feasible average fuel economy, the agency is required by section 32902(f) of the Act 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 Nation to conserve energy.

Proposed Decision and Public Comment

This final decision was preceded by a proposal announcing the agency's tentative conclusion that Rolls-Royce should be exempted from the generally applicable MY 1997 passenger automobile average fuel economy standard of 27.5 mpg, and that an alternative standard of 15.1 mpg be established for Rolls-Royce for that model year (60 FR 37861; July 24, 1995). The agency did not receive any comments in response to the proposed decision.

NHTSA Final Determination

Therefore, 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 the conclusions that the maximum feasible average fuel economy level for Rolls-Royce in MY 1997 is 15.1 mpg, 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 Rolls-Royce from the generally applicable passenger automobile average fuel economy standard for the 1997 model year and establishes an alternative standard of 15.1 mpg for Rolls-Royce for that year.

Regulatory Impacts

NHTSA has analyzed this decision, and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and procedures apply, because this decision is not a ''rule,'' which term is defined as ''an agency statement of general applicability and future effect.'' This exemption is not generally applicable, since it applies only to Rolls-Royce. If the Departmental policies and procedures were applicable, the agency would have determined that this action is not ''significant.'' The principal impact of this exemption is that Rolls-Royce will not be required to pay civil penalties if it achieves a CAFE level equivalent to the alternative standard established in this notice. Since this decision sets an alternative standard at the level determined to be Rolls-Royce's maximum feasible average fuel economy, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

The agency has also considered the environmental implications of this decision in accordance with the National Environmental Policy Act and determined that this decision will not significantly affect the human environment. Regardless of the fuel economy of a vehicle, it must pass the emissions standards which limit the amount of emissions per mile traveled. Thus, the quality of the air is not affected by this exemption and alternative standard. Further, since Rolls-Royce's MY 1997 automobiles cannot achieve better fuel economy than 15.1 mpg, granting this exemption will not affect the amount of gasoline consumed.

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 Rolls-Royce. It relieves the company from having to pay civil penalties for noncompliance with the generally applicable standard for MY 1997. Since the price of 1997 Rolls-Royce 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 49 CFR 531.5, the introductory text of paragraph (b) is republished and paragraph (b)(2) is revised 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:

* * * * *

(2) Rolls-Royce Motors, Inc.

Model year	Average fuel economy standard (miles per gallon)
1978	10.7
1979	10.8
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0
1985	10.0
1986	11.0
1987	11.2
1988	11.2
1989	11.2
1990	12.7
1991	12.7
1992	13.8
1993	13.8
1994	13.8
1995	14.6
1996	14.6
1997	15.1

* * * * *

Issued on: January 30, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–2331 Filed 2–5–96; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies the California Highway Patrol's petition to amend Federal Motor Vehicle Safety Standard (FMVSS) 108, Lamps, reflective devices and associated equipment, to include requirements that no visible color other than white be emitted from headlamps at any axis. NHTSA's analysis of the petition concludes that this action would have no effect upon highway safety and would cause many if not all presently complying headlamps to be non-complying.

FOR FURTHER INFORMATION CONTACT: Richard L. Van Iderstine, Safety Performance Standards, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Van Iderstine's telephone number is: (202) 366–5275. His facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION: By letter dated May 31, 1995, Lt. R.B. Wineinger, Acting Commander, Hazardous Materials Section, Department of

California Highway Patrol (CHP) petitioned the agency to amend FMVSS 108 to include requirements that no visible color other than white be emitted from headlamps at any axis.

CHP is concerned about the use of ''Color-Clear™'' headlamps manufactured and recently introduced by Philips Lighting Company (''the Headlamps''). CHP states that, with the Headlamps, the color red is clearly visible when viewing the lamp from off-axis positions. While CHP agrees that this does not approximate the red light emitted from red authorized emergency vehicle (AEV) warning lamps under static test conditions, it is concerned that such lamps could cause confusion under actual driving conditions where sight recognition time is often restricted to very short periods. CHP is also concerned about the potential for misuse or abuse of these lamps among certain segments of the public. CHP states that it does not wish to unduly restrict or burden the manufacturers of lamps and lighting devices, but does believe that any device which displays any amount of red light to the front of motor vehicles may have a negative impact on highway safety.

CHP states that the lamps are also unlawful under California law. California Vehicle Code Section 25950(a) reads, in part, as follows: ''The emitted light from all lamps and the reflected light from all reflectors, visible from the front of the vehicle shall be white or yellow.'' CHP would like to prohibit the use of the Headlamps and any others that perform similarly, but believes that California is prohibited from doing this because FMVSS No. 108 pre-empts California law and the lamps meet the requirements of FMVSS 108.

Analysis of Petition: NHTSA personnel have viewed the Headlamps when operating and not operating. On April 26, 1995, Philips Lighting Company demonstrated the Headlamps and presented a report from ETL Testing Laboratories (ETL) that showed that the color of light from the Headlamps is identical to that of standard halogen headlamps. In response to a letter requesting an interpretation of the color requirements of FMVSS No. 108, on May 11, 1995, NHTSA wrote to the manufacturer of the Headlamps and agreed with its conclusion that the Headlamps were designed to conform to the FMVSS No. 108. During the demonstration NHTSA observed that the Headlamps are built with an internal honeycomb structure placed between the reflector and the lens. This honeycomb structure can be colored by the lamp manufacturer, and Philips had done so with the colors white, black, red and blue. Other colors appear to be feasible.

The structure appears colorless and almost invisible when viewed ''on'' axis (from straight ahead), whether the lamp is turned on or not. As the ETL test report stated, the structure appears to have no effect on the formation of the beam and the photometric performance. In the ''on'' state, the preponderance of light emitted is white when viewed with the human eye. At large off-axis angles to the side, some color does appear, and is noticeable when projected on a white screen. In the ''off'' state, as the off-axis viewing angle increases, the color of the honeycomb structure becomes apparent because of ambient light that enters the lamp and is reflected off the internal colored structure. In thinking about that demonstration, whether on or off, the agency believes that colored light from the Headlamp's internal structure would be less noticeable than colored light reflected off adjacent colored trim, and painted fenders and hoods of motor vehicles. These are permitted to be any color and as a consequence, may reflect any color as may headlamps without the inserted honeycomb structure.

CHP did not show that the Headlamps could cause onlookers to misidentify the vehicle as an AEV or that the Headlamps could somehow be misused to make onlookers misidentify the vehicle as an AEV. Accordingly, NHTSA is not convinced that the Headlamps present any danger to the public from either a highway safety or misrepresentation perspective.

An additional and very compelling issue is that which results from the specific language that CHP has asked to be incorporated in the FMVSS No. 108. CHP wants the lighting standard ''to include requirements that no visible color other than white be emitted from headlamps at any axis.'' This requirement, if implemented, would have the effect of banning almost all headlamps that are manufactured for the U.S. market. This is because of the physics of light transmission through lenses. As light passes through prisms (the fluting patterns on headlamp lenses), the light path is bent to direct the light in directions chosen by the optical engineer. This is done to form the beam for compliance purposes and for achieving a safe highway beam. As the light is refracted in the prism, the light has the tendency to split into its constituent wavelengths, causing visible colors other than white to appear at the edges of the beam. These are rarely seen in the main part of the beam because of the multiples of light rays adding to each other and achieving white light. Where it can be noticed, however, is at extreme angles where there are large gradients between light and dark areas of the beam. Often red and blue color is visible in these regions. Thus, even headlamps that do not have the special internal features of the Headlamps will emit light in some parts of the beam pattern that is a color other than white. Under the CHP proposed language, most headlamps would be deemed non-complying after a test for emitting only white light.

Finding colors at the periphery of the beam pattern are of no highway safety consequence because the light levels are low, the locations are near the periphery of forward vision, relatively close to the vehicle, and target identification (as opposed to target noticeability) under these circumstances has never been identified as necessary of regulation. There is no safety justification for regulating such performance.

The petitioner believes that California Vehicle Code Section 25950(a) is preempted, and that California is thereby prohibited from enforcing the Code against the Headlamps. Under 49 U.S.C. 30103(b), no State may enact or continue in effect a standard covering the same aspect of performance as a FMVSS unless it is identical to the FMVSS. The purpose of the preemption clause is to relieve the burden on commerce that would ensue were States to have differing safety standards on the same aspect of performance. With respect to the color of headlamps, Section 25950(a) is, on its face, essentially identical to FMVSS No. 108. FMVSS No. 108 specifies white as the color for headlamps, while Section 25950(a) states that ''[t]he emitted light from all lamps * * * visible from the front of the vehicle shall be white * * *.'' However, Section 25950(a), as interpreted by California, is not identical to FMVSS No. 108. While the Headlamps are white and thus meet the color requirement of FMVSS No. 108, they are regarded by California as failing to meet its requirement. The preemption clause requires State standards be identical not only on their face but also as interpreted. Thus, NHTSA concurs with California's conclusion that the preemption clause prohibits that State from prohibiting use of the Headlamps because of their color.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of the rulemaking proceeding. Accordingly, it denies the CHP petition.

Authority: 49 U.S.C. 30103, 30111 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 1, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–2492 Filed 2–5–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Final Rule To Delist Bidens cuneata (cuneate bidens), a Hawaiian Plant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines to remove a plant, *Bidens cuneata* (cuneate bidens), from the List of Endangered Plants. This action is based on a review of the best available scientific and commercial data, which indicate that this plant is not a discrete taxonomic entity and therefore does not meet the definition of a species as defined by the Endangered Species Act of 1973, as amended (Act). Extensive studies associated with a recent revision of the Hawaiian members of the genus have concluded that *Bidens cuneata* is an outlying population of *Bidens molokaiensis,* which is common along the windward cliffs of the island of Molokai.

EFFECTIVE DATE: February 6, 1996.

ADDRESSES: The complete file for this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, 300 Ala Moana Boulevard, Room 3108, P.O. Box 50088, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Pacific Islands Ecoregion Manager, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

The type specimen for *Bidens cuneata* was collected on Diamond Head, Oahu, by William A. Bryan on December 6, 1903, and was formally described by Earl E. Sherff in 1920 (Sherff 1920, Takeuchi 1980). Subsequent to its initial discovery, there were no further collections or observations of the species, leading botanists to believe that it could have gone extinct. In 1955, the species was rediscovered in the area where it was collected originally (Takeuchi 1980).

Hybrids of the Hawaiian *Bidens* species can readily be induced experimentally and result in highly fertile progeny, indicating a general lack of genetic barriers within the group. Based upon experimental crosses in the Hawaiian members of the genus, Gillette and Lim (1970) concluded that *Bidens cuneata* was a natural hybrid between *Bidens mauiensis,* native to the island of Maui, and *Bidens molokaiensis,* which is restricted to Molokai Island; however, few botanists accepted this conclusion. Citing the occurrence of natural and experimental hybrids, Gillette (1975) later contended that the 41 species of Hawaiian *Bidens* placed by Sherff in section *Campylotheca* should be considered a single species. Recent systematic studies of the genus (including additional experimental hybridizations) culminated in a revision of the Hawaiian members of the genus (Ganders and Nagata 1990). In this publication, *Bidens cuneata* was considered conspecific with *Bidens molokaiensis,* a common species found along the northern side of Molokai Island. *Bidens molokaiensis* occurs between sea level and 150 meters (500 feet) in elevation along the seashores, sea cliffs, talus slopes, and fields of northern Molokai from Hoolehua to Kaonihu, a distance of about 37 kilometers (23 miles) or about two-thirds the length of the island.

Previous Federal Action

Federal action on *Bidens cuneata* began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document *Bidens cuneata* was considered to be endangered. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act), and giving notice of its intention to review the status of the plant species named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including *Bidens cuneata.* The list of 1,700 plant species was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, Federal Register publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, Federal Register publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over two years old be withdrawn. A one-year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice in the Federal Register (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

Bidens cuneata was proposed for listing as an endangered species on August 23, 1982 (47 FR 36675). The public comment period ended on November 22, 1982. The final rule listing *Bidens cuneata* as an endangered species was published in the Federal Register on February 17, 1984 (49 FR 6099). On July 7, 1993, the Service published in the Federal Register (57 FR 47028) a proposal to delist *Bidens cuneata.* This proposal was based primarily on information from current taxonomic literature, which is the best scientific and commercial information available. The Service now determines *Bidens cuneata* should be delisted with the publication of this rule.

Summary of Comments and Recommendations

In the July 7, 1993, proposed rule (57 FR 47028) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the ''*Honolulu Advertiser*'' on August 6, 1993. The public comment period ended on September 7, 1993. No comments were received.

Summary of Factors Affecting the Species

The Act and its implementing regulations, 50 CFR 424.11, require that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their