

The State of South Carolina



Office of the Attorney General

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August 21, 1991

The Honorable Timothy F. Rogers
Member, House of Representatives
1310 Lady Street, Suite 600
P. O. Box 11716
Columbia, South Carolina 29250

Dear Representative Rogers:

You have asked for the definition of the term "fuel economy product" as it appears in the following August 27, 1985 South Carolina Budget and Control Board directive:

All testing of motor vehicle fuel economy products and devices shall be the responsibility of the Division of Motor Vehicle Management (DMVM). No state agency may test or evaluate any fuel economy product or device without the approval of the director of DMVM.

You have asked for an interpretation of the term to be applied by the Budget and Control Board. It must be noted, initially, that state law does not authorize this Office to supersede the administrative authority or discretion of an officer, agency or public body as administrative interpretation of an agency's own rules, regulations, or directives are accorded great deference. See S. C. Code Section 1-7-110; Griggs v. Hodge, 229 S.C. 245, 92 S.E.2d 654 (1956).

Also, this Office cannot make a determination as to which product may or may not be a "fuel economy product" as such would require a factual resolution. This Office is only able to provide an interpretation of relevant law; we are not empowered or capable of making

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specific factual determinations. See Ops. Atty. Gen. April 2, 1984 and December 9, 1983. The application of the facts and interpretation of policy must remain with the agency concerned. However, in order to assist the agency in reviewing possible definitions, this Office offers the following which were found in the federal Energy Policy Conservation Act of 1975 which establishes mandatory average fuel economy performance standards for passenger automobile manufacturers.

The term "fuel economy" means the average number of miles traveled by an automobile per gallon of gasoline (or equivalent amount of other fuel) consumed, as determined by the EPA Administrator in accordance with procedures established under Section 2003(d) of this title. 15 U.S.C.A. Section 2001(6).

The Act also defines

... the term "retrofit device" ... (as) any component, equipment, or other device--

(1) which is designed to be installed in or on an automobile (as an addition to, as a replacement for, or through alteration or modification of, any original component, equipment, or other device); and

(2) which any manufacturer, dealer, or distributor of such device represents will provide higher fuel economy than would have resulted with the automobile as originally equipped,

as determined under rules of the Administrator. Such term also includes a fuel additive for use in an automobile. 15 U.S.C.A. Section 2011.

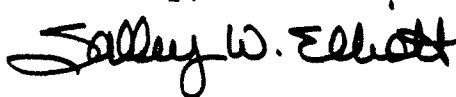
Our research revealed no indication that the legislature or courts in South Carolina have addressed the definition of a "fuel economy product".

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These definitions, of course, are merely suggestions as the application of the facts to any suggested definition or interpretation of law must remain with the agency concerned and then, ultimately, with a court of law.

I hope this information will be of some assistance.

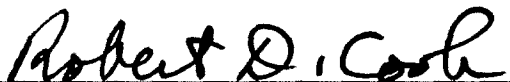
Sincerely,



Salley W. Elliott
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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