

Wage and Hour Division, Labor

§ 779.255

that taxes are not excluded in measuring this annual dollar volume. Thus, the total cost to the enterprise of such goods will be included in calculating the \$250,000. This will include all taxes and other charges which the enterprise must pay for such goods. Generally, all charges will be included in the invoice of the goods. But whether included in the invoice or not, the total amount which the enterprise is required to pay for such goods, including charges for transportation, insurance, delivery, storage and any other will be included in computing the \$250,000. The dollar volume of the goods purchased or received by the enterprise is the "annual" volume. The method of calculating the annual dollar volume is explained in § 779.266.

THE GASOLINE SERVICE ESTABLISHMENT ENTERPRISE

§ 779.254 Summary of coverage and exemptions prior to and following the 1966 amendments.

The ordinary gasoline service establishment is a covered enterprise under the Act if it has an annual gross volume of sales made or business done of not less than \$250,000 a year, exclusive of excise taxes at the retail level which are separately stated, and meets the other tests of section 3(s)(5) of the prior Act and section 3(s)(1) of the amended Act. Beginning February 1, 1969, enterprise coverage extends to any gasoline service establishment in an enterprise which has an annual gross volume in such amount, even if the establishment's annual gross volume is less. However, a gasoline service establishment with gross sales of less than \$250,000, exclusive of excise taxes at the retail level which are separately stated, may qualify for the minimum wage and overtime pay exemption provided in section 13(a)(2) of the Act if it meets the requirements of that section. Section 779.313 summarizes the requirements. An overtime pay exemption, which was repealed by the 1966 amendments, existed until February 1, 1967, for employees of ordinary gasoline service establishments under the prior Act. Thus, nonexempt employees of a covered gasoline service establishment enterprise are subject to the minimum wage standards for previously covered

employment and the overtime pay requirements for newly covered employment as listed below:

Minimum wage:	Beginning
\$1.40 an hour	February 1, 1967.
\$1.60 an hour	February 1, 1968 and thereafter.
Overtime pay after:	
44 hours in a workweek	February 1, 1967.
42 hours in a workweek	February 1, 1968.
40 hours in a workweek	February 1, 1969 and thereafter.

The particular considerations affecting coverage and exemptions are discussed in subsequent sections. The statutory language contained in section 3(s)(5) of the prior Act and 3(s)(1) of the amended Act may be found in § 779.22.

§ 779.255 Meaning of "gasoline service establishment."

(a) A gasoline service station or establishment is one which is typically a physically separate place of business engaged primarily ("primarily" meaning 50 percent or more) in selling gasoline and lubricating oils to the general public at the station or establishment. It may also sell other merchandise or perform minor repair work as an incidental part of the business. (See S. Rept. 145, 87th Cong., first session, p. 32.) No difference in application of the terms "gasoline service establishment" and "gasoline service station" was intended by Congress (see Senate Report cited above) and both carry the same meaning.

(b) Under section 3(s)(5) of the prior Act and until February 1, 1969, under section 3(s)(1) of the amended Act, the covered enterprise is always a single establishment—a gasoline service establishment, even though such establishment may be a part of some larger enterprise for purposes of other provisions of the "enterprise" coverage of the new amendments. As noted above this term refers to what is commonly known as a gasoline service station, a separate "establishment." What constitutes a separate establishment is discussed in §§ 779.303 through 779.306. While receipts from incidental sales and services are included and counted in determining the establishment's annual gross volume of sales for purposes