

Green Legal News

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Green Building

Federal

The Senate failed to pass a cloture vote on a global warming bill that would have required major reductions in greenhouse gases. Supporters of the bill fell a dozen votes short of getting the 60 needed to end a filibuster on the measure and bring the bill up for a vote. The 48-36 vote failed to reach even a majority. Majority Leader Harry Reid was expected to pull the legislation, in all likelihood pushing the congressional debate over climate change to next year with a new Congress and a new president. The bill would have capped carbon dioxide coming from power plants, refineries and factories, with a target of cutting greenhouse gas emissions by 71 percent by mid-century.

On July 15, 2008, the Federal Trade Commission is holding a public meeting on the claims of "Green Building" by building owners and whether the FTC's Green Guides should be updated to conform with the new third party verification systems for Green Building. 73 FR 32662. Since the Commission last revised the Green Guides in 1998, there has been a significant increase in environmental claims concerning textiles, building products and construction. In the textile market, advertisements for green textiles, such as organic cotton, bamboo fiber clothing and bedding materials have increased. In the building market, green claims are prevalent for a wide range of building products including flooring, carpeting, paint, wallpaper, lighting, insulation and windows. In addition, builders are making claims that they build green. These green building claims often are based upon third-party certification programs, which have grown substantially since the last revision of the Guides. The nature of these textile and building product claims, consumer

understanding of the claims, and the marketers' substantiation of these claims all raise consumer protection issues that the FTC plans to explore at the workshop. Further, the FTC states: "The market for green homes and products is growing. A 2007 study found that the market for green homes is expected to rise from \$2 billion to \$20 billion over five years. This study also found that 40 percent of homeowners choose green products to remodel their homes. In response, today's market offers a myriad of green choices, including paint, carpeting, wallpaper, flooring, cabinetry, lighting, windows, insulation, appliances, as well as heating and cooling systems.



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"This growth provides benefits to consumers and businesses alike. However, it also poses challenges to marketers seeking to highlight the environmental attributes of their products. Claims that building products are "environmentally friendly" raise potential consumer perception and substantiation issues. Sellers and marketers are making green claims for a wide variety of products and are making claims not presently addressed in the Green Guides, including such terms as "sustainable" and "renewable." In addition, some

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marketers advise consumers to consider the life cycle of the building products before purchasing, e.g., whether the products are made of materials that are rapidly renewable or sustainable and whether the materials can be reused or recycled when the item wears out. How consumers interpret these claims and the substantiation necessary to support them are issues we plan to discuss at the workshop.

“In the green building market, many sellers use certification programs to highlight the environmentally friendly aspects of homes and buildings. There are several third-party certification programs that establish criteria for green homes. In particular, the FTC is asking the following questions:

- (1) How effective have the Guides' provisions regarding general environmental claims been in preventing consumer deception and providing business guidance with respect to environmental claims for building products and buildings? Please provide any evidence that supports your answer.
- (2) Has there been a change in consumer perception of environmental claims for building products and buildings since the Guides were revised? (a) If so, please describe this change and provide any evidence that supports your answer. (b) Should the Guides be revised to address any such change? If so, how?
- (3) Are there environmental claims for building products and buildings in the marketplace that are misleading? If so, please describe these claims and provide any evidence that supports your answer.
- (4) To the extent not addressed in your previous answers, please explain whether and how the Guides should be revised to prevent consumer deception, provide business guidance, and/or reduce costs that following the Guides may impose on businesses, particularly small businesses, with respect to environmental claims for building products and buildings.”

A bill was introduced that would require the Secretary of Energy to make loan guarantees for renovation projects that will result in a building achieving the United States Green Building Council Leadership in Energy and Environmental Design 'certified' level. HR 6218.

A bill was introduced to extend the solar tax credit, renewable production tax credit and energy efficient building deduction (which is also being proposed to increase). S. 3098.

Illinois

The Illinois State Board of Education has published regulations in conformance with the requirements of Section 5-40 of the Illinois School Construction Law requiring all grant applications for school projects to demonstrate LEED or Green Globe compliance. 23 Ill Adm. Code §151.30.

New Mexico

New Mexico passed statutes which provides for tax credits for individuals and corporations to offset the cost of sustainable buildings. The credits vary by level of LEED certification (Silver is lowest) and by square footage of the building. There are also variations based on whether the building is commercial or residential. §7-2-18.19. §7-2A-21.

The New Mexico Department of Taxation has issued regulations allowing corporate income tax credits for green building costs for buildings that meet or exceed LEED silver standards. §3.4.17.9

Oklahoma

Effective July 1, 2009, all buildings over 10,000 square feet that uses state funds for at least 50 percent of the project cost, for construction or renovation, must meet LEED certification standards. HB 3394.

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