

US EPA ARCHIVE DOCUMENT

FINAL XL PROJECT AGREEMENT
for PROGRESSIVE AUTO INSURANCE COMPANY
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Draft

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I. Introduction

A. Introduction to Project XL

The U.S. Environmental Protection Agency with the cooperation of state and local authorities has initiated the Excellence and Leadership (“XL”) Program to work with interested companies to develop innovative approaches for addressing environmental issues. The XL program encourages companies to come forward with new approaches that have the potential to advance environmental goals more effectively than have been achieved using traditional regulatory tools. Project sponsors must demonstrate superior environmental performance, the on-going involvement of stakeholders and achievement of other XL criteria. The Progressive Auto Insurance Company, while not regulated by USEPA, has developed an innovative insurance product which has the potential to greatly benefit the environment.

B. Project Contact List

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II. Project Description

A. Progressive Auto Insurance Company’s Pay-as-you-Drive Program

Progressive Auto Insurance company has piloted a unique voluntary insurance program in the state of Texas. Most auto insurance rates are based on a number of factors, including: age, sex, marital status, and where the driver lives, while more specific information about customer driving patterns such as mileage driven, time of day and location of driving, are generally not taken into account because of the difficulty involved in monitoring and tracking the information. In response to this, Progressive has worked cooperatively with a technology firm to install in their customers’ vehicles a global positioning system device which, in addition to providing personal security, and roadside and directional assistance, also monitors a number of other factors, including: time of day, amount of driving, and estimated geographic location of driving (whether the customer is in a rural area, urban area, or small town.) The company can then use these additional factors in its “Autograph” Program in determining auto insurance rates which are more specific to individuals’ driving habits.

It has been estimated that roughly 80% of an individual’s transportation costs are fixed once

one purchases a car; that is, 80% of costs remain the same on a monthly basis regardless of how much or how little one drives. With the Progressive system, some of the fixed costs now become variable costs which will be influenced by the customer's monthly driving activity.

Progressive's system is designed not only to lower costs for its customers, but also to encourage positive driving behaviors which lead to a reduction in accidents and thefts. By offering this system, Progressive is providing its customers a financial incentive to drive less and choose alternate forms of transportation, such as public transit or walking, and in so doing reduce the negative environmental impact resulting from higher levels of automobile usage. In this XL Project, EPA will initiate a study to determine the environmental impact of this insurance product. The parties that will sign this XL Agreement are USEPA and the Progressive Insurance Company.

B. Progressive's Commitments

The company has already piloted the technology and the insurance product. Progressive's commitment to this XL Project involves making available to EPA aggregated data on participants' driving mileage and times of day that participants are driving. This will allow the Agency to analyze Progressive's data and make determinations about increases or decreases in driving mileage in response to the use of this product. In addition, Progressive is committing to working cooperatively with auto manufacturers to increase the availability of the product; this will be of assistance in EPA's study since the study's designers would like to include regional effects to whatever degree is possible.

III. Project XL Criteria

In Federal Register Notices in 1995 and 1997, USEPA defined and detailed specific criteria to guide XL Projects.

A. Superior environmental performance

While the company has not yet directly measured environmental impacts, if consumers respond to the increased per mile cost of driving resulting from converting automotive insurance from a fixed to variable cost the same way they do to the increased per mile cost of driving resulting from fuel price increases, a significant reduction in driving would be expected. Initial cost figures appear to show that

significant savings are accruing, and that drivers are paying close attention to their driving patterns and the information supplied to them by the company, in order to minimize their insurance costs. Drivers in urban areas appear to accrue the greatest savings, as they see the largest reductions in theft premiums and tend to have short commutes.

The focus of this XL Project is an analytical study, which will determine the extent to which the Progressive Program has an effect on the environment. EPA, in partnership with USDOT and the Insurance Institute for Highway Safety, is developing a study methodology to determine if indeed the anecdotal evidence is accurate, and drivers are driving less as a result of their participation in the program. EPA's interest in the program derives from the possibility that insurance pricing plans like Autograph might alter driving habits, as well as distinguish existing differences in habits, as drivers learn how their driving habits affect their costs. Recognizing that some factors which contribute to increased crash risk, such as total driving and driving during congested traffic periods, can also affect air quality, EPA is interested in whether people who sign up for a voluntary program like Autograph will reduce their total driving or their driving during congested periods. A brief description of factors to be monitored in the study is included in the "monitoring, reporting, and evaluation" section of this document.

Reducing vehicle miles traveled (VMT) is essential to promoting many of EPA's environmental objectives. Despite years of progress in improving vehicle technology to reduce automotive emissions, cars and light trucks continue to be major contributors to a host of national environmental challenges, in part due to large and continuous increases in VMT. For example, according to EPA's *Indicators of the Environmental Impacts of Transportation* report (October 1999), U.S. travel is responsible for a substantial portion of U.S. ozone precursor emissions (31% of volatile organic compounds and 36% of nitrogen oxides) 61% of nationwide carbon monoxide emissions, and 31% of carbon dioxide emissions (a primary greenhouse gas responsible for climate change.) As a result of the proliferation of light duty trucks, fleetwide fuel economy is decreasing, and per mile vehicle carbon dioxide emissions have actually increased. Additionally, many environmental challenges related to travel - such as water quality deterioration due to roadway runoff, wetlands loss, and habitat destruction - are unaffected by

improved vehicle technology. Reducing VMT is a fundamental strategy in addressing the full range of environmental harms related to travel. In most XL Projects, specific regulatory relief is requested by the company, and granted by EPA, in order to allow the Project to move forward. In the case of Progressive, no regulatory relief is being requested; however, as the Project progresses, if it is found that the project proves to be environmentally beneficial, it is possible that some alternatives might be explored for offering incentives to key groups who enable the project to move forward. In 1997, EPA adopted a policy to allow credit in State Implementation Plans (SIP's) for voluntary mobile source reduction programs (VMEP's.) The possibility of offering SIP credits in those states which enable this program to move forward is one alternative for offering regulatory flexibility. The policy allows 3% of the total reductions needed for attainment in a local or regional geographic area to be from voluntary mobile source reduction programs.

B. Anticipated Benefits such as cost savings, paperwork reduction and operational flexibility

Progressive has begun to accumulate anecdotal evidence which suggests that their system is earning greater popularity. Those involved are reporting a high level of awareness of their driving patterns, and through focus group research, the company is finding that participants are encouraging non-users to consider signing up for the program. Progressive's participation in this XL Project may further increase public awareness of this insurance product, and in so doing, might help the company increase the product's availability throughout the country.

C. Active stakeholder involvement in project development and implementation.

Progressive has involved stakeholders in the development of this XL Project. The Department of Transportation/Federal Highway Administration, the Insurance Institute for Highway Safety, Environmental Defense, and representatives from the automobile industry have attended meetings on the project, reviewed documents and made suggestions about the agreement.

D. Innovation/Multi-media pollution prevention

In general, there is little opportunity for shifting of pollutants from one media to another in this project. This project is not aiming to reduce a specific media pollutant, which can in some cases carry with it a degree of risk that levels of other media pollutants might increase. It seems unlikely that overall

driving levels will have been found to increase at the end of the study. There is some possibility that car owners who are involved in the program where only one vehicle is charged insurance by usage, will choose another household vehicle for some trips; the designers of the analytical study have a number of possible methods for dealing with this problem, depending on resource availability.

E. Transferability

Progressive's goal is to begin marketing their product in other states, though this is dependent on each state's specific insurance regulations. Progressive has taken important steps to begin to pilot the program in the states of Ohio, Illinois, and California. Expansion of the product will be dependent in part upon the insurance regulations in specific states.

One of the difficulties involved in expanding the product is the limited availability of the technology. The company has been working cooperatively with auto manufacturers to expand the GPS system. It is expected that over 100,000 new vehicles in the U.S. will be GPS equipped beginning in January 2001 and that a substantial portion of the new domestic vehicle fleet will be GPS equipped beginning in July 2001, corresponding to the beginning of model year 2002. To facilitate retrofitting after market vehicles of all ages to enable participation in Autograph—a key need to ensure that the benefits of Autograph extend to consumers in all income brackets and that drivers of the oldest, most polluting vehicles can be rewarded for driving less—Progressive has been working cooperatively with after market GPS equipment manufacturers and several American automobile manufacturers, to bring Program compatible, cost effective technology to market.

F. Feasibility

Since the product has already been made available in the state of Texas, the technology itself has already been tested. By signing this XL Agreement, the Progressive is committing to analysis of the data by EPA. The data that is collected will not contain private, individual participant information such as names or other personal information.

G. Monitoring, reporting accountability, and evaluation/duration of study

The analysis will be carried out and completed by EPA in cooperation with other federal and non-federal partners. Data collection regarding individual driving habits is expected to begin to be

collected after January 1, 2001, and to end on January 1st, 2003. The study will look at baseline data before being involved in the Autograph program and after being involved in Autograph; the study will take into account such factors as demographic issues, regional affects, and subregional affects (urban vs. suburban, etc.) The study will also account for mileage shifting from one household vehicle to another. Exact numbers of participants have not yet been determined since this will depend upon the level of detail of the study and funding availability. Data will be evaluated on an aggregate basis only so as to protect individual consumer privacy.

H. No shift of risk burden/consistency with Executive Order 12898 on Environmental Justice/must protect worker safety and ensure that no one is subjected to unjust or disproportionate environmental impacts.

This XL Project is consistent with this Executive Order. No groups are subject to adverse environmental impacts and worker safety is not at risk.

IV. Legal Basis for the Project

A. Authority to Enter into the Agreement

By signing the agreement, EPA, and Progressive Insurance acknowledge and agree that they have the respective authorities and resources to enter into this agreement and to implement applicable provisions of this Project, as described in this document.

B. Legal Effect of the Agreement

This agreement states the intentions of the parties with respect to Progressive's XL Project. The parties have stated their intentions seriously and in good faith, and expect to carry out their stated intentions.

This Agreement in itself does not create or modify legal rights or obligations, is not a contract or a regulatory action, such as a permit or rule, and is not legally binding or enforceable against any party. Rather, it expresses the plans and intentions of the Parties without making those plans and intentions binding requirements. This applies to both procedural and substantive matters. Thus for example, the Agreement establishes procedures that the parties intend to follow with respect to dispute resolution

and termination. However, while the parties fully intend to adhere to these procedures, they are not legally obligated to do so.

This agreement is not a “final Agency Action” by EPA, because it does not create or modify legal rights or obligations and is not legally enforceable. Nothing either party does or does not do that deviates from a provision of this Agreement, or that is alleged to deviate from a provision of this Agreement, can serve as a basis for any claim for damages, compensation or other relief against any party. This Agreement is itself not subject to judicial review or enforcement.

C. Laws and Regulations Unaffected

In this XL Project, no regulatory flexibility is being requested and the parties do not intend to modify any future laws or regulations.

D. Retention of Rights to Other Legal Remedies

Nothing in the Agreement affects or limits either USEPA’s or Progressive’s legal rights. Such rights may include legal, equitable, civil, criminal, or administrative claims or other relief regarding the enforcement of present or future applicable federal and state codes, rules, regulations or permits.

V. Withdrawal from or Termination of the Agreement

A. Expectations

Although this Agreement is not legally binding and any party may withdraw from the Agreement at any time, it is the desire of the parties that it should be implemented as fully as possible unless one of the conditions below occurs:

1. Failure by any party to (a) comply with the provisions of the enforceable implementing mechanisms for this Project, or (b) act in accordance with the provisions of this Agreement. The assessment of the failure will take its nature and duration into account.

2. Failure of any party to disclose material facts during development of the Agreement.

3. Failure of the project to provide superior environmental performance consistent with the provisions of this Agreement.

4. Enactment or promulgation of any environmental, health or safety law or regulation after execution of the Agreement, which renders the project legally, technically or economically impracticable.

B. Procedures

The parties agree that the following procedures will be used to withdraw from or terminate the Project before expiration of the Project term.

1. Any party that wants to terminate or withdraw from the Project is expected to provide written notice to the other parties at least sixty days before the withdrawal or termination.

2. If requested by any party during the sixty day period noted above, the dispute resolution proceedings described in Section IX of this Agreement may be initiated to resolve any dispute relating to the intended withdrawal or termination. If, following any dispute resolution of informal discussion, a party still desires to withdraw or terminate, that party will provide written notice of final withdrawal or termination to the other parties.

3. The procedures described in this Section apply only to the decision to withdraw or terminate participation in this Agreement. Procedures to be used in modifying or rescinding any legal implementing mechanisms, if any, will be governed by the terms of those legal mechanisms and applicable law. It may be necessary to invoke the implementing mechanism's provisions that end authorization for the Project in the event of withdrawal or termination.

VI. Project Duration

The parties intend that data collection for this project will begin in January of 2001 and end on June 30, 2003.

VII. Unavoidable Delay During Project Implementation

“Unavoidable Delay” (for purposes of this Agreement) means any event beyond the control of any party that causes delays or prevents the implementation of the project described in this Agreement, despite the parties’ best efforts to put their intentions into effect. An unavoidable delay can be caused by, for example a fire or acts of war.

When any event occurs that may delay or prevent the implementation of this Project, whether or not it is avoidable, the party to this Agreement who discovers it will immediately provide notice to the other parties. Within ten days after that initial notice, the party should confirm the event in writing. The confirming notice should include: 1) the reason for the delay; 2) the anticipated duration 3) all actions taken to prevent or minimize the delay; and 4) why the delay was considered unavoidable, accompanied by appropriate documentation.

If the parties agree that the delay is unavoidable, the schedule should be extended to cover the time period lost due to the delay. If they agree, they should also document their agreement in a written amendment to this Agreement. If the Parties do not agree, then they should follow the provisions for dispute resolution outlined below.

This section applies only to the provisions of this Agreement. Enforceable, regulatory mechanisms, such as permit provisions or rules, are subject to modification or enforcement as provided in applicable law.

VIII. Amendments or Modifications to the Agreement

This project is an experiment designed to test new approaches environmental protection and there is a degree of uncertainty regarding the environmental benefits and costs associated with activities to be undertaken in this project. Therefore, it may be appropriate to amend this Agreement at some point during its duration.

This Final Project Agreement may be amended by mutual agreement of all parties at any time during the duration of the project. The parties recognize that amendments to this Agreement may also necessitate modification of legal implementation mechanisms or may require development of new

implementation mechanisms. If the Agreement is amended, EPA and Progressive expect to work together with other stakeholders to pursue any necessary modifications or additions to the implementation mechanisms in accordance with applicable procedures. If the parties agree to make a substantive amendment to this Agreement, the general public will receive notice of the amendment and be given an opportunity to participate in the process, as appropriate.

In determining whether to amend the Agreement, the parties will evaluate whether the proposed amendment meets Project XL acceptance criteria and any other relevant considerations agreed upon by the parties. All parties to the Agreement will meet within 90 days following submission of any amendment proposal (or within a shorter or longer period if all parties agree) to discuss evaluation of the proposed amendment. If all parties support the proposed amendment, the parties will (after appropriate stakeholder involvement) amend the Agreement.

IX. Transfer of Project Benefits and Responsibilities to a New Owner

The parties expect that the implementing mechanisms will allow for a transfer of Progressive's benefits and responsibilities under the Project to any future owner or operator upon request of progressive and the new owner or operator, provided that the following conditions are met:

- A.** Progressive will provide written notice of any such proposed transfer to the EPA at least 90 days prior the effective date of the transfer. The notice is expected to include identification of the proposed new owner or operator, a description of its financial and technical capability to assume the obligations associated with the project, and a statement of the new owner's intention to take over responsibilities in the XL Project of the existing owner or operator.
- B.** Within 45 days of receipt of the written notice, the parties expect that EPA, in consultation with appropriate stakeholders, will determine whether 1) the new owner or operator has demonstrated adequate capability to meet EPA's requirements for carrying out the XL Project; 2) is willing to take over the responsibilities in the XL Project of the existing owner or operator and 3) is otherwise an appropriate Project XL partner.

It will be necessary to modify the Agreement to reflect the new owner and it may also be necessary for EPA, to amend appropriate rules, permits or other implementing mechanisms (subject to applicable public notice and comment) to transfer the legal rights and obligations of Progressive under this Project to the new owner.

X. Process for Resolving Disputes

Any dispute which arises under or with respect to this Agreement will be subject to informal negotiations between the parties to the Agreement. The period of informal negotiations will not exceed twenty calendar days from the time the dispute is first documented, unless that period is extended by a written agreement of the parties to the dispute. The dispute will be considered documented when one party sends a written notice of dispute to the other parties.

If the dispute cannot be resolved by the parties then one or both of the parties may involve non-binding mediation by setting forth the nature of the dispute with a proposal for its resolution in a letter to the Assistant Administrator for EPA's Office of Policy, Economics and Innovation. This person will serve as the non-binding mediator and may request an informal mediation meeting to attempt to resolve the dispute. He or she will then issue a written opinion that will be non-binding and does not constitute final EPA action. If this effort is successful, the parties still have the option to terminate or withdraw from the Agreement, as set forth earlier in this document.

Signatories and Effective Date

Progressive Auto Insurance

USEPA

