For distribution and use only in the state of New York

FIFRA Sec. 24(c)
Special Local Need Label

Additional Restrictions and Limitations for use in New York State

This label expires on December 31, 2017 and must not be used or distributed after this date.

EPA Reg. No. 7969-310
EPA SLN No. NY-140004

Directions For Use

Refer to the Merivon® Xemium® brand fungicide main label, EPA Reg. No. 7969-310, for complete Directions For Use and all applicable restrictions and precautions. When following the instructions on this supplemental label, the user must have this label and the entire Merivon container label in possession at the time of pesticide application.

It is a violation of federal law to use this product in a manner inconsistent with its labeling.

This bulletin contains new or supplemental instructions for use of this product which DO NOT appear on the EPA-registered package label.

Restrictions and Limitations

- Not for sale, distribution, or use in Nassau and Suffolk counties in New York State.
- For use only by certified applicators

ACCEPTED FOR REGISTRATION

April 2, 2014

New York State Department of Environmental Conservation
Division of Materials Management
Pesticide Product Registration

Classified for “RESTRICTED USE” in New York State under 6NYCRR Part 326

DOC ID 538173
## Conditions of Sale and Warranty

The **Directions For Use** of this product reflect the opinion of experts based on field use and tests. The directions are believed to be reliable and must be followed carefully. However, it is impossible to eliminate all risks inherently associated with the use of this product. Crop injury, ineffectiveness or other unintended consequences may result because of such factors as weather conditions, presence of other materials, or use of the product in a manner inconsistent with its labeling, all of which are beyond the control of BASF CORPORATION (“BASF”) or the Seller. To the extent consistent with applicable law, all such risks shall be assumed by the Buyer.

BASF warrants that this product conforms to the chemical description on the label and is reasonably fit for the purposes referred to in the **Directions For Use**, subject to the inherent risks, referred to above.

**TO THE EXTENT CONSISTENT WITH APPLICABLE LAW, BASF MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY OF FITNESS OR MERCHANTABILITY OR ANY OTHER EXPRESS OR IMPLIED WARRANTY.**

**TO THE EXTENT CONSISTENT WITH APPLICABLE LAW, BUYER’S EXCLUSIVE REMEDY AND BASF’S EXCLUSIVE LIABILITY, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, SHALL BE LIMITED TO REPAYMENT OF THE PURCHASE PRICE OF THE PRODUCT.**

**TO THE EXTENT CONSISTENT WITH APPLICABLE LAW, BASF AND THE SELLER DISCLAIM ANY LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES RESULTING FROM THE USE OR HANDLING OF THIS PRODUCT.**

BASF and the Seller offer this product, and the Buyer and User accept it, subject to the foregoing **Conditions of Sale and Warranty** which may be varied only by agreement in writing signed by a duly authorized representative of BASF.

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**Merivon and Xemium** are registered trademark of **BASF**.

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**24(c) registrant:**
BASF Corporation
26 Davis Drive
Research Triangle Park, NC 27709

BASF
The Chemical Company
VIA E-MAIL

Ms. Judy Fersch
BASF Corporation
26 Davis Drive
Research Triangle Park, North Carolina 27709-3528

Dear Ms. Fersch:

Re: Registration of Special Local Need Labeling for Merivon Xemium Brand Fungicide (EPA Reg. No. 7969-310) Assigned SLN No. NY-140004

The New York State Department of Environmental Conservation (Department) has reviewed your application to register Special Local Need (SLN) labeling for Merivon Xemium Brand Fungicide (EPA Reg. No. 7969-310) in New York State. The product contains the active ingredients fluxapyroxad (chemical code: 138009) and pyraclostrobin (chemical code: 099100). Fluxapyroxad is currently undergoing review for the registration of a new active ingredient in New York State. The Department has received many letters of support for the SLN registration of Merivon Xemium Brand Fungicide in New York State, from fruit growers claiming increased resistance of apple scab and powdery mildew fungus to currently registered products.

Dr. Kerik Cox, Associate Professor of Plant Pathology and Plant-Microbe Biology at Cornell University, has provided justification for the immediate need to register Mervon Xemium Brand Fungicide for use on pome fruit and stone fruit in New York State. Dr. Cox strongly advocates the need for registration of this product which combines two different chemistries, the fluxapyroxad being of the Group 7 succinate dehydrogenase inhibitor (SDHI fungicides) and pyraclostrobin being of the Group 11 strobilurins or Quinone Outside Inhibitors (QoI) to inhibit pathogenic resistance.

Dr. Cox reports that Merivon in particular is well suited for application later in the spring when growers are trying to manage powdery mildew and later season diseases. The Group 7 Fungicides that are currently available to New York State apple growers are not well suited to later season applications. Merivon provides more effective knockdown of pathogens by combining two chemistries working by different mechanisms thus slowing pathogen resistance especially to Group 11 Fungicides. Further, Group 7 fungicides work via different mechanisms and can be rotated as well to limit resistance. A rotational strategy of different classes of fungicide and different Group 7 chemistries will ward off resistance by plant pathogens and allow New York State fruit growers to remain competitive in the marketplace.
The Department has initiated a technical review of the active ingredient and product formulation and has concerns that the use of this product may potentially impact groundwater in sensitive areas. Therefore, the Department will require that Merivon Xemium Brand Fungicide be prohibited from use in Nassau and Suffolk Counties which contains a sole source drinking water aquifer. However, the state registration of Merivon Xemium Brand Fungicide will not be completed in time to respond to fruit grower needs for this season. The Department is acknowledging that a FIFRA 24(c) Special Local Need (SLN) registration for Merivon Xemium Brand Fungicide is being issued because it has been demonstrated that there is an existing or imminent pest problem in New York State that cannot be controlled by an existing state registered product.

The Department hereby grants, under the authority of Section 24(c) of FIFRA, a Special Local Need registration for Merivon Xemium Brand Fungicide (EPA Reg. No. 7969-310) for use only on pome fruit and stone fruit. The Special Local Need labeling is assigned SLN No. NY-140004.

The SLN registration for Merivon Xemium Brand Fungicide (SLN No. NY-140004), as noted on the “restriction” column of the certificate, is classified as “restricted use” in New York State under rules and regulations 6NYCRR 326.23(e). As such, this product is restricted in its purchase, distribution, sale, use, and possession in New York State.

According to New York State Department of Environmental Conservation Regulations 6NYCRR 326.3(a): “It shall be unlawful for any person to distribute, sell, offer for sale, purchase for the purpose of resale, or possess for the purpose of resale, any restricted pesticide unless said person shall have applied for, and been issued a commercial permit.”

Should you require information to obtain a commercial permit, please contact the Pesticide Reporting & Certification Section, at (518) 402-8748.

The Pesticide Reporting Law (PRL) in the Environmental Conservation Law Article 33 Title 12 requires all certified commercial pesticide applicators to report information annually to the Department regarding each pesticide application they make. Commercial pesticide retailers are required to report all sales of restricted pesticide products and sales of general use pesticide products to private applicators for use in agricultural crop production. If no sales are made within New York State, a report still must be filed with the Department indicating this is the case.

If you need information relating to the Pesticide Reporting Law, or annual report forms, please visit the Department’s website at http://www.dec.ny.gov/chemical/27506.html or call (518) 402-8748.

The Certificate of Pesticide Registration and a copy of the New York State stamped “ACCEPTED” SLN labeling and container labeling “Accepted” for use only in conjunction with SLN labeling for Merivon Xemium Brand Fungicide (SLN No. NY-140004) are enclosed for your records.
The SLN labeling specifies the geographical use limitation for use of Merivon Xemium Brand Fungicide which must be followed in order for Merivon Xemium Brand Fungicide to be legally used in New York State. All precautionary statements, applicable use directions, use precautions and limitations of the labeling affixed to the Merivon Xemium Brand Fungicide container must also be followed.

Please be reminded that a copy of the accepted SLN label must be in the possession of the user at the time of pesticide application.

Please contact Ms. Paula McBath of my staff, at (518) 402-8768, with any questions.

Sincerely,

Jeanine M. Broughel
Chief, Product Registration and Pest Management Alternatives Section

Enclosures