

Subpart H—[Removed]

25. Subpart H of part 391, consisting of §§ 391.81 through 391.125, is removed.

PART 392—[AMENDED]

26. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 31136 and 31502; and 49 CFR 1.48.

27. Section 392.4 is amended by revising paragraph (a)(1) to read as follows:

§ 392.4 Drugs and other substances.

* * * * *

(1) Any 21 CFR 1308.11 *Schedule I* substance;

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Appendices D and E—[Removed and Reserved]

28. Appendices D and E to subchapter B of chapter III are removed and reserved.

[FR Doc. 97-18260 Filed 7-10-97; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 531**

[Docket No. 96-115; Notice 2]

Passenger Automobile Average Fuel Economy Standards; Final Decision To Grant Exemption

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Final decision.

SUMMARY: This final 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 (MYs) 1994, 1995, 1997 and 1998 and that lower alternative standards be established. In this document, NHTSA establishes an alternative standard for Lotus of 24.2 mpg for MY 1994 and 23.3 mpg for MY 1995 and denies the requests for MYs 1997 and 1998.

DATES: *Effective date:* August 25, 1997. This exemption and the alternative standards apply to Lotus for MYs 1994 and 1995.

Petitions for reconsideration: Petitions for reconsideration must be received no later than August 25, 1997.

ADDRESSES: Petitions for reconsideration of this rule should refer to the docket

number and notice number cited in the heading of this notice and must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Spinner, Office of 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. section 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.

Proposed Decision and Public Comment

This final decision was preceded by a proposal announcing the agency's tentative conclusion that Lotus should be exempted from the generally applicable MYs 1994, 1995, 1997 and 1998 passenger automobile average fuel economy standard of 27.5 mpg, and that alternative standards of 24.2 mpg for MY 1994, 23.3 mpg for MY 1995, and

21.2 mpg for MYs 1997 and 1998 be established for Lotus. (61 FR 67518; December 23, 1996). The agency received one comment from a Mr. Lance Tunick, a consultant acting on behalf of Lotus, supporting the establishment of an alternative standard for Lotus for MYs 1994, 1995, 1997 and 1998.

NHTSA Final Determination

With the exception of establishing an alternative standard for the 1997 and 1998 model years, the agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on these conclusions, the maximum feasible average fuel economy level for Lotus is 24.2 mpg for MY 1994 and 23.3 mpg for MY 1995. NHTSA has determined that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision and that the national effort to conserve energy will not be affected by granting this exemption. NHTSA hereby exempts Lotus from the generally applicable passenger automobile average fuel economy standard for the 1994 and 1995 model years and establishes an alternative standard of 24.2 mpg for MY 1994 and 23.3 mpg for MY 1995 for Lotus.

In regard to the 1997 and 1998 model years, NHTSA notes that in October 1996, Perusahaan Otomobil Nasional Berhad (Proton) acquired a controlling interest in Lotus Cars Ltd. Proton, which is a manufacturer of automobiles operating primarily in Malaysia, has an annual worldwide production of more than 10,000 vehicles.

Section 32902(d) provides that an alternative standard may only be established for a manufacturer that manufactured (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year 2 years before the model year for which the application is made. The section further provides that an exemption for a model year applies only if the manufacturer manufactures (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year.

On September 21, 1990, the agency published a notice (55 FR 38822) containing NHTSA's interpretation that the definition of "manufacture," derived from section 32902(d)(1)'s phrase "manufactured (whether in the United States or not)," applied for purposes of determining eligibility for a low volume exemption under that section. In considering whether an entity is eligible for a low volume exemption, the agency

indicated that it must count all of the cars manufactured by that entity worldwide, and not merely those imported into the U.S.

Importers who are controlled by larger "parent" manufacturers have, by virtue of the relationship with the "parent," access to technological and material resources that provide them with the ability to manufacture more fuel efficient vehicles. The fact that the "parent" may choose not to import and market cars in the United States does not have any bearing on the availability of these resources.

In regard to Lotus' application for an alternative standard for MY 1997, the agency notes that Lotus submitted materials indicating that its 1997 model year began before Lotus was acquired by Proton. Lotus contends that because its 1997 model year began before it was acquired by Proton, that Proton's October 1996 acquisition of Lotus should not preclude the availability of an alternative standard for MY 1997.

The agency disagrees with this view. Section 32902(d) states that "An exemption for a model year applies only if the manufacturer manufactures (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year." This sentence follows the section's first sentence, which discusses general eligibility for exemptions. Read together, the two sentences make it clear that manufacturers are only eligible for exemption if they manufacture fewer than 10,000 automobiles in the model year 2 years before the model year in question and that if an exemption is granted, that exemption applies only if the manufacturer manufactures (whether in the United States or not) fewer than 10,000 automobiles in that model year.

Proton acquired Lotus during the 1997 model year. The combined worldwide production of Lotus and Proton will exceed 10,000 vehicles in MY 1997 and Lotus would be ineligible for an exemption even in the event that one had previously been granted. As the agency has not yet granted such an exemption, it will not do so now. Similarly, as Lotus and its parent, Proton, will manufacture more than 10,000 vehicles annually in the 1998 model year, the agency is denying Lotus' request for that year.

Regulatory Impact Analyses

NHTSA has analyzed this decision and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and procedures apply. Under Executive Order 12866, the decision would not

establish a "rule," which is defined in the Executive Order as "an agency statement of general applicability and future effect." The decision is not generally applicable, since it would apply only to Lotus Cars Ltd., as discussed in this notice. Under DOT regulatory policies and procedures, the decision is not a "significant regulation." If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this decision is neither major nor significant. The principal impact of this decision is that the exempted company will 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 decision sets an alternative standard at the level determined to be the maximum feasible levels for Lotus for MYs 1994 and 1995, 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 Cars Ltd.'s customers would not affect the United States's need to conserve gasoline. There are not any impacts for the public at large.

The agency has also considered the environmental implications of this decision in accordance with the Environmental Policy Act and determined that it does 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 alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, the decision does not affect the amount of fuel used.

Since the Regulatory Flexibility Act may apply to a decision exempting a manufacturer from a generally applicable standard, I certify that this decision will not have a significant economic impact on a substantial number of small entities. This decision does not impose any burdens on Lotus. It relieves the company from having to pay civil penalties for noncompliance with the generally applicable standard for MY 1994 and 1995. Since the price of 1994 and 1995 Lotus automobiles will not be affected by this decision, the purchasers will not be affected.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

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

PART 531—[AMENDED]

1. The authority citation for part 531 continues 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) is amended 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 |

Issued on: July 3, 1997.

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. 970318057-7158-02; I.D. 022097C]

RIN 0648-AJ42

Fisheries of the Northeastern United States; Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP); Recreational Measures for the 1997 Summer Flounder Fishery

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

ACTION: Final rule and correction.

SUMMARY: NMFS issues this rule to amend the regulations implementing the