

[Executive Order 12866](#) outlines some fundamental tenets of U.S. regulatory policy, instructing regulatory agencies to identify the problems that they are attempting to solve through new rules and to promulgate rules that are cost-effective. These instructions are intended to make sure that rules actually address specific problems, and that these problems are worth addressing through the rulemaking process rather than through private action. Despite these guidelines, the Department of Transportation recently issued a proposed rule that would increase the prices of over 1 million domestically sold cars, without first showing the existence of a public problem that would require a regulation.

The DOT's National Highway Traffic Safety Administration (NHTSA) published a [proposed rule](#) requiring light vehicles manufactured after September 2014 to be equipped with an event data recorder (EDR), which records technical information about vehicle operation in the instance of a car crash or other extreme circumstances. This information is used by regulatory agencies to better understand the circumstances leading up to a vehicle crash and to improve vehicle safety and regulation.

In 2006, NHTSA encouraged the voluntary use of EDRs in automobiles, predicting that by model year 2010, 85 percent of light vehicles would install them. As it turns out, an even greater percentage of vehicles have adopted EDRs, with NHTSA reporting that 92 percent of model year 2012 light vehicles now come equipped with them. Nevertheless, NHTSA feels the need to issue the rule because it believes, "without a regulation, EDRs will remain absent from the estimated 8 percent of the current light vehicle fleet that lacks an EDR." Though it determined in 2006 that EDRs in 85 percent of vehicles would "yield data of statistical significance," it now "believe[s]" that requiring all light vehicles required to have frontal air bags to be equipped with EDRs would help improve vehicle safety for consumers, while imposing relatively limited costs on the automobile industry." NHTSA estimates that requiring installation of an EDR will cost \$20 per vehicle, or \$26.4 million when applied to the 1.32 million vehicles affected by this rule.

Nowhere in the proposal does NHTSA articulate the "compelling public need" for the proposal, as required by Executive Order 12866, which states: "Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people." The Agency does not explain how a voluntary adoption rate of 92 percent is consistent with a material failure of private markets, particularly when vehicle drivers and manufacturers have an interest in vehicle safety and incentives to take optimal actions to achieve it. In the absence of these explanations, NHTSA's proposal does not live up to the regulatory standards laid out in Executive Order 12866.

