



**BERGESON & CAMPBELL, P.C.**

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**MEMORANDUM**

Via E-Mail

DATE: September 25 2008

TO: Firm Clients and Friends

FROM: Bergeson & Campbell, P.C.

RE: EPA Publishes Final Rule Regarding Food Packaging Treated with a Pesticide

On September 24, 2008, the U.S. Environmental Protection Agency (EPA) published in the *Federal Register* a final rule regarding food packaging treated with a pesticide. EPA states that the final rule, which is effective immediately:

- Excepts food packaging materials (*e.g.*, paper and paperboard, coatings, adhesives, and polymers) from the definitions of “pesticide chemical” and “pesticide chemical residue” under Section 201(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), when such food packaging materials have been treated with a pesticide regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);
- Expands the scope of the current exception, established in 1998, which applies only to food packaging impregnated with an insect repellent -- one type of pesticide;
- As with the rule it amends, applies only to the food packaging materials themselves and does not otherwise limit EPA’s FFDCA jurisdiction over the pesticidal substances in or on such products or limit the Food and Drug Administration’s (FDA) jurisdiction over substances subject to FDA regulation as food additives; and
- Eliminates duplicative FFDCA jurisdiction and economizes federal government resources while continuing to protect human health and the environment.



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According to EPA, “[i]t is important to note that under [FIFRA], EPA will continue to regulate the food packaging as an inert ingredient of the pesticide product and regulate the pesticide active ingredient in the treated food packaging under both FIFRA and the FFDCA (except as otherwise provided by statute).”

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We hope this information is helpful. As always, please call if you have any questions.