

### III. Procedural Matters

#### *National Environmental Policy Act of 1969*

The BLM has prepared a draft environmental assessment (EA), and has made a tentative finding that the final rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The BLM anticipates making a Finding of No Significant Impact (FONSI) for the final rule in accordance with the BLM's procedures under NEPA. The BLM has placed the EA on file in the BLM Administrative Record at the address specified previously. The BLM will complete an EA on the final rule and make a finding on the significance of any resulting impacts before promulgating the final rule.

#### *Paperwork Reduction Act*

The proposed rule does not contain information collection requirements that the Office of Management and Budget must approve under 44 U.S.C. 3501 *et seq.*

#### *Regulatory Flexibility Act*

BLM has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### *Unfunded Mandates Reform Act of 1995*

This proposed rule does not include any Federal mandate that may result in expenditures of \$100 million in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a Section 202 statement under the Unfunded Mandates Reform Act is not required.

#### *Executive Order 12612*

BLM has analyzed this rule under the principles and criteria in Executive Order 12612 and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### *Executive Order 12630*

BLM certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### *Executive Order 12866*

The proposed rule does not meet the criteria for significant regulatory action requiring review by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review.

#### *Executive Order 12988*

The Department has determined that this rule meets the applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

#### Author

The principal authors of this rule are Frank Bruno, Regulatory Management Group, (202) 452-0352, and Wendy Spencer, Bureau Records Administrator, (303) 236-6642, assisted by Frances Watson, Regulatory Management Group, (202) 452-5006.

#### List of Subjects in 43 CFR Part 1810

Administrative practice and procedure, Archives and records.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, Part 1810 of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

### **PART 1810—INTRODUCTION AND GENERAL GUIDANCE**

1. The authority for part 1810 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

#### **Subpart 1813—[Removed]**

2. Subpart 1813 is removed in its entirety.

Dated: December 17, 1996.

Bob Armstrong,

*Assistant Secretary, Land and Minerals Management.*

[FR Doc. 96-32410 Filed 12-20-96; 8:45 am]

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### **DEPARTMENT OF TRANSPORTATION**

#### **National Highway Traffic Safety Administration**

#### **49 CFR Part 531**

[Docket No. 96-115; Notice 1]

#### **Passenger Automobile Average Fuel Economy Standards; Proposed Decision To Grant Exemption**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Proposed decision.

**SUMMARY:** This proposed decision responds to a petition filed by Lotus Cars Ltd. (Lotus) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years 1994, 1995, 1997, and 1998, and that, for Lotus, lower alternative standards be established. In this document, NHTSA proposes that the requested exemption be granted to Lotus and that alternative standards of 24.2 mpg be established for MY 1994, 23.3 mpg for MY 1995, and 21.2 mpg for MYs 1997 and 1998.

**DATES:** Comments on this proposed decision must be received on or before February 21, 1997.

**ADDRESSES:** Comments on this proposal must refer to the docket number and notice number in the heading of this document and be submitted, preferably in ten copies, to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Ms. Henrietta Spinner, Office Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Ms. Spinner's telephone number is: (202) 366-4802.

#### **SUPPLEMENTARY INFORMATION:**

##### **Statutory Background**

Pursuant to 49 U.S.C. 32902(d), NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the statute, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining the maximum feasible average fuel economy, the agency is required under 49 U.S.C. 32902(f) to consider:

- (1) Technological feasibility
- (2) Economic practicability
- (3) The effect of other Federal motor vehicle standards on fuel economy, and
- (4) The need of the United States to conserve energy.

The statute permits NHTSA to establish alternative average fuel

economy standards applicable to exempted low volume manufacturers in one of three ways: (1) a separate standard for each exempted manufacturer; (2) a separate average fuel economy standard applicable to each class of exempted automobiles (classes would be based on design, size, price, or other factors); or (3) a single standard for all exempted manufacturers.

#### Background Information on Lotus

Lotus was founded in England by Colin Chapman in 1955 and owned by Mr. Chapman until his death in 1982. After Mr. Chapman's death, the company was owned by several joint companies until 1986. In 1986, General Motors (GM) acquired total ownership of Lotus. Although GM owned it, Lotus continued to operate on an independent basis. For MYs 1987–1993, Lotus' U.S. sales were incorporated into the GM import fleet for corporate average fuel economy (CAFE) purposes. In August 1993, Bugatti International SAH, a holding company with a controlling interest in Bugatti Automobili SpA., acquired ownership of Lotus from GM. Although under common ownership with Bugatti Automobili, Lotus continued to operate independently.

Lotus has always provided high performance and efficiency through technology and weight reduction. For example, the first Lotus street production vehicle weighed 1,500 pounds (lbs.) and had a 1.6 liter engine of 100 horsepower (hp) (15 lbs./hp). For more than 30 years, Lotus four-cylinder engines were based on the fuel efficient four-valve-per-cylinder design. Lotus pioneered and developed this technology for its own and other automotive companies worldwide. Lotus has exported vehicles to the United States (U.S.) for almost 30 years. However, the number of Lotus vehicles entering the U.S. is usually quite small. Lotus traditionally produces fewer than 2000 vehicles each year.

For the 1994, 1995, 1997, and 1998 model years, Lotus' product-line for the U.S. market consists of the Lotus Esprit, a two-seat sports car. Lotus imported 137 Esprit cars into the U.S. in the 1994 model year and 241 in the 1995 model year. Lotus does not anticipate importing any vehicles into the U.S. in 1996 and projects sales volumes for 1997 and 1998 that are consistent with its status as a low volume importer.

#### The Lotus Petition

NHTSA's regulations on low volume exemptions from CAFE standards state that petitions for exemption are submitted "not later than 24 months before the beginning of the affected

model year, unless good cause for later submission is shown." (49 CFR 525.6(b).)

NHTSA received a joint petition from Bugatti Automobili S.p.A. and Lotus Cars Ltd. (Bugatti/Lotus) on July 18, 1994, seeking exemption from the passenger automobile fuel economy standards for MYs 1994–1996. This joint petition was filed less than 24 months before the beginning of MYs 1994 and 1995 and was therefore untimely under 49 C.F.R. 525.6(b). The agency notes that Lotus was not sold by GM until August 1993, when it was acquired by Bugatti International SAH. As both Lotus and Bugatti were under the common control of Bugatti International, they were required to file a joint petition for exemption. NHTSA observes that the two companies requested the agency's opinion concerning submitting a petition within three months of the sale of Lotus by GM. The agency responded to the Bugatti/Lotus request by a letter dated May 9, 1994 in which NHTSA indicated it would accept a joint Bugatti/Lotus petition. Bugatti and Lotus submitted their joint petition approximately two months later. Under the circumstances, NHTSA concludes that Bugatti and Lotus took reasonable measures to submit a petition in as timely a manner as possible. Therefore, the agency has determined that good cause exists for the late submission of the petition.

In October 1994, NHTSA received an additional joint petition from Bugatti/Lotus seeking exemption from the passenger automobile fuel economy standard for MY 1997. In October 1995, NHTSA received another petition from Lotus seeking exemption from the passenger automobile fuel economy standard for MY 1998. These petitions are timely, as required by NHTSA's regulations at 49 C.F.R. 525.6(b).

On September 22, 1995, Bugatti entered receivership in Italy. Because of Bugatti's financial instability, Lotus requested by a letter dated October 31, 1995, that NHTSA remove Bugatti from the pending MYs 1994–1997 joint petitions filed previously by Bugatti and Lotus. Lotus also indicated that there were no Bugatti imports for MYs 1994–1995 and that Lotus itself would not import any vehicles into the U.S. for MY 1996. Lotus requested that NHTSA revise its petitions for MYs 1994, 1995, and 1997 to reflect alternative standards equal only to Lotus' fuel economy values.

#### Methodology Used To Project Maximum Feasible Average Fuel Economy Level for Lotus

##### *Baseline Fuel Economy*

To project the level of fuel economy which could be achieved by Lotus in the 1994, 1995, 1997, and 1998 model years, NHTSA considered whether there were technical or other improvements that would be feasible for these vehicles, and whether the company currently plans to incorporate such improvements in the vehicles. The agency reviewed the technological feasibility of any changes and their economic practicability.

NHTSA interprets "technological feasibility" as meaning that technology which would be available to Lotus for use on its 1994, 1995, 1997, and 1998 model year automobiles, and which would improve the fuel economy of those automobiles. The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, drive line improvements, and reduced rolling resistance.

The agency interprets "economic practicability" as meaning the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its 1994, 1995, 1997, and 1998 model year automobiles. In assuming that capability, the agency has always considered market demand as an implicit part of the concept of economic practicability. Consumers need not purchase what they do not want.

In accordance with the concerns of economic practicability, NHTSA has considered only those improvements which would be compatible with the basic design concepts of Lotus automobiles. Since NHTSA assumes that Lotus will continue to build high performance cars, design changes that would remove items traditionally offered on these cars were not considered. Such changes to the basic design would be economically impracticable since they might well significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.

##### *Technology for Fuel Economy Improvement*

The nature of Lotus vehicles generally do not result in high fuel economy values. Also, Lotus lags in having the latest developments in fuel efficiency technology because suppliers generally provide components and technology to small manufacturers only after supplying large manufacturers.

Lotus states that the requested alternative fuel economy values represent the best possible CAFE that Lotus can achieve for the 1994, 1995, 1997, and 1998 model years. However, the alternative fuel economy values decrease from 24.2 mpg in MY 1994 to 23.3 mpg in MY 1995 (a decrease of 0.9 mpg). For MYs 1997 and 1998, Lotus stated that the fuel economy value of 21.2 mpg represents the best possible CAFE that it can achieve. The shift from 23.3 mpg in MY 1995 to 21.2 mpg in MYs 1997–1998 represents a decrease of 2.1 mpg. The fuel economy values will decrease over the course of these model years because Lotus has increased the Esprit's horsepower, and will replace the engine with a V-8 after MY 1995 for higher performance. Lotus' decision to use a V-8 in the Esprit after MY 1995 is a response to market demand for more powerful engines. Lotus has produced small lightweight innovative sports vehicles for more than 40 years. Performance is achieved through obtaining maximum output from a small engine displacement, the use of glass fiber body panels, and reliance on a backbone chassis design. The vehicle's compact dimensions provide efficient performance coupled with a strong and relatively light-weight aerodynamic body construction.

The body and chassis have been continuously improved to satisfy legal and customer requirements, and the MYs 1994–1995 vehicles have an equivalent test weight of 3,250 pounds and a weight-to-horsepower ratio of 12.31 lbs./hp and 11.36 lbs./hp respectively.

The current Lotus' engine family series, the 900, has been in production for over 20 years. This engine is an in-line four-cylinder unit of 2.2 liters with intercooled turbocharging to maximize air density. The engine provides a high power/torque package that is a very efficient balance of fuel economy versus engine power. In MYs 1997–1998, Lotus will employ a new turbocharged 3.5 liter V-8 engine with four valves per cylinder, high tumble combustion, and a high compression ratio. This engine will also be highly efficient. Because of Lotus' financial constraints and its decreased research and development budget, the manufacturer must use an engine that fits the existing Esprit chassis/body configuration and uses the present gearbox while maintaining Lotus' performance image. Other vehicle specifications for the MYs 1994, 1995, 1997, and 1998 Lotus' models remain relatively constant, with a slight increase in vehicle weight due to powertrain and regulatory requirements.

#### *Model Mix*

Lotus is a small vehicle manufacturer that produces a modest range of high performance exotic sport vehicles. The current Lotus 900 engine series has been successful in complying with world-wide emission standards; however, in MY 1997, Lotus will alter its engine design to increase performance and to comply with increasingly stringent U.S. emission requirements. There is little opportunity to improve fuel economy by changing model mix since Lotus will make only one basic model in each model year.

#### *Effect of Other Federal Motor Vehicle Standards*

The new, stringent California emission standards and the similarly stringent Federal Clean Air Act Amendments will apply to Lotus in MYs 1995, 1997, and 1998. Lotus will likely achieve lower fuel economy due to compliance with these standards. In addition, a portion of its limited engineering resources will have to be expended to comply with these more stringent emissions standards including, but not limited to, evaporative emission standards.

Federal motor vehicle safety standards (FMVSS) and regulations also have an adverse effect on the fuel economy of Lotus vehicles. These standards include 49 CFR Part 581 (energy absorbing bumpers), FMVSS 202 (head restraints), FMVSS 207 (seating systems), FMVSS 208 (occupant crash protection), FMVSS 214 (side door strength), and FMVSS 216 (roof crush resistance). These standards tend to reduce achievable fuel economy values, since they result in increased vehicle weight.

Lotus is a small company and engineering resources are limited. Priority must be given to meeting mandatory standards to remain in the marketplace.

#### *The Need of the United States to Conserve Energy*

The agency recognizes there is a need to conserve energy, to promote energy security, and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it is not technologically feasible or economically practicable for Lotus to achieve an average fuel economy in MYs 1994 through 1998 above the levels set forth in this proposed decision. Granting an exemption to Lotus and setting an alternative standard at that level would result in only a negligible increase in fuel consumption and would not affect the need of the United States

to conserve energy. In fact, there would not be any increase since Lotus cannot attain those generally applicable standards. Nevertheless, the agency estimates that the additional fuel consumed by operating the MYs 1994, 1995, 1997, and 1998 fleets of Lotus vehicles at the CAFE of 24.2 mpg for MY 1994, CAFE of 23.3 mpg for MY 1995, projected CAFE of 21.2 mpg for MYs 1997 and 1998 (compared to a hypothetical 27.5 mpg fleet) is 21,159 barrels of fuel. This averages about 3 barrels of fuel per day over the 20-year period that these vehicles will be an active part of the fleet. Obviously, this is insignificant compared to the fuel used daily by the entire motor vehicle fleet which amounts to 4.81 million barrels per day for passenger cars in the United States in 1994.

#### *Maximum Feasible Average Fuel Economy for Lotus*

The agency has tentatively concluded that it would not be technologically feasible and economically practicable for Lotus to improve the fuel economies of its MYs 1994, 1995, 1997, and 1998 fleets above an average of 24.2 mpg for MY 1994, 23.3 mpg for MY 1995 and 21.2 mpg for MYs 1997 and 1998. Federal automobile standards would not adversely affect achievable fuel economy beyond the amount already factored into Lotus' projections, and that the national effort to conserve energy would not be affected by granting the requested exemption and establishing an alternative standard.

Consequently, the agency tentatively concludes that the maximum feasible average fuel economy for Lotus is 24.2 mpg for MY 1994, 23.3 mpg for MY 1995, and 21.2 mpg for MYs 1997 and 1998.

NHTSA tentatively concludes that it would be appropriate to establish a separate standard for Lotus for the following reasons. The agency has already granted petitions submitted by Rolls Royce for alternative standards of 14.6 mpg for MYs 1995–96 and 15.1 mpg for MY 1997. NHTSA has also granted a petition from Mednet, Inc. (successor company to Dutcher Motors) for an alternative standard of 17.0 mpg for MYs 1996–98. Therefore, the agency cannot use the second (class standards) or third (single standard for all exempted manufacturers) approaches for MYs 1995, 1996, 1997, and 1998.

#### *Regulatory Impact Analyses*

NHTSA has analyzed this proposal and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and procedures apply. Under Executive

Order 12866, the proposal would not establish a "rule," which is defined in the Executive Order as "an agency statement of general applicability and future effect." The proposed exemption is not generally applicable, since it would apply only to Lotus Cars Ltd., as discussed in this document. Under DOT regulatory policies and procedures, the proposed exemption would not be a "significant regulation." If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted company would not be required to pay civil penalties if its maximum feasible average fuel economy were achieved, and purchasers of those vehicles would not have to bear the burden of those civil penalties in the form of higher prices. Since this proposal sets an alternative standard at the level determined to be the maximum feasible levels for Lotus for MYs 1994, 1995, 1997, and 1998, no fuel would be saved by establishing a higher alternative standard. NHTSA finds in the Section on "The Need of the United States to Conserve Energy" that because of the small size of the Lotus fleet, that incremental usage of gasoline by Lotus's customers would not affect the United States's need to conserve gasoline. There would not be any impacts for the public at large.

The agency has also considered the environmental implications of this proposed exemption in accordance with the Environmental Policy Act and determined that this proposed exemption if adopted, would not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the proposed exemptions and alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, granting these proposed exemptions would not affect the amount of fuel used.

Interested persons are invited to submit comments on the proposed decision. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage

commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential business information has been deleted, should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed under the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action.

Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

#### List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 531 is proposed to be amended as follows:

#### PART 531—[AMENDED]

1. The authority citation for part 531 would be revised to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

2. In § 531.5, the introductory text of paragraph (b) is republished for the convenience of the reader and paragraph (b)(6) would be added to read as follows:

#### § 531.5 Fuel economy standards.

\* \* \* \* \*

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

\* \* \* \* \*

(6) Lotus Cars Ltd.

Model year	Average fuel economy standard (miles per gallon)
1994 .....	24.2
1995 .....	23.3
1997 .....	21.2
1998 .....	21.2

\* \* \* \* \*

Issued on: December 18, 1996.

L. Robert Shelton,  
*Associate Administrator for Safety Performance Standards.*

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 951208293-6351-01; I.D. 110796F]

RIN 0648-AF01

#### Fisheries of the Northeastern United States; Amendment 5 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries; Resubmitted Measures.

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement three provisions of Amendment 5 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) that were initially disapproved but have been revised and resubmitted by the Mid-Atlantic Fishery Management Council (Council). These measures would: Revise the overfishing definition for Atlantic mackerel, establish criteria for a moratorium vessel permit for *Illex* squid, and establish a 5,000-lb (2.27-mt) incidental catch permit for *Illex* squid. The intent of these measures is to prevent