

## 2/25/2009 Update on SO2 in wineries...Pesticide or Food additive?

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I had a long conversation with Kirk Shermer from Snowden Enterprises yesterday. Kirk says he can fill any SO2 order if he has the information about intended use, desired form, and size as described below. I'm writing up some notes on the various conversations I've had with different people, and will be asking DPR (California Department of Pesticide Regulation) and others to make sure I'm not wrong...but this is what I think is the current situation, at least in California.

This information has not yet been vetted by Kirk or by the DPR and may contain inaccuracies.

1. Pesticidal use of SO2 is controlled by the DPR and requires possession of the correct pesticide applicator's license.
2. Non-pesticidal use (that is, use as a food additive) of exactly the same chemical and form of chemical is NOT controlled by the DPR. This "wine additive" version (ie non-pesticidal) is not registered as a pesticide, and logically thus cannot be a "Restricted Use Pesticide". In other words, if it is not registered as a pesticide then it cannot be a pesticide, even if the exact same product with a different intended use is a pesticide. It is the intended usage of the chemical, not the chemical itself, which determines status, and thus who controls it and which laws apply.
3. If the primary intended use is not intended to be pesticidal but has pesticidal effects which are inherent to the chemical itself and its usage, then it is, legally, being used as a pesticide and is still controlled by the DPR and requires a license. For example, if SO2 is being used in barrels because it seems to help extract more vanilla and oak flavors after the SO2 treatments, it is still a pesticidal use because in the course of extracted those flavors the barrels are sanitized. You can't say you don't intend pesticidal use when no one can deny that it is an effect inherent to the use of SO2 on barrels.
4. Use of SO2 gas on grapes to prevent mold during railcar transport is Pesticidal; this is not a food additive and it is not controlled by 27 CFR wine laws.

(Note: the "best" argument I've seen against referring to barrel gassing as "pesticidal" use of SO2 relies on the rather tenuous legal definition of barrels as "non taxable food additives" in the state of California: I don't think this argument has gained any traction with the DPR. I asked the DPR ombudsperson and the local ag offices about wine barrels as legal flavor additives, but they didn't bite.)

To order the correct cylinder of SO2 for winery use:

- 1) Determine the intended use of the SO2...pesticidal (used for sanitizing barrels or other materials) or food adjunct (ie adding to juice or wine).
  - a) If pesticidal, it must be labeled as such and only sold to those with the correct pesticide applicator's license. Use of the pesticide is controlled by the CA DPR and is listed as a Federally Restricted Pesticide. This container cannot be used as a food additive. Its usage must be tracked and reported monthly to the DPR/county agriculture department.
  - b) If non-pesticidal, it will NOT have the pesticide label, and it can be purchased by anyone. Its use is regulated by OSHA and the TTB for wine/juice use. It cannot be used as a pesticide. Its usage does not get reported monthly.
- 2) Determine the desired form of SO2...pure liquid or gas. If the container has a siphon tube, it will deliver pure 100% liquid SO2 from the bottom of the container; if it has an eductor tube it will deliver SO2 gas from the top of the container.
- 3) Determine the desired amount in weight (ie 2000 lg, 150 lb, 25 lb, etc).
- 4) If a cylinder matching the above parameters is available, Purchase...if not, place a special order.