submission to the Bureau of the contract or agreement of affiliation within thirty (30) days after its execution.

(c) All existing labor federations or national unions are required to submit a list of all their affiliates, their addresses and including the names and addresses of their respective officials, to the Bureau within thirty (30) days from effectivity of these Rules.

(d) All existing labor federations or national unions with direct members are required to organize said members into locals or chapters in their respective companies or establishments within sixty (60) days from effectivity of these Rules.

(e) The local or chapter of a labor federation or national union shall have and maintain constitution and by-laws, set of officers and books of accounts. For reporting purposes, the procedure governing the reporting of independently registered unions, federations or national unions shall be observed.

(f) No person who is not an employee or worker of the company or establishment where an independently registered union, affiliate, local or chapter of a labor federation or national union operates shall henceforth be elected or appointed as an officer of such union, affiliate, local or chapter.

SECTION 4. Requirements for registration of local unions; applications. — The application for registration of a local union shall be signed by at least twenty percent (20%) of the employees in the appropriate bargaining unit which the applicant union seeks to represent, and shall be accompanied by the following:

(a) Fifty-peso registration fee;

(b) The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of the workers who participated in such meetings;

(c) The names of all its members and the number of employees in the bargaining unit;

(d) If the applicant union has been in existence for one or more years, copies of its annual financial reports;

(e) Four copies of its constitution and by-laws, minutes of its adoption or ratification, and the list of the members who participated in it;

(f) A sworn statement by the applicant union that there is no certified bargaining agent in the bargaining unit concerned. In case where there is an existing collective bargaining agreement

duly submitted to the Department of Labor and Employment, a sworn statement that the application for registration is filed during the last sixty (60) days of the agreement; and

(g) The application for registration and all the accompanying documents shall be verified under oath by the secretary or the treasurer, as the case may be, and attested to by the president.

SECTION 5. Denial of registration of local unions. — The Regional Office of the Bureau may deny the application for registration on grounds of non-compliance with the requirements enumerated in Section 4 hereof.

The decision of the Regional Office or the Bureau denying the application for registration shall be in writing, stating in clear terms the reasons therefor. A copy thereof shall be furnished the applicant union.

SECTION 6. Appeal. — Any applicant union may appeal to the Bureau the denial of registration by the Regional Office, or to the Secretary if the denial is by the Bureau, within ten (10) calendar days from receipt of such decision on grounds of:

- (a) Grave abuse of discretion; and
- (b) Gross incompetence.

The appeal shall be filed in the Regional Office/Bureau which shall cause the transmittal of the records to the Bureau/Secretary within five (5) calendar days from receipt of the appeal.

The Bureau/Secretary shall decide the appeal within twenty (20) calendar days from receipt of the records of the case.

SECTION 7. Cancellation of registration certificate. — The certificate of registration of any legitimate labor organization including labor federations or national unions may be cancelled by the Bureau or the Regional Office on any of the following grounds:

- (a) Violation of Articles 234, 237 and 239 of the Code;
- (b) Failure to comply with Article 238 of the Code; and
- (c) Violation of any of the provisions of Article 241 of the Code.

SECTION 8. Notice of Cancellation. — The Bureau or the Regional Office shall serve a notice of the cancellation proceedings on the labor organization concerned stating the grounds therefor, at least fifteen (15) calendar days before the scheduled date of hearing. In such hearing, the representative of the labor organization shall have the right to present its side.

SECTION 9. Appeal. — The labor organization may, unless the law provides otherwise, within fifteen (15) calendar days from receipt of the decision cancelling or revoking its certificate of registration, file an appeal to the Bureau, or in case of cancellation by the Bureau, to the Secretary, on any of the following grounds:

(a) Grave abuse of discretion; and

(b) Gross incompetence.

The Bureau/Secretary shall have fifteen (15) calendar days from receipt of the records of the case within which to decide the appeal. The decision shall be final and unappealable.

SECTION 10. Rights of labor organizations. — A legitimate labor organization shall have the rights enumerated in Article 242 of the Code.

SECTION 11. Automatic cancellation of union registration. — (a) The Bureau or the Regional Office shall, after due process, cancel the certificate of registration of any labor organization which fails to submit the financial reports required by the Code and its Implementing Rules six (6) months after the effectivity of Republic Act No. 6715.

(b) The reports required under this section shall be submitted to the Bureau or the Regional Office.

RULE III

Restructuring

(Repealed by EO 111)

RULE IV

Equity of the Incumbent

(Repealed by EO 111)

RULE V

Representation Cases and Internal-Union Disputes

SECTION 1. Where to file. — A petition for certification election shall be filed with the Regional Office which has jurisdiction over the principal office of the petitioner. The petition shall be in writing and under oath.

SECTION 2. Who may file. — Any legitimate labor organization or the employer, when requested to bargain collectively, may file the petition.

The petition, when filed by a legitimate labor organization shall contain, among others:

(a) The name of petitioner and its address and affiliation, if any;

(b) Name, address and nature of the employer's business;

(c) Description of the bargaining unit which shall be the employer unit unless circumstances otherwise require; and provided further, that the appropriate bargaining unit of the rank-and-file employees shall not include supervisory employees and/or security guards;

(d) Appropriate number of the employees in the alleged bargaining unit;

(e) Names and addresses of other legitimate labor organizations in the bargaining unit;

(f) In an organized establishment, the signatures of at least twenty-five (25%) percent of all employees in the appropriate bargaining unit; and

(g) Other relevant facts.

When the petition is filed by an employer, it shall contain, among others:

(a) The name, address and general nature of the employer's business;

(b) Names and addresses of the legitimate labor organizations involved;

(c) Approximate number of the employees in the appropriate bargaining unit;

(d) Description of the bargaining unit which shall be the employer unit unless circumstances otherwise required; and provided further, that the appropriate bargaining unit of the rank-and-file employees shall not include supervisory employees and/or security guards;

(e) Other relevant facts.

SECTION 3. When to file. — In the absence of a collective bargaining agreement duly registered in accordance with Article 231 of the Code, a petition for certification election may be filed at any time. However, no certification election may be held within one year from the date of issuance of a final certification election result. Neither may a representation question be entertained if, before the filing of a petition for certification election, a bargaining deadlock to which an incumbent or certified bargaining agent is a party had been submitted to conciliation or arbitration or had become the subject of a valid notice of strike or lockout.

If a collective bargaining agreement has been duly registered in accordance with Article 231 of the Code, a petition for certification election or a motion for intervention can only be entertained within sixty (60) days prior to the expiry date of such agreement.

SECTION 4. Effects of early agreements. — The representation case shall not, however, be adversely affected by a collective bargaining agreement registered before or during the last sixty (60) days of a subsisting agreement or during the pendency of the representation case.

SECTION 5. Where to file motion for intervention. — The motion for intervention in certification election proceedings shall be filed before the Med-Arbitrator assigned to the case. The mere filing of said motion, however, will not suspend the holding of the certification election without an order issued by the Med-Arbitrator.

SECTION 6. Procedure. — Upon receipt of a petition, the Regional Director shall assign the case to a Med-Arbitrator for appropriate action. The Med-Arbitrator, upon receipt of the assigned petition, shall have twenty (20) working days from submission of the case for resolution within which to dismiss or grant the petition.

In a petition filed by a legitimate organization involving an unorganized establishment, the Med-Arbitrator shall immediately order the conduct of a certification election.

In a petition involving an organized establishment or enterprise where the majority status of the incumbent collective bargaining union is questioned through a verified petition by a legitimate labor organization, the Med-Arbiter shall immediately order the certification election by secret ballot if the petition is filed during the last sixty (60) days of the collective bargaining agreement and supported by the written consent of at least twenty-five percent (25%) of all the employees in the bargaining unit. Any petition filed before or after the sixty-day freedom period shall be dismissed outright. The twenty-five percent (25%) requirement shall be satisfied upon the filing of the petition, otherwise the petition shall be dismissed.

The sixty-day freedom period based on the original collective bargaining agreement shall not be affected by any amendment, extension or renewal of the collective bargaining agreement for purposes of certification election.

The decision calling for the conduct of an election shall contain the following:

- (a) Names of the contending unions;
- (b) Name of the employer;
- (c) Description of the bargaining unit, and
- (d) List of eligible voters which shall be based on the payroll three (3) months prior to the filing of the petition for certification election.

The certification election shall be held within twenty (20) calendar days from receipt of the order by the parties.

SECTION 7. Appeal. — Any aggrieved party may appeal the order of the Med-Arbiter to the Secretary on the ground that the rules and regulations or parts thereof established by the Secretary for the conduct of election have been violated.

The appeal shall specifically state the grounds relied upon by the appellant with the supporting memorandum.

SECTION 8. Where to file appeal. — The appeal, which shall be under oath and copy furnished the appellee, shall be filed in the Regional Office where the case originated.

SECTION 9. Period of Appeal. — The appeal shall be filed within ten (10) calendar days from receipt of the order by the appellant. Any opposition thereto may be filed within ten (10) calendar days from receipt of the appeal. The Regional Director shall within five (5) calendar days forward the entire records of the case to the Office of the Secretary.

SECTION 10. Decision of the Secretary final and unappealable. — The Secretary shall have fifteen (15) calendar days within which to decide the appeal from receipt of the records of the case. The filing of the appeal from the decision of the Med-Arbiter stays the holding of any certification election. The decision of the secretary shall be final and unappealable.

SECTION 11. Execution pending appeal. — The execution of the order of the Med-Arbiter shall be stayed pending appeal.

RULE VI

Election

SECTION 1. Conduct of an election. — The Regional Division shall cause the necessary posting of notices at least five (5) working days before the actual date of election in two most conspicuous places in the company premises. The notices shall contain the date of election, names of the contending parties, the description of the bargaining unit and the list of eligible voters.

SECTION 2. Election conducted during regular business day. — The election shall be set during the regular business day of the company unless otherwise agreed upon by the parties.

SECTION 3. Representation officer may rule on any on-the-spot questions. — The Representation Officer may rule on any on-the-spot question arising from the conduct of the election. The interested party may, however, file a protest with the Representation Officer before the close of the proceedings.

Protests not so raised are deemed waived. Such protests shall be contained in the minutes of the proceedings.

SECTION 4. Protest to be decided in twenty (20) working days. — When the protest is formalized before the Med-Arbiter within five (5) days after the close of the election proceedings, the Med-Arbiter shall decide the same within twenty (20) working days from the date of its formalization. If not formalized within the prescribed period, the protest shall be deemed dropped. The decision may be appealed to the Bureau in the same manner and on the same grounds as provided under Rule V.

SECTION 5. Motion to postpone does not stay election. — The filing of a motion to postpone shall not stay the holding of the election.

SECTION 6. Duties of Representation Officer. — Before the actual voting commences, the Representation Officer shall inspect the polling place, the ballot boxes and the polling booths to insure secrecy of balloting. The parties shall be given opportunity to witness the inspection proceedings. After the examination of the ballot box, the Representation Officer shall lock it with three keys one of which he shall keep and the rest forthwith given one each to the employer's representative and the representative of the labor organization. If more than one union is involved, the holder of the third key shall be determined by drawing of lots. The key shall remain in the possession of the Representation Officer and the parties during the proceedings and thereafter until all the controversies concerning the conduct of the election shall have been definitely resolved.

SECTION 7. Preparation of ballots. — Ballots shall be prepared in Filipino and English along with a translation in the local dialect, if any, for the guidance of worker-voters.

SECTION 8. Marking and canvassing of votes. — (a) The voter must write a cross (x) or a check (/) in the square opposite the union of his choice. If only one union is involved, the voter shall make his cross or check in the square indicating "Yes" or "No".

(b) If a ballot is torn, marked, or defaced, in such a manner as to create doubt or confusion or identify the voter, it shall be considered spoiled. If the voter inadvertently spoils a ballot, he shall return it to the Representation Officer who shall destroy it and deliver him another ballot.

(c) As soon as the polls close, the votes cast shall be counted and tabulated by the Representation Officer in the presence of the representatives of the parties. Upon completion of the canvassing, the Representation Officer shall give each representative a certification of the result of the election and minutes of the concluded election.

(d) The ballots, tally sheets, and certification of the results, together with the minutes of the election, shall be sealed in an envelope and signed outside by the Representation Officer and by representatives of the contending parties. These envelopes shall remain sealed under the custody of the Representation Officer until after the Med-Arbiter has finally certified the winner.

(e) The Med-Arbiter, upon receipt of the results of the election and no protest having been filed, shall certify the winner.

(f) The union which obtained a majority of the valid votes cast by the eligible voters shall be certified as the sole and exclusive bargaining agent of all the workers in the appropriate unit. However, in order to have a valid election, at least a majority of all eligible voters in the bargaining unit must have cast their votes.

RULE VII

Challenges and Run-Offs

SECTION 1. Challenging of votes. — (a) Any vote may be challenged for a valid cause by any observer before the voter has deposited his vote in the ballot box.

(b) If a ballot is challenged on valid grounds, the Representation Officer shall segregate it from the unchallenged ballots and seal it in an envelope. The Representation Officer shall indicate on the envelope the name of the challenger and the ground of the challenge.

SECTION 2. Run-off election. — When an election which provides for three (3) or more choices results in no choice receiving a majority of the valid votes cast, and no objections or challenges have been presented which if sustained might change the results, the representation officer shall motu proprio conduct a run-off election within five (5) calendar days from the close of the election between the labor unions receiving the two highest number of votes; Provided, that the total number of votes for all contending unions is at least fifty (50%) percent of the number of votes cast.

The ballots in the run-off election shall provide for two choices receiving the highest and the second highest number of the votes cast.

RULE VIII

Internal Union-Disputes

SECTION 1. Complaint. — A complaint for any violation of the constitution and by-laws and the rights and conditions of membership under Article 242 may filed in the Regional Office where the union is domiciled.

SECTION 2. Who may file. — If the issue involves the entire membership of the union, the complaint shall be signed by at least 30 percent of the membership of the union.

In addition to the above requirement, the petition must show on its face that the administrative remedies provided for in the constitution and by-laws have been exhausted or such remedies are not readily available to the complaining members through no fault of their own. However, if the issue affects a single member only, such member may alone file his complaint.

SECTION 3. Contents of complaint. — The complaint must, among other things, contain the following:

- (a) The person or persons charged;
- (b) The specific violation/s committed;
- (c) The relief/s prayed for; and
- (d) Other relevant matters.

Such complaint must be in writing and under oath, and a copy thereof served on the respondent.

SECTION 4. Procedure. — Upon receipt of the complaint, the Regional Director shall immediately assign the case to a Med-Arbiter. The Med-Arbiter shall have twenty (20) working days within which to settle or decide the case. The decision of the Med-Arbiter shall state the facts and the reliefs granted, if any. If the conflicts involve a violation of the rights and conditions of the membership enumerated under Article 242 of the Code, the Med-Arbiter shall order the cancellation of the registration certificate of the erring union or the expulsion of the guilty party from the union, whichever is appropriate.

SECTION 5. Appeal. — The aggrieved party may, within ten (10) calendar days from receipt of the decision of the Med-Arbiter, appeal the same to the Secretary on any of the following grounds:

- (a) Grave abuse of discretion; and
- (b) Gross incompetence.

The appeal shall consist of a position paper specifically stating the grounds relied upon by the appellant and supporting arguments under oath.

SECTION 6. Where to file appeal. — The appellant shall file his appeal, which shall be under oath and copy furnished the appellee in the Regional Office where the case originated.

SECTION 7. Period to answer. — The appellee shall file his answer thereto within ten (10) calendar days from receipt of the appeal. The Regional Director shall, within five (5) calendar days, forward the entire records of the case to the Office of the Secretary.

SECTION 8. Decision of the Secretary final and inappealable. — The Secretary shall have fifteen (15) calendar days within which to decide the appeal from receipt of the records of the case. The decision of the Secretary shall be final and inappealable.

SECTION 9. Execution pending appeal. — The execution of the order of the Med-Arbitrator shall be stayed pending appeal.

RULE VIII-A

Visitorial Power

SECTION 1. Exercise of visitorial power. — The Secretary of Labor and Employment or his duly authorized representative shall inquire into the financial activities of any legitimate labor organization and examine their books of accounts and other records to determine compliance with the law and the organization, constitution and by-laws, upon filing of a complaint under oath and duly supported by the written consent of at least twenty (20%) percent of the total membership of the labor organization concerned.

SECTION 2. Period of inquiry or examination. — No inquiry or examination of the financial activities and books of accounts as well as other records of any legitimate labor organization mentioned in the preceding section shall be conducted during the sixty (60) days freedom period nor within thirty (30) days immediately preceding the date of election of union officials.

RULE IX

Registration of Collective Bargaining Agreements

SECTION 1. Registration of collective bargaining agreement. — The parties to a collective bargaining agreement shall submit to the Bureau or the appropriate Regional Office five (5) duly signed up copies thereof within thirty (30) calendar days from execution. Such copies of the agreement shall be accompanied by verified proof of its posting in two conspicuous places in the workplace and of ratification by the majority of all the workers in the bargaining unit.

Five (5) copies of the collective bargaining agreement executed pursuant to an award by the appropriate government authority or by a voluntary arbitrator shall likewise be submitted by the parties to the Bureau or Regional Office accompanied by verified proof of its posting in two conspicuous places in the workplace.

Such proof shall consist of copies of the following documents certified under oath by the union secretary and attested to by the union president:

(a) Statement that the collective bargaining agreement was posted in at least two conspicuous places in the establishment at least five (5) days before its ratification, and

(b) Statement that the collective bargaining agreement was ratified by the majority of the employees in the bargaining unit.

The posting required in the preceding paragraph shall be the responsibility of the parties.

The Bureau or the Regional Office shall assess the employer for every collective bargaining agreement a registration fee of one thousand (P1,000.00) pesos.

The Regional Office shall transmit two (2) copies of the agreement to the Bureau and one (1) to the Board within five (5) calendar days from its registration. Where the agreement is registered with the Bureau, one (1) copy shall be sent to the Board and two (2) copies to the Regional Office where the company has its principal office.

The Bureau or the Regional Office shall issue a certificate of registration within five (5) calendar days from receipt of the agreement.

SECTION 2. Terms of collective bargaining agreement. — The representation status of the collective bargaining agent shall be for a period of five (5) years. The parties are encouraged to conclude a collective bargaining agreement with a term of not more than five (5) years; Provided, that the parties shall renegotiate all provisions other than the representation issue not later than the third year; Provided further, that the collective bargaining agreement or other provisions of such agreement entered into within six (6) months from the date of expiry of the term of such other provisions as fixed in the collective bargaining agreement shall retroact to the day immediately following such date. If any such agreement is entered into beyond six months, the parties shall agree on the date of effectivity thereof. In case of a deadlock in the renegotiation, of the collective bargaining agreement, the parties may exercise their rights under this Code. In case of such a renegotiation, all requirements for registration shall be complied with, except for the payment of the registration fee.

The term of all contracts entered into before the effectivity of Republic Act No. 6715, shall be respected. Thereafter, any new collective bargaining agreement that shall be entered into in the same establishment shall conform with the provisions of Republic Act No. 6715.

RULE X

Labor Education and Research

SECTION 1. Enlightenment of unionists as a duty. — It shall be the duty of every legitimate labor organization to enlighten its members on their rights and obligations as unionists and as employees.

SECTION 2. Special fund for labor education and research. — Every legitimate labor organization shall, for the above purpose, maintain a special fund for labor education and

research. Existing strike funds may be transformed into labor education and research funds, in whole or in part. The union may also periodically assess and collect a reasonable amount from its members for such fund.

SECTION 3. Mandatory seminars. — It shall be mandatory for every legitimate labor organization to conduct seminars and similar activities on existing labor laws, collective agreements, company rules and regulations, and other relevant matters. The union seminars and similar activities may be conducted independently or in cooperation with the Department of Labor and Employment, the Asian Labor Education Center, the Institute of Labor and Manpower Studies, and other labor-education groups.

SECTION 4. Official receipts. — All collections and expenditures of funds for labor research and education shall be duly covered by official receipts subject to account examination by the Secretary of Labor and Employment or his representative.

SECTION 5. Grounds for impeachment or expulsion. — Failure to provide adequate labor education and research services to members of a labor organization shall be a ground for the impeachment or expulsion of the officer or officers responsible therefor in accordance with the provisions of the constitution and by-laws of the labor organization concerned. Misuse or illegal disbursement of the labor education and research fund shall be a ground for impeachment or expulsion from the union and punishable under the relevant provisions of the constitution and by-laws of the union and other applicable laws.

RULE XI

Voluntary Arbitration

SECTION 1. Jurisdiction of voluntary arbitrator or panel of voluntary arbitrators. — The voluntary arbitrator or panel of voluntary arbitrators named in the collective bargaining agreement shall have exclusive and original jurisdiction to hear and decide all grievances arising from the implementation or interpretation of the collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies which remain unresolved after exhaustion of the grievance procedure.

The voluntary arbitrator or panel of voluntary arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practice and bargaining deadlocks.

SECTION 2. Referral of cases to voluntary arbitration. — All grievances unsettled or unresolved within seven (7) calendar days from the date of its submission for resolution to the last step of the grievance machinery shall automatically be referred to voluntary arbitration prescribed in the collective bargaining agreement.

The Commission, its regional branches and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators and shall immediately dispose and refer the same to the appropriate grievance machinery or voluntary arbitration provided in the collective bargaining agreement.

In case issues arising from the interpretation or implementation of the collective bargaining agreements or those arising from the interpretation or enforcement of company personnel policies are raised in notices of strikes or lockouts or requests for preventive mediation, the regional branch of the Board shall advise the parties to submit the issue/s to voluntary arbitration.

SECTION 3. All labor-management dispute subject to voluntary arbitration. — It is the policy of the State to encourage voluntary arbitration on all other labor-management disputes. Before or at any state of the compulsory arbitration process, the parties may opt to submit their dispute to voluntary arbitration.

SECTION 4. Powers of voluntary arbitrator and panel voluntary arbitrators. — The voluntary arbitrator or panel of voluntary arbitrators shall have the power to hold hearings, receive evidence and take whatever action is necessary to resolve the issue/s subject of the dispute.

The voluntary arbitrator or panel of arbitrators may conciliate or mediate to aid the parties in reaching a voluntary settlement of the disputes.

SECTION 5. Procedures. — All parties to the dispute shall be entitled to attend the arbitration proceedings. The attendance of any third party or the exclusion of any witness from the proceedings shall be determined by the voluntary arbitrator or panel of arbitrators. Hearing may be adjourned for cause or upon agreement by the parties.

Unless the parties agree otherwise, it shall be mandatory for the voluntary arbitrator or panel of voluntary arbitrators to render an award or decision within twenty (20) calendar days from the date of submission of the dispute to voluntary arbitration.

SECTION 6. Award/Decision. — The award or decision of the voluntary arbitrator or panel of voluntary arbitrators must state in clear, concise and definite terms the facts, the law and/or contract upon which it is based. It shall be final and executory after ten (10) calendar days from the receipt of the copy of the award or decision by the parties.

SECTION 7. Execution of Award/Decision. — Upon motion of any interested party, the voluntary arbitrator or panel of voluntary arbitrators or the Labor Arbiter in the region where the movant resides, in case of the absence or incapacity of the voluntary arbitrator or panel of voluntary arbitrators for any reason, may issue a writ of execution requiring either the Sheriff of the Commission or regular courts or any public official whom the parties may designate in the submission agreement to execute the final decision order or award.

SECTION 8. Cost of voluntary arbitration and voluntary arbitrator's fee. — The parties to a collective bargaining agreement shall provide therein a proportionate sharing scheme on the cost of voluntary arbitration including the voluntary arbitrator's fee. The fixing of fee of voluntary arbitrators or panel of arbitrators, whether shouldered wholly by the parties or subsidized by the Special Voluntary Arbitration Fund, shall take into account the following factors:

(a) Nature of the case;

- (b) Time consumed in hearing the case;
- (c) Professional standing of the voluntary arbitrator;
- (d) Capacity to pay of the parties; and
- (e) Fees provided for in the Revised Rules of Court.

Unless the parties agree otherwise, the cost of voluntary arbitration proceedings and voluntary arbitrator's fee shall be shared equally by the parties.

Parties are encouraged to set aside funds to answer for the cost of voluntary arbitration proceedings including voluntary arbitrator's fee. In the event that said funds are not sufficient to cover such expenses, an amount by way of subsidy taken out of the Special Voluntary Arbitration Fund may be availed of by either or both parties under Section 9 of these Rules.

SECTION 9. Voluntary arbitration subsidy. — The Special Voluntary Arbitration Fund shall be available to subsidize the cost of voluntary arbitration in cases involving the interpretation and implementation of the collective bargaining agreement and the interpretation and enforcement of company personnel policies, including the arbitrator's fees, subject to the guidelines on voluntary arbitration to be issued by the Secretary.

RULE XII

Labor-Management Council

SECTION 1. Creation of labor-management council. — The Department shall promote the formation of a labor-management council in organized establishments to enable the workers to participate in policy and decision-making processes in the establishment insofar as said processes will directly affect their rights, benefits and welfare, except those which are covered by collective bargaining agreements or are traditional areas of bargaining.

The Department shall render, among others, the following services:

1. Conduct awareness campaigns on the need to establish labor-management councils;
2. Assist the parties, through the Department's field workers, in setting up labor-management structures, functions and procedures;
3. Provide process facilitators in labor-management council meetings upon request of the parties; and
4. Monitor the activities of labor-management councils as may be necessary;
5. In establishments where no legitimate labor organization exists, labor-management committees may be formed voluntarily by workers and employers for the purpose of promoting industrial peace. The Department shall endeavor to enlighten and educate the workers and employers on their rights and responsibilities.

SECTION 2. Assistance by the Department. — The Department, upon its own initiative or upon the request of both parties, may assist in the formulation and development of labor-management cooperation, programs and projects on productivity, occupational safety and health, improvement of quality of work life, product quality improvement, and the like.

RULE XIII

Picketing, Strikes and Lockouts

SECTION 1. Grounds for strike and lockout. — A strike or lockout may be declared in cases of bargaining deadlocks and unfair labor practices. Violations of collective bargaining agreements, except flagrant and/or malicious refusal to comply with its economic provisions, shall not be considered unfair labor practice and shall not be strikeable. No strike or lockout may be declared on grounds involving inter-union and internal union disputes or on issues brought to voluntary or compulsory arbitration.

SECTION 2. Who may declare a strike or lockout. — Any certified or duly recognized bargaining representative may declare a strike in cases of bargaining deadlocks and unfair labor practices. The employer may declare a lockout in the same cases. In the absence of a certified or duly recognized bargaining representative, any legitimate labor organization in the establishment may declare a strike but only on grounds of unfair labor practices.

SECTION 3. Notice of strike or lockout. — In cases of bargaining deadlocks, a notice of strike or lockout shall be filed with the regional branch of the Board at least thirty (30) days before the intended date thereof, a copy of said notice having been served on the other party concerned. In cases of unfair labor practices, the period of notice shall be fifteen (15) days. However, in case of unfair labor practice involving the dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws which may constitute union-busting where the existence of the union is threatened, the fifteen-day cooling-off period shall not apply and the union may take action immediately after the strike vote is conducted and the results thereof submitted to the Department of Labor and Employment.

SECTION 4. Contents of notice. — The notice shall state, among others, the names and addresses of the employer and the union involved, the nature of the industry to which the employer belongs, the number of union members and of the workers in the bargaining unit, and such other relevant data as may facilitate the settlement of the dispute, such as a brief statement or enumeration of all pending labor disputes involving the same parties.

In cases of bargaining deadlocks, the notice shall, as far as practicable, further state the unresolved issues in the bargaining negotiations and be accompanied by the written proposals of the union, the counter-proposals of the employer and the proof of a request for conference to settle the differences. In cases of unfair labor practices, the notice shall, as far as practicable, state the acts complained of and the efforts taken to resolve the dispute amicably.

Any notice which does not conform with the requirements of this and the foregoing sections shall be deemed as not having been filed and the party concerned shall be so informed by the regional branch of the Board.

SECTION 5. Disclosure of information. — In collective bargaining, the parties shall, at the request of either of them, make available such up-to-date financial information on the economic situation of the undertaking, which is normally submitted to relevant government agencies, as is material and necessary for meaningful negotiations. Where the disclosure of some of this information could be prejudicial to the undertaking, its communication may be made conditioned upon a commitment that it would be regarded as confidential to the extent required. The information to be made available may be agreed upon between the parties to collective bargaining.

SECTION 6. Conciliation. — Upon receipt of the notice, the regional branch of the Board shall exert all efforts at mediation and conciliation to enable the parties to settle the dispute amicably. The regional branch of the Board shall also encourage the parties to submit the dispute to voluntary arbitration.

During the proceedings, the parties shall not do any act which may disrupt or impede the early settlement of the dispute. They are obliged, as part of their duty to bargain collectively in good faith, to participate fully and promptly in the conciliation meetings called by the regional branch of the Board. The regional branch of the Board shall have the power to issue subpoenas requiring the attendance of the parties to the meetings.

Information and statements given at conciliation proceedings shall be treated as privileged communications. Conciliators and similar officials shall not testify in any court or body regarding any matter taken up at conciliation proceedings conducted by them.

SECTION 7. Strike or lockout vote. — A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in meetings or referenda called for the purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the employer corporation or association or the partners in a partnership obtained by a secret ballot in a meeting called for the purpose.

The regional branch of the Board may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the regional branch of the Board the notice of meetings referred to in the preceding paragraph at least twenty-four (24) hours before such meetings as well as the results of the voting at least seven (7) days before the intended strike or lockout, subject to the cooling-off period provided in this Rule.

SECTION 8. Declaration of strike or lockout. — Should the dispute remain unsettled after the lapse of the requisite number of days from the filing of the notice or strike or lockout and of the results of the election required in the preceding section, the labor union may strike or the employer may lock out its workers. The regional branch of the Board shall continue mediating and conciliating.

SECTION 8-a. Improved offer balloting. — In case of a strike, the regional branch of the Board shall, at its own initiative or upon the request of any affected party, conduct a referendum by secret balloting on the improved offer of the employer on or before the 30th day of the strike. When at least a majority of the union members vote to accept the improved offer, the striking workers shall immediately return to work and the employer shall thereupon readmit them upon the signing of the agreement.

In case of a lockout, the regional branch of the Board shall also conduct a referendum by secret balloting on the reduced offer of the union on or before the 30th day of the lockout. When at least a majority of the board of directors or trustees or the partners holding the controlling interest in the case of a partnership vote to accept the reduced offer, the workers shall immediately return to work and the employer shall thereupon readmit them upon the signing of the agreement.

SECTION 9. Hiring of replacements. — The mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment even if a replacement had been hired by the employer during such lawful strike. But any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status.

SECTION 10. Prohibition regarding the employment of replacements. — No public official employee, including officers and personnel of the Armed Forces of the Philippines or the Integrated National Police, or any armed person shall —

(a) Bring in, introduce or escort, in any manner, any individual who seeks to replace strikers in entering or leaving the premises of a strike area, or

(b) Work in place of the strikers.

Nothing herein shall be interpreted to prevent the aforementioned officials, employees or peace officers from taking any measure necessary to maintain peace and order and/or protect life and property.

SECTION 11. Peaceful picketing. — Workers shall have the right to peaceful picketing. No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares.

No person shall obstruct, impede or interfere with, by force, violence, coercion, threats or intimidation, any peaceful picketing by workers during any labor controversy or in the exercise of the right to self-organization or collective bargaining or shall aid or abet such obstruction or interference. No employer shall use or employ any person to commit such acts nor shall any person be employed for such purpose.

SECTION 12. Injunctions. — No court or entity shall enjoin any picketing, strike or lockout, except as provided in Articles 218 and 264 of the Code.

The Commission shall have the power to issue temporary injunctions in such cases but only after due notice and hearing and in accordance with its rules. The reception of evidence for the application of a writ of injunction may be delegated by the Commission to any Labor Arbiter who shall submit his recommendations to the Commission for its consideration and resolution. Where the parties are not residents of Manila, the Labor Arbiter shall conduct hearings in such places as he may determine to be accessible to the parties and their witnesses.

Any ex parte restraining order issued by the Commission, or its Chairman or Vice-Chairman when the Commission is not in session and as prescribed by its rules, shall be valid for a period not exceeding 20 days.

SECTION 13. Criminal prosecution. — The regular courts shall have jurisdiction over any criminal action under Article 273 of the Code.

SECTION 14. Definition of "export-oriented industries." — For the purpose of paragraph (g) of Article 264 of the Code, "export-oriented industries" means firms exporting 50 percent or more of their products worth at least \$1 million or those annually exporting at least \$10 million worth of their products or those exporting manufactured or processed goods with high value or labor value added as distinguished from traditional exports.

RULE XIV

Termination of Employment

SECTION 1. Security of tenure and due process. — No workers shall be dismissed except for a just or authorized cause provided by law and after due process.

SECTION 2. Notice of dismissal. — Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

SECTION 3. Preventive suspension. — The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

SECTION 4. Period of suspension. — No preventive suspension shall last longer than 30 days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

SECTION 5. Answer and hearing. — The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires.

SECTION 6. Decision to dismiss. — The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.

SECTION 7. Right to contest dismissal. — Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the Regional Branch of the Commission.

SECTION 8. Period to decide. — Cases involving the dismissal of a worker shall be decided by the Labor Arbiter within 20 working days from the date of submission of such cases for decision.

SECTION 9. Reinstatement pending hearing. — The Secretary may suspend the effects of the termination pending resolution of the case in the event of a prima facie finding that the termination may cause a serious labor dispute or is in implementation of a mass lay-off.

SECTION 10. Certification of employment. — A dismissed worker shall be entitled to receive, on request, a certificate from the employer specifying the dates of his engagement and termination of his employment and the type or types of work on which he is employed.

SECTION 11. Report of dismissal. — The employer shall submit a monthly report to the Regional Office having jurisdiction over the place of work all dismissals effected by him during the month, specifying therein the names of the dismissed workers, the reasons for their dismissal, the date of commencement and termination of employment, the positions last held by them and such other information as may be required by the Department for policy guidance and statistical purposes.

RULE XV

Execution of Decisions, Awards or Orders

SECTION 1. Decision of Commission. — The decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties.

SECTION 2. Execution of decisions, orders or awards. — (a) The Secretary of Labor and Employment or any Regional Director, Med-Arbiter or voluntary arbitrator may, upon his own initiative or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory requiring the Sheriff or the duly deputized officer to execute or enforce their respective final decisions, orders, or awards.

(b) The Secretary of Labor and Employment and the Chairman of the Commission may designate special sheriffs and take any measure under existing laws to ensure compliance with their decisions, orders or awards and those of the Labor Arbiters and voluntary arbitrators, including the imposition of administrative fines, which shall not be less than five hundred (P500.00) pesos nor more than ten thousand (P10,000.00) pesos.

(c) Alternatively, the Secretary of Labor and Employment, the Commission, any Labor Arbiter, the Regional Director or the Director of the Bureau of Labor Relations in appropriate

cases may deputize the Philippine Constabulary or any law-enforcement agencies in the enforcement of final awards, orders or decision.

RULE XVI

General Provisions

SECTION 1. Penalties. — Any person violating any of the provisions of Article 264 of the Code shall be punished by a fine of not less than one thousand (P1,000.00) pesos nor more than ten thousand (P10,000.00) pesos and/or imprisonment for not less than three months nor more than three years, or both such fine and imprisonment, at the discretion of the court. Prosecution under this provision shall preclude prosecution for the same act under the Revised Penal Code and vice versa.

SECTION 2. Frivolous or dilatory appeal. — To discourage frivolous or dilatory appeals, the Office of the President, the Secretary of Labor, the Bureau or the Commission shall impose reasonable penalties, including fines or censures upon erring parties.

SECTION 3. Enforcement of decisions, orders and awards. — To ensure compliance with decisions, orders and awards, the Labor Arbiters or the Med-Arbiters may take any measure under existing laws, decrees, and general orders, as may be necessary, including the imposition of administrative fines which shall not be less than P500 nor more than P10,000 against the erring parties.

SECTION 4. Person guilty of misbehavior. — A person guilty of misbehavior in the presence of or so near the Office of the President, the Secretary of Labor, the Chairman, or any member of the Commission, any Labor Arbiter, Med-Arbiter, Conciliator, Regional Director, Director of the Bureau, as to obstruct or interrupt the proceedings before the same, including disrespect toward said officials, offensive personalities toward others, or refusal to be sworn or to answer as a witness or to subscribe an affidavit or deposition when lawfully required to do so may be summarily adjudged in direct contempt by said officials and punished by fines not exceeding two hundred pesos or imprisonment not exceeding ten (10) days or both, if it be the Commission or members thereof, the Secretary of Labor, Office of the President, the Director of the Bureau or the Regional Director, or a fine not exceeding P10.00 or imprisonment not exceeding one (1) day, or both, if it be a Labor Arbiter, Med-Arbiter or Conciliator.

The person adjudged in direct contempt by a Labor Arbiter or Med-Arbiter or Conciliator may appeal to the Commission or to the Bureau, respectively, and the execution of the judgment shall be suspended pending the resolution of the appeal upon the filing by such person of a bond on condition that he will abide by and perform the judgment should the appeal be decided against him. Judgment of the Commission, Secretary of Labor, Office of the President, Director of the Bureau and Regional Director on direct contempt is immediately executory and inappealable.

Indirect contempt shall be dealt with by the Commission or Labor Arbiter, Med-Arbiter, Conciliator, Regional Director, Director of the Bureau, Secretary of Labor and Office of the President in the manner prescribed under Rule 71 of the Revised Rules of Court.

SECTION 5. Injunctions. — No temporary injunction or restraining order in any case involving or growing out of a labor dispute shall be issued by any court or other entity. On the other hand, the Office of the President, the Secretary of Labor, the Commission, the Labor Arbiter or Med-Arbiter may enjoin any or all acts involving or arising from any case pending before any of said offices or officials which if not restrained forthwith may cause grave or irreparable damage to any of the parties to the case or seriously affect social or economic stability.

SECTION 6. Incidental motions will not be given due course. — In all proceedings at all levels, motions for dismissal or any other incidental motions shall not be given due course, but shall remain as part of the records for whatever they may be worth when the case is decided on the merits.

SECTION 7. Compulsory arbitrator; when and who appoints. — The Commission or any Labor Arbiter shall have the power to seek the assistance of other government officials and qualified private citizens to act as compulsory arbitrators on cases referred to them and to fix and assess the fees of such compulsory arbitrators.

The appointment of a compulsory arbitrator may be made under any of the following circumstances:

- (a) Whenever a factual issue requires the assistance of an expert; and
- (b) When dictated by geographical considerations and similar circumstances.

The procedures before the compulsory arbitrators shall be the same as those before the Labor Arbiters.

SECTION 8. Non-intervention of outsiders in labor disputes. — No person other than the interested parties, their counsels or representatives may intervene in labor disputes pending before the Regional Office, the Bureau, Labor Arbiters, the compulsory or voluntary arbitrators, the Commission, the Secretary of Labor, and the Office of the President. Any violation of this provision will subject the outsider to the administrative fines and penalties provided for in the Code.

SECTION 9. Disclosure of donations, donors, and purposes. — Legitimate labor organizations are required to make a disclosure of donations, donors and their purposes in their annual financial reports to the Labor Relations Division concerned, copy furnished the Bureau. Failure to make such disclosures shall be a ground for the cancellation of the registration certificate of any labor organization and the imposition of administrative fines and penalties provided for in the Code.

SECTION 10. Filing fees for complaints or petitions. — No docket fee shall be assessed in labor standards disputes.

In all other disputes, an individual complainant shall pay a filing fee of P2.00. Where there are two or more complaints, a filing fee of P5.00 shall be charged. In case of deadlock in negotiations, the minimum filing fee shall be P25.00. The Bureau shall promulgate a schedule of fees for deadlocks in negotiations involving more than P200,000, provided that in all cases involving bargaining deadlocks, the fee shall be shared equally by the negotiating parties.

SECTION 11. Disposition of collected funds. — The Secretary of Labor is hereby authorized to spend any amount collected from the filing fees, appeal fees, registration fees of applicant unions, confiscated bonds, fines and other monetary collections under the Code for the use of the Department of Labor and Employment and its Regional Offices subject to usual accounting and auditing procedures.

SECTION 12. Appeal fee and bond. — The interested party appealing any decision, order or award of the lower body or agency shall pay a filing fee of twenty-five pesos (P25.00) with the body or agency of origin except deadlock in negotiation cases where the minimum appeal fee shall be P50.00.

To stay the execution of the decision, order or award, the appealing party shall post an appeal bond to be determined and approved by the Commission or Labor Arbiter, Med-Arbiter, Regional Director or Director of the Bureau of origin, as the case may be.

SECTION 13. When complaint deemed filed. — A complaint is deemed filed upon receipt thereof by the appropriate agency which has jurisdiction over the subject matter and over the parties, and upon due payment of the required filing fees.

SECTION 14. Check-off from non-members. — Pursuant to Article 248 (e) of the Code, the employer shall check-off from non-union members within a collective bargaining unit the same reasonable fee equivalent to the dues and other fees normally paid by union members without the need for individual check-off authorizations.

BOOK SIX

Post Employment

TITLE I

Termination of Employment

ARTICLE 278. Coverage. — The provisions of this Title shall apply to all establishments or undertakings, whether for profit or not.

ARTIXLE 279. Security of tenure. — In case of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to his backwages computed from the time his compensation was withheld from him up to the time of his reinstatement.

ARTICLE 280. Regular and casual employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer except where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, where the position no longer exists at the time of reinstatement for reasons not attributable to the fault of the employer, the employee shall be entitled to separation pay equivalent to at least one-month salary or to one-month salary for every year of service, whichever is higher, a fraction of at least six months being considered as one whole year. (*Articles 278 to 280 and then Section 5, these are what appeared in the official version*)

SECTION 5. Regular and casual employment. — (a) The provisions of written agreements to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be considered to be regular employment for purposes of Book VI of the Labor Code where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

(b) Employment shall be deemed as casual in nature if it is not covered by the preceding paragraph; Provided, That any employee who has rendered at least one year of service, whether such service is continuous or not, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

(c) An employee who is allowed to work after a probationary period shall be considered a regular employee.

SECTION 6. Probationary employment. — (a) Where the work for which an employee has been engaged is learnable or apprenticeable in accordance with the standards prescribed by the Department of Labor, the probationary employment period of the employee shall be limited to the authorized learnership or apprenticeship period, whichever is applicable.

(b) Where the work is neither learnable nor apprenticeable, the probationary employment period shall not exceed six (6) months reckoned from the date the employee actually started working.

(c) The services of an employee who has been engaged on probationary basis may be terminated only for a just cause or when authorized by existing laws, or when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.

(d) In all cases involving employees engaged on probationary basis, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement.

SECTION 7. Termination of employment by employer. — The just causes for terminating the services of an employee shall be those provided in Article 283 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits, and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

SECTION 8. Disease as a ground for dismissal. — Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there is a certification by competent public health authority that the disease is of such nature of at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. If the disease or ailment can be cured within the period, the employee shall not terminate the employee but shall ask the employee to take a leave of absence. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health.

SECTION 9. Termination pay. — (a) An employee shall be entitled to termination pay equivalent to at least one month's salary for every year of service a fraction of at least six (6) months being considered as one whole year, in case of termination of his employment due to the installation of labor-saving devices or redundancy.

(b) Where the termination of employment is due to retrenchment to prevent losses and in case of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, or where the employment is prohibited by law or is prejudicial to his health or to the health of his co-employees, the employee shall be entitled to termination pay equivalent to at least one-half month's pay for every year of service, a fraction of at least six months being considered as one whole year.

(c) The termination pay provided in the Section shall in no case be less than the employee's one month pay.

SECTION 10. Basis of termination pay. — The computation of the termination pay of an employee as provided herein shall be based on his latest salary rate, unless the same was reduced by the employer to defeat the intention of the Code, in which case the basis of computation shall be the rate before its deduction.

SECTION 11. Termination of employment by employee. — The just causes for putting an end to the employer-employee relationship by the employee shall be those provided in Article 286 of the Labor Code.

SECTION 12. Suspension of relationship. — The employer-employee relationship shall be deemed suspended in case of suspension of operation of the business or undertaking of the employer for a period not exceeding six (6) months, unless the suspension is for the purpose of defeating the rights of the employees under the Code, and in case of mandatory fulfillment by the employee of a military or civic duty. The payment of wages of the employee as well as the grant of other benefits and privileges while he is on a military or civic duty shall be subject to special laws and decrees and to the applicable individual or collective bargaining agreement and voluntary employer practice or policy.

SECTION 13. Retirement. — In the absence of any collective bargaining agreement or other applicable agreement concerning terms and conditions of employment which provides for retirement at an older age, an employee may be retired upon reaching the age of sixty (60) years.

SECTION 14. Retirement benefits. — (a) An employee who is retired pursuant to a bona-fide retirement plan or in accordance with the applicable individual or collective agreement or established employer policy shall be entitled to all the retirement benefits provided therein or to termination pay equivalent to at least one-half month salary for every year of service, whichever is higher, a fraction of at least six (6) months being considered as one whole year.

(b) Where both the employer and the employee contribute to the retirement plan, agreement or policy, the employer's total contribution thereto shall not be less than the total termination pay to which the employee would have been entitled had there been no such retirement fund. In case the employer's contribution is less than the termination pay the employee is entitled to receive, the employer shall pay the deficiency upon the retirement of the employee.

(c) This Section shall apply where the employee retires at the age of sixty (60) years or older.

BOOK SEVEN

Prescriptions, Transitory and Final Provisions

RULE I

Venue of Actions

SECTION 1. Money claims. — All money claims and benefits arising from employer-employee relations, except claims for social security benefits, medicare and workmen's compensation, shall be filed with the Labor Relations Division of the regional office nearest the place where the cause of action accrued.

SECTION 2. Unfair labor practices. — All complaints for unfair labor practices shall be filed with the Labor Relations Division of the regional office nearest the place where the acts complained of were committed.

SECTION 3. Workmen's compensation claims. — (a) Claims for workmen's compensation accruing prior to January 1, 1975 shall be filed with the appropriate regional offices of the Department of Labor and Employment in accordance with the Rules of the Workmen's Compensation Commission;

(b) Claims for workmen's compensation arising or after January 1, 1975 shall be filed with the Social Security System for employees in the private sector and with the Government Service Insurance System for employees of the government, as the case may be, in accordance with such rules and regulations as the case may be, as may be laid down by the Employees' Compensation Commission.

RULE II

Prescription of Actions

SECTION 1. Money claims. — All money claims and benefits arising from employer relations shall be filed within three (3) years from the time the cause of action accrued; otherwise, they shall be forever barred.

SECTION 2. Unfair labor practices. — The complaints involving unfair labor practices shall be filed within one (1) year from the time the acts complained of were committed; otherwise, they shall be forever barred.

SECTION 3. Workmen's compensation claims. — Subject to the exceptions provided under the Code, all claim for workmen's compensation shall be filed within one (1) year from the occurrence of injury or death; otherwise they shall be forever barred.

SECTION 4. Claims accruing prior to effectivity of the Code. — (a) All money claims and benefits arising from the employer-employee relations which accrued prior to the effectivity of the Code shall be filed within one (1) year from the date of the effectivity of the Code; otherwise, they shall be forever barred.

(b) All worker's compensation claims accruing prior to January 1, 1975 shall be filed not later than March 31, 1975, otherwise, they shall be forever barred.

SECTION 5. Prescription of action on union funds. — Any action involving the funds of the organization shall prescribe after three years from the date of submission of the annual financial report to the Department of Labor and Employment or from the date the same should have been submitted as required by law, whichever comes earlier.

RULE III

Laws Repealed

SECTION 1. Laws repealed. — Pursuant to the repealing clause of Article 303 of the Code, the following labor laws are deemed repealed by the Code:

(a) Act No. 1874, or the Employer's Liability Act.

(b) Act No. 2473.

- (c) Act No. 2486, as amended, or the Recruitment for Overseas Employment Act.
- (d) Act No. 2549.
- (e) Act No. 3957, as amended, or the Private Employment Agency Act.
- (f) Act No. 3428, as amended, or the Workmen's Compensation Act.
- (g) Act No. 3959, or the Contractor's Bond Act.
- (h) Commonwealth Act No. 103, as amended, or the Court of Industrial Relations Act.
- (i) Commonwealth Act No. 104, as amended, or the Industrial Safety Act.
- (j) Commonwealth Act No. 213.
- (k) Commonwealth Act No. 303.
- (l) Commonwealth Act No. 444, as amended, or the Eight Hour Labor Law.
- (m) Republic Act No. 602, as amended, or the Minimum Wage Law, except Sections 3 and 7 thereof.
- (n) Republic Act No. 679, as amended, or the Woman and Child Labor Law.
- (o) Republic Act No. 761, as amended, or the National Employment Service Law.
- (p) Republic Act No. 875, as amended, or the Industrial Peace Act.
- (q) Republic Act No. 946, as amended, or the Blue Sunday Law.
- (r) Republic Act No. 1052, as amended, or the Termination Pay Law.
- (s) Republic Act No. 1054 or the Emergency Medical and Dental Treatment Law.
- (t) Republic Act No. 1826, as amended, or the National Apprenticeship Act.
- (u) Republic Act No. 2646.
- (v) Republic Act No. 2714.
- (w) Republic Act No. 5462, or the Manpower and Out-of-School Youth Development Act.
- (x) Reorganization Plan No. 20-A.

All rules and regulations, policy instructions, orders and issuances implementing Presidential Decree No. 442, as amended, contrary to or inconsistent with these rules are hereby repealed or modified accordingly.

All other laws involving employer-employee relations, including the Sugar Act of 1952 (R.A. 809), are deemed not repealed.

RULE IV

Date of Effectivity

SECTION 1. Effectivity of these rules and regulations. — (a) The provisions of these rules and regulations which were promulgated on January 19, 1975, shall continue to be in effect as of February 3, 1975, except the following:

1. Those relating to self-executing provisions of the Labor Code which become effective on November 1, 1974; and

2. Those implementing the pertinent provisions of Presidential Decree No. 850 further amending the Labor Code and incorporated as part of these rules and regulations, which shall take effect on March 2, 1976, unless they pertain to self-executing provisions of Presidential Decree No. 850, which took effect on December 16, 1975.

(b) Republic Act No. 6715 took effect on March 21, 1989, fifteen (15) days after the completion of its publication in two (2) newspapers of general circulation. The Rules implementing this Act shall take effect fifteen (15) days after the completion of their publication in two (2) newspapers of general circulation, except those which pertain to self-executing provisions of said Act.

Done in the City of Manila, this 27th day of May, 1989.