

ENVIRONMENTAL PROTECTION AGENCY

Policy or Regulatory Flexibility as Incentive for Improved Environmental Performance at
Laboratories

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice; request for information under Project XL and Labs21-- Flexibility needs under
environmental policies or regulations that affect laboratories

SUMMARY: EPA solicits information from laboratories on cases where flexibility under
environmental policies or regulations could result in improved environmental performance. The
Agency will use this information in an assessment of whether to provide flexibility through Project
XL to laboratories who participate in the emerging Labs21 program. EPA also seeks candidate
laboratories to participate in a pilot project connected with this effort.

DATES: The period for the solicitation is open-ended, although responders are requested to
reply by *<one month after publication date.>*

ADDRESSES: Responders to Section IV of this Federal Register Notice should address
correspondence to: Nina Bonnelycke, Mail Code 1802, U.S. EPA, Ariel Rios Building, 1200
Pennsylvania Ave., N.W., Washington, D.C. 20460. Responders may also send information via

email to bonnelycke.nina@epa.gov.

FOR FURTHER INFORMATION CONTACT: For specific information on regulatory relief for laboratories under Project XL or for general information on Project XL, please contact Nina Bonnelycke at the above addresses or at 202-260-3344. For more information on EPA's Labs21 program, please contact Phil Wirdzek at Mail Code 3204, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460, phone: 202-564-2094, email: wirdzek.phil@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Through its Office of Administration and Resources Management, EPA is planning to establish a voluntary initiative to improve laboratory environmental performance through energy- and water-efficiency. This initiative, named Laboratories for the 21st century or Labs21, evolved from the Agency's recent efforts to improve the environmental performance of its own laboratories. As part of developing the Labs21 program, the Agency is exploring what incentives, if any, might prompt laboratories to participate in the new program. Preliminary contacts with industry representatives indicate that regulatory relief from environmental regulations might be one such incentive. Other examples include awards and recognition or data sharing on environmental management practices. Since Project XL is an existing EPA program for providing relief from environmental regulations or programmatic requirements, the Agency is exploring

using XL as a way to offer this type of flexibility to Labs21 participants.

II. Labs21 and Project XL

A. *Labs21 Overview*

EPA recently implemented changes at its Ann Arbor, Michigan, laboratory that will accomplish the following:

- . Reduce annual electricity demand by 68 percent
- . Reduce annual water consumption by 80 percent
- . Produce energy and water savings that will reduce the laboratory's annual utility bill by 74 percent
- . Recoup the cost of the associated equipment upgrades within 8 years.

The Agency is currently implementing comparable modifications at many of its other laboratories and is expecting similar results. Based on its experience with its own facilities, EPA is exploring whether to develop a national voluntary initiative, referred to as Labs21, to encourage similar improvements at laboratories throughout the U.S.

As part of developing Labs21, EPA held an initial planning meeting on September 9, 1999, to discuss the emerging program with interested parties. (Conference information is

available at <http://www.epa.gov/labs21century>.) At this meeting, EPA presented its first-year objectives for Labs21, which are to:

- . Establish procedures laboratory owners and operators can use to evaluate the energy- and water-efficiency of their laboratories
- . Define the participation requirements for a Labs21 laboratory
- . Provide opportunities to exchange information on laboratory energy- and water-efficiency (e.g., conferences, newsletters, or websites)
- . Identify, promote, and replicate demonstration projects to facilitate market acceptance of advanced energy- and water-efficient technologies
- . Establish award criteria for recognizing Labs21 participants.

EPA is continuing to work with a group of laboratories, including the National Renewable Energy Laboratory and the Lawrence Berkeley National Laboratory to flesh out the program further. Interested parties should contact EPA as indicated above.

B. Project XL Overview

One possible means of adding a flexibility component to Labs21 might be Project XL. Project XL is an existing EPA program specifically designed to offer flexibility on an experimental basis, and it has both a continuing mission and experience in granting flexibility from environmental regulations, including regulations that affect laboratories.

EPA launched Project XL --"eXcellence and Leadership"-- on March 16, 1995, as a central part of its effort to reinvent environmental protection. (See 60 FR 27282; May 23, 1995.) Project XL gives individual private and public regulated entities the opportunity to develop their own pilot projects wherein the Agency provides targeted flexibility in exchange for improved environmental performance. EPA intends to use Project XL and other related efforts to test innovative strategies for reducing the regulatory burden and promoting economic growth while achieving better environmental and public health protection. Through this testing, EPA can investigate approaches or legal interpretations that depart from or are even inconsistent with longstanding Agency practices, as long as those interpretations meet the general mandate of the statutes the Agency is charged with implementing.

To participate in XL, interested parties must develop a proposal that satisfies a number of criteria, including criteria for superior environmental performance, transferability, and stakeholder involvement. In the evaluation of environmental performance under XL, EPA seeks superior performance both in areas under existing EPA jurisdiction such as waste handling, air emissions, or effluent treatment, as well as through environmental innovations in fields as diverse as data monitoring and reporting or product stewardship.

As of December 1999, 31 projects have met the XL criteria and are in various stages of development and implementation. Sixteen (16) new proposals are in review. For more information about the XL program, XL criteria, or about specific XL projects underway, please refer to <http://www.epa.gov/projectxl> or contact EPA as indicated above under For Further

Information Contact.

C. *Existing XL Project Investigates Regulatory Flexibility for Laboratories*

The XL program has an existing project, the New England Universities Laboratories XL Project (NE Labs), to replace certain federal and state hazardous waste regulations with an Environmental Management Plan tailored to university labs. (This project is described in more detail on the XL website at <http://www.epa.gov/projectxl/nelabs/index.htm>.)

The conflict for universities that this project works to address is that while hazardous waste regulations are typically directed toward large-scale industrial processes, academic and teaching laboratories typically use only small amounts of hazardous chemicals. This XL project focuses on two specific environmental management problems caused by application of the waste management regulations to university settings: premature hazardous waste determination and inefficient collection of wastes from satellite locations. Premature hazardous waste determination occurs when university workers, in an attempt to adhere to hazardous waste regulations, discard used materials as “hazardous wastes” without knowledge of the university’s options for recycling and reuse. The result is that the university must dispose of an unnecessarily large volume of reusable materials each year, meaning that the regulations in effect curb the effectiveness of the university’s recycling program. In a similar vein, the 3-day satellite accumulation requirements under hazardous waste management regulations force university environmental managers to pick up and transport wastes on a frequent but unpredictable basis. The XL project gives participating

universities the latitude to explore how to replace the broad-brush hazardous waste regulations that cause these inefficiencies with a more targeted, effective environmental management system.

It is this type of tradeoff between regulatory relief and improved environmental performance that the Agency hopes to capture in the Labs21 program, and EPA's expectation is that the experience the XL program has gained through running the NE Labs XL project and other similar projects can assist EPA in structuring a flexibility component for Labs21.

III. Definition of "Laboratory"

For purposes of this Federal Register notice, the term "laboratory" includes research, academic or industrial laboratories. This definition extends to facilities that generate product in commercial quantities in addition to facilities whose principal output is research, analysis, or products manufactured for R&D or other investigatory purposes.

IV. Information Sought By EPA

A. *Types of Flexibility Needed By Laboratories*

In today's notice, EPA is asking laboratories to identify specific examples of environmental regulations or policies under which the benefit to the environment appears to be small compared to the implementation burden faced by the affected lab. The previous section

describes a case where university laboratories felt they could obtain superior environmental performance by implementing their own environmental control plan instead of continuing compliance with existing hazardous waste regulations. Other examples may exist, for instance, there may be air emission or water treatment standards that, for whatever reason, fail to achieve their environmental objectives when applied to laboratory settings. The Agency will use feedback received through this Notice to guide its assessment of whether to offer a flexibility component in the new Labs21 program.

In addition, the Agency today is asking laboratories to identify any regulations or policies issued by other federal agencies where the benefit to the environment appears to be small compared to the implementation burden faced by the affected lab. Examples of federal agencies with jurisdiction over laboratories' environmental performance include the Food and Drug Administration or the Department of Transportation. The feedback EPA receives will help the Agency assess the need to coordinate with other federal agencies regarding flexibility for laboratories.

B. Laboratories Interested in Participating in a Pilot Project

Through today's notice, EPA requests contact with laboratories that want to participate in an XL project to grant flexibility as part of the Labs21 program. These candidates, referred to as "sponsors" under XL, should be interested in obtaining regulatory or programmatic flexibility for their lab, should have some specific ideas concerning requirements that EPA should consider

waiving, or should have broad knowledge of the regulatory obstacles to environmental performance that laboratories face.

Through participating, sponsors will not only have a chance to secure regulatory or programmatic relief for their facilities, but will also have an opportunity to shape the dialogue between laboratories and EPA on how to maximize environmental performance at labs.

Dated: _____

Signed: _____
Richard T. Farrell,
Associate Administrator,
Office of Policy and Reinvention