§ 779.319
shops, and other such local establish-
ments.
(b) The legislative history of the sec-
tion 13(a)(2) exemption for certain re-
tail or service establishments shows
that Congress also intended that the
retail exemption extend in some meas-
ure beyond consumer goods and serv-
ces to embrace certain products al-
most never purchased for family or
noncommercial use. A precise line be-
tween such articles and those which
can never be sold at retail cannot be
drawn. But a few characteristics of
items like small trucks and farm im-
plements may offer some guidance;
their use is very widespread as is that
of consumer goods; they are often dis-
tributed in stores or showrooms by
means not dissimilar to those used for
consumer goods; and they are fre-
cently used in commercial activities
of limited scope. The list of strictly
commercial items whose sale can be
deemed retail is very small and a de-
termination as to the application of
the retail exemption in specific cases
would depend upon the consideration of
all the circumstances relevant to the
situation. (Idaho Sheet Metal Works,
Inc. v. Wirtz and Wirtz v. Steepleton Gen-
eral Fire Company, Inc., 383 U.S. 190, 202,
rehearing denied 383 U.S. 963.)
[35 FR 5856, Apr. 9, 1970, as amended at 36 FR
14466, Aug. 6, 1971]
§ 779.319  A retail or service establish-
ment must be open to general pub-
ic.
The location of the retail or service
establishment, whether in an indus-
trial plant, an office building, a rail-
road depot, or a government park, etc.,
will make no difference in the applica-
tion of the exemption and such an es-
tablishment will be exempt if it meets
the tests of the exemption. Generally,
however, an establishment, wherever
located, will not be considered a retail
or service establishment within the
meaning of the Act, if it is not ordi-
narily available to the general con-
suming public. An establishment, how-
ever, does not have to be actually fre-
quented by the general public in the
sense that the public must actually
visit it and make purchases of goods or
services on the premises in order to be
considered as available and open to the
general public. A refrigerator repair
service shop, for example, is available
and open to the general public even if
it receives all its orders on the tele-
phone and performs all of its repair
services on the premises of its cus-
tomers.
§ 779.320  Partial list of establishments
whose sales or service may be rec-
ognized as retail.
Antique shops.
Auto courts.
Automobile dealers’ establishments.
Automobile laundries.
Automobile repair shops.
Barber shops.
Beauty shops.
Bicycle shops.
Billiard parlors.
Book stores.
Bowling alleys.
Butcher shops.
Cafeterias.
Cemeteries.
China, glassware stores.
Cigar stores.
Clothing stores.
Coal yards.
Confectionery stores.
Cremaotories.
Dance halls.
Delicatessen stores.
Department stores.
Drapery stores.
Dress-suit rental establishments.
Drug stores.
Dry goods stores.
Embalmimg establishments.
Farm implement dealers.
Filling stations.
Floor covering stores.
Florists.
Funeral homes.
Fur repair and storage shops.
Fur shops.
Furniture stores.
Gift, novelty and souvenir shops.
Grocery stores.
Hardware stores.
Hosiery shops.
Hotels.
Household appliance stores.
Household furniture storage and moving es-
tablishments.
Household refrigerator service and repair
shops.
Infants’ wear shops.
Jewelry stores.
Liquor stores.
Luggage stores.
Lumber yards.
Masseur establishments.
Millinery shops.
Musical instrument stores and repair shops.