



NOV 15 2018

MEMORANDUM FOR: REGIONAL COMMISSIONERS, PBS
REGIONAL LEASING DIRECTORS
REGIONAL LEASE ACQUISITION OFFICERS

FROM:

A handwritten signature in black ink, appearing to read "Allison H. Azevedo", with a long horizontal flourish extending to the right.

ALLISON H. AZEVEDO
ASSISTANT COMMISSIONER FOR OFFICE OF LEASING
- PR

SUBJECT: LEASING ALERT (LA-18-10) Modification to ENERGY
STAR® Requirement

1. **Purpose.** This Leasing Alert provides guidance to address the recent review and suspension of ENERGY STAR® certifications by the U.S. Environmental Protection Agency (EPA). This temporary suspension prevents lessors from earning the ENERGY STAR® label, a statutory requirement in the General Service Administration's (GSA's) RLP and Lease based on the Energy Independence and Security Act (EISA) of 2007- Section 435. To address this suspension, GSA shall temporarily toll (i.e., pause) all requirements for a label by extending the period of time by which an offeror must provide evidence of achieving the label to be equal to the time period of the EPA suspension.
2. **Background.**
 - a. On September 28, 2010, GSA issued Realty Services Letter RSL-2010-02 to implement the Energy Star Requirements of the Energy Independence and Security Act (EISA) of 2007. Section 435 of the Energy Independence and Security Act (EISA) of 2007 mandates that no Federal agencies enter into a leasing contract after December 19, 2010, in a building that has not earned the ENERGY STAR® label, unless the space requirement complies with specific exceptions provided in statute. This RSL was followed by clarifications issued via Leasing Alert on January 7, 2014.
 - b. On September 24, 2018, EPA temporarily suspended ENERGY STAR® certifications for a number of space types as a result of updates made on Aug. 26, 2018 to performance metrics in the ENERGY STAR Portfolio Manager® tool, the platform used to calculate an ENERGY STAR® score. These updates are part of EPA's standard process to keep

ENERGY STAR® metrics current and reflective of current market performance.

- c. ENERGY STAR® certifications are temporarily suspended while EPA conducts a comprehensive review to ensure that the benchmarking models are working as intended. EPA will work with stakeholders and technical experts to conduct this analysis and adjust the scoring models, if needed.
 - i. ENERGY STAR® certifications are temporarily suspended for the following primary property types that GSA leases: 1) Offices and Courthouses; 2) Retail; and 3) Warehouses. The suspension of certifications does not impact data centers.
 - ii. ENERGY STAR® applications submitted prior to the temporary certification suspension (Sept. 23rd or before) are being processed normally. Only applications made after this date (Sept. 24th forward) are impacted by the suspension. New applications cannot be submitted until the suspension is lifted.
 - iii. ENERGY STAR's Portfolio Manager® tool is functioning but provides scores based on the EPA updates. The tool generates an ENERGY STAR® score based on current modeling for a building, once the necessary building and utility data is input. Current ENERGY STAR® scores could change, however, if EPA adjusts the score models after completing their review and analysis. If EPA does not change the score models, then the newly/recently generated ENERGY STAR® scores will not change.
 - iv. EPA is working to reinstate certification by early 2019, and will resume accepting certification applications by property type as each model is evaluated (on a rolling basis).
 - d. In response to EPA's current review and certification suspension, GSA is issuing changes to RLP and Lease language in addition to pre and post-award guidance for leasing specialists and Lease Contracting Officers (LCOs) to follow during the certification hiatus. The Office of Leasing will continue to monitor the situation and will notify regions when the suspension is lifted.
3. **Effective Date.** This Leasing Alert is effective as of the date of issuance unless modified, canceled, or reissued.
4. **Cancellation.** N/A
5. **Applicability.** This Leasing Alert and its attachments apply to all GSA real property leasing and to activities delegated by GSA to other Federal agencies.
6. **Instructions and Procedures.**

- a. The attached language is intended to address both the pre-award (lease award determination) and post-award (successful offeror/Lessor obligations) impacts of the current ENERGY STAR® certification suspension, as follows:
 - i. Amending RLP language to toll (pause) all requirements for a label by extending the period of time by which an offeror must provide evidence of achieving the ENERGY STAR® label, "Designed to Earn the Energy Star®" certification, or Target Finder scores to be equal to the time period of the EPA suspension and review. Offers must provide a statement that the offeror was foreclosed from being awarded an ENERGY STAR® label or other evidence of capability to achieve the certification solely as a result of the EPA actions. The procurement will proceed to award. Post award, the Building must achieve an ENERGY STAR® label within the times frames specified in the RLP provision, unless the LCO approves a time extension as described below. During this pause, offerors who cannot obtain the ENERGY STAR® label, "Designed to Earn the Energy Star®" certification, or Target Finder scores of 75 or higher, because of the EPA suspension shall not be excluded from award consideration.
 - ii. Amending lease language to provide a time extension for the successful offeror/Lessor's impacted by the suspension to obtain an ENERGY STAR® label, provided the Lessor has demonstrated, to the satisfaction of the LCO, that such suspension and review delayed their ability to obtain the ENERGY STAR® label in a timely manner. Such time extension, which shall be the Lessor's sole remedy, shall not exceed the length of time associated with the EPA suspension for the affected property category. Note that this time extension only applies to achieving the label itself and does not allow the Lessor an extension for substantial completion or other post-award activities such as completing cost effective upgrades.
- b. For lease actions (new, new/replacing, succeeding, or superseding) which have not been awarded:
 - i. For lease actions where the LCO has not called for Final Proposal Revisions (FPR), LCOs must incorporate the appropriate language, as outlined under Attachments 1 – 4, into their RLPs, either by amendment (if the RLP has already been issued), or into the RLP itself (if the RLP has not been issued).
 - ii. For lease actions where the FPR date has passed, the LCO should consult with regional counsel to assess (1) whether or not this suspension impacts either the award decision (i.e., an offeror was

excluded due to lack of an ENERGY STAR® label and the suspension may have affected the offeror's ability to obtain the label) and/or (2) post-award obligations on the part of the successful offeror/Lessor, to determine whether an RLP or Lease amendment is warranted.

- c. For lease actions (new, new/replacing, succeeding, or superseding) which have been awarded where the Lessor is obligated to obtain an ENERGY STAR® label within a certain timeframe, LCOs are authorized to provide Lessors with a time extension to obtain this label, commensurate with the period of the EPA certification suspension and review for the affected property category, provided the Lessor has demonstrated, to the satisfaction of the LCO, that such suspension delayed their ability to obtain the ENERGY STAR® label in a timely manner. See 6.a.II, above.
- d. For Automated Advanced Acquisition Program (AAAP) procurements, the Office of Leasing will post a similar RLP amendment to all RLPs posted on the AAAP platform (see Attachment 5). LCOs should implement these interim standards as part of their confirmation of ENERGY STAR® compliance, as outlined under Leasing Desk Guide Chapter 22.
- e. The following leasing provisions are not impacted by the ENERGY STAR® certification suspension:
 - i. Since the Portfolio Manager® tool continues to function, there is no impact to leases containing the paragraph "Utility Consumption Reporting." As outlined in this paragraph, Lessors are still required to provide monthly energy and water data in the Portfolio Manager® tool for leases over 10,000 rsf. Lease Administration Managers (LAM) will continue to track/monitor compliance with this UCR requirement during their annual inspections.
 - ii. The recently added provision in our ENERGY STAR® requirement (addressing the 2015 Energy Efficiency and Improvement Act of 2015) requires lessors without an ENERGY STAR® label to still report their ENERGY STAR® score. This reporting should continue. Lease Administration Managers (LAM) will continue to track/monitor the compliance/reporting of ENERGY STAR® scores during the annual inspection process.

Attachments:

Attachment 1 – Global Model RLP and Lease edits

Attachment 2 – Warehouse Model RLP and Lease edits

Attachment 3 – Simplified Model RLP and Lease edits

Attachment 4 – Small Model RLP and Lease edits

Attachment 5 – AAAP Model RLP Amendment (to be posted by the National Office of Leasing)

Cover Page for Attachments 1 through 5