

ALMOND BOARD OF CALIFORNIA

20__ - 20__

AGENCY AGREEMENT - DISPOSITION OF RESERVE
TO NONCOMPETITIVE OUTLETS

REVISED 3/6/00

THIS AGREEMENT, made this _____ day of _____, _____, between the Almond Board of California, hereinafter referred to as "Board", and _____ a handler of almonds, hereinafter referred to as "Agent", WITNESSETH that:

WHEREAS, §981.66 of the Order of the Secretary of Agriculture regulating the handling of almonds grown in California, hereinafter referred to as the "Order", authorizes the Board to dispose of reserve almonds in noncompetitive outlets; and

WHEREAS, §981.67 of the Order permits handlers of almonds to become agents of the Board in such disposal; and

WHEREAS, Agent as a handler of almonds is subject to the provisions of the Order and has requested authority to act as agent of the Board in the disposition of reserve of almonds; and

WHEREAS, timely information on Agent's intentions to dispose and dispositions of almonds into noncompetitive outlets is necessary for effective administration of the reserve and for future marketing policy determination of the Board;

NOW THEREFORE IT IS AGREED BY AND BETWEEN the parties as follows:

1. General

- (a) Subject to the provisions of §981.66 of the Order and the regulations applicable to the crop year, Agent is hereby authorized on behalf of the Board to dispose of reserve almonds held or acquired by Agent and which are subject to the Board's disposal authority. Such disposition shall conform with such inspection, certification, and other disposition terms and conditions as the Board may herein prescribe or from time to time specify, and shall be subject to the limitations placed on the Board's disposal authority for the crop year.
- (b) Agent agrees that there shall be no obligation on the part of the Board with respect to any expenses, commitments, or damages arising out of any agreement between Agent and other person relative to the disposition of reserve almonds or of salable almonds for which credit against a reserve obligation is desired.
- (c) Board agrees that if at any time the dispositions by agent exceed agent's reserve obligation and the excess must be classified as salable, a portion or all such excess may be credited as reserve to cover an increase in Agent's reserve obligation or a transfer to another handler but only if the disposition of such salable tonnage has complied with the requirements for reserve disposition.
- (d) Agent agrees that no reserve almonds will be sold or delivered to any outlets or geographic locations where Board representatives or Federal-State Inspection Service or Canadian government officials would be restricted, for any reason, from verifying reserve almonds, products made from reserve almonds or records pertaining to reserve dispositions.

2. Geographic Limitations/Other Safeguards

Agent agrees that all reserve almonds shall be disposed of as follows:

- (a) Almonds for human consumption as almonds, almond butter, school lunch programs, etc., shall be manufactured and/or packed in the 48 contiguous United States, however, almonds may be shipped to Canada for manufacturing into almond butter.
- (b) Almonds used in the manufacture of almond oil shall be crushed only in California. Sale of such almonds shall be direct from agent to oil manufacturer.
- (c) Almonds for poultry or animal feed shall be sold only to feed manufacturers or commercial feed distributors licensed by California Department of Food and Agriculture, Division of Inspection Services, Agricultural Commodities and Regulatory Services and currently hold valid licenses. Such almonds shall be ground under the direct supervision of the Almond Board, at Board's option.

- (d) Almonds sold to school lunch and other governmental uses, and to charitable institutions for charitable purposes shall be sold for use in the United States.

3. Eligible Outlets

- (a) School Lunch and other Governmental Uses

Individual handlers may participate on a competitive bid basis if USDA implements a school purchase program. In addition, handlers may work with local school districts, colleges, and universities to promote the sale of reserve almonds in the school lunch program at State and National levels.

- (b) Almond oil

- (c) Almond butter

Almond butter is defined in §981.466 as a comminuted food product prepared by grinding shelled or blanched almonds into a homogeneous plastic or semi-plastic mass or liquid having very few particles larger than 1/16 inch in any dimension. To produce chunky style almond butter, almond chunks or pieces may be added up to a maximum of 25% by weight of the finished product. The size of the almond pieces used to make chunky style almond butter may not exceed 5/16 inch in any dimension.

- (d) Charitable Institutions for Charitable Purposes

Eligible organizations are as described in §170(c) of the Internal Revenue Service Code.

- (e) Certified Organic Almonds

Almonds grown and certified as organic, delivered to handlers and sold as certified organic almonds, would satisfy reserve requirements for the 1999/2000 crop year. These almonds must be certified by an organic certification organization currently registered with the California Department of Food and Agriculture, or registered with the California Department of Food and Agriculture and complying with California Health and Safety Code §26569.11 to §26569.17. Those handlers wishing to dispose of reserve through this outlet must provide to the Board proof that all almonds sold as part of their reserve meet the requirements of certified organic almonds. They would also have to provide documentation to the Board giving the name, address, and phone number of the buyer.

Handlers transferring or receiving transfers of certified organic almonds via interhandler transfers may only conduct such transactions with handlers that handle only certified organically grown almonds.

- (1) To be eligible to utilize this as a disposition outlet, the agent must handle only certified organically grown almonds.
- (2) Transfer or receipt of reserve obligation or reserve credits accumulated by disposition through this outlet is limited to handlers identified in 3(e)(1) above.

(f) Other Approved Reserve Outlets

As specified in §981.66, additional noncompetitive outlets may be added by the Board as developed.

4. Grade Requirements for Disposition

- (a) Reserve almonds used for human consumption purposes as almonds or almond butter shall be U.S No. 1 pieces or better as defined in U.S Standards for Grades for Shelled Almonds (7 C.F.R. 51.2105 – 51.2132).

BASIC REQUIREMENTS

- (1) Shall not contain serious damage by decay, rancidity, insect injury, or mold.
- (2) Shall not contain foreign material.
- (3) Blanched whole almonds and pieces of almonds shall not be damaged by adhering skin. Whole almonds shall be damaged when pellicle is adhering to an area more than ¼ inch in the aggregate and pieces shall be damaged when pellicle is adhering to an area of more than 10 percent of the total surface area of the piece.
- (4) Shall be well dried and clean meaning kernels shall be firm and brittle, not pliable or leathery, and shall be practically free from dirt or other foreign substances exclusive of salt, flavorings or other such additives.
- (5) Shall be free from the following other defects:
 - (A) Gum, when a film of shiny resinous-appearing substance covers more than ¼" in diameter;
 - (B) Shriveling, when a kernel is excessively thin for its size or when materially withered, shrunken, leathery, tough or only partially developed, provided that partially developed kernels are not

considered defects if more than $\frac{3}{4}$ of the pellicle is filled with meat;

- (C) Brown spot on the kernel, either single or multiple, when the affected area aggregates more than a circle $\frac{1}{8}$ inch diameter.
- (6) Minimum size shall be $\frac{8}{64}$ inch in diameter.

TOLERANCES

- (1) 3% for serious damage by decay, rancidity, insect injury, or mold.
 - (2) 0.2% for foreign material.
 - (3) 3% for adhering skin.
 - (4) 2% for kernels or pieces which are not well dried, not clean or are affected by other defects.
 - (5) 5% for undersize kernels or pieces.
- (b) Reserve almonds used for almond oil or poultry or animal feed shall receive credit for only the percent of edible kernels contained in the delivery subject to minimum edible kernel content as provided for in §7(a) of this Agreement.

5. Inspection

All reserve almonds shall be inspected by the Federal-State Inspection Service at Agent's expense as follows:

(a) Almond butter

(1) Raw product

All reserve almonds to be used in the manufacture of almond butter shall be certified as to quality by the Federal-State Inspection Service. This may be either lot inspection or in-line inspection. Almonds from one lot certified as U.S. grade may be delivered in separate lots to one or more manufacturers provided:

- (A) Each delivery shall be accompanied by a copy of the inspection certificate and ABC Form 13/14.

- (B) At manufacturer's premises the Federal or Federal-State Inspection Service shall certify that the almonds were received and made into the product in the manner specified in §5(f) of this Agreement.
- (2) **Blanched and manufactured almonds.**
Grading standards have been developed for blanched and manufactured almonds which will allow a handler to use manufactured stock already in inventory, providing they are certified by the Federal-State Inspection Service in accordance with the standards as specified in §4(a).
- (3) **Shrinkage factor.**
There may be a difference (shrinkage) between actual kernel weight of almonds received for manufacture into almond butter and the actual weight of finished product. A loss factor of 6% will be allowed.
- (b) Reserve almonds sold to the government for USDA school lunch programs and for other governmental uses shall meet the inspection criteria set forth in terms of the respective government bid announcement.
- (c) Reserve almonds sold to charitable institutions for charitable purposes shall be certified as to quality by the Federal-State Inspection Service, by either lot or in-line inspection prior to delivery. Each delivery shall be accompanied by an ABC Form 13/14.
- (d) Almond oil – see §7(a) and (b) below.
- (e) Livestock and poultry feed – see §7(a) and (b) below.
- (f) **Federal or Federal-State Inspection Certification.**
In order to complete the certification required by §§5(a)(1) and 5(b) of this Agreement, the Federal or Federal-State Inspection Service must:
- (1) visit the packer or manufacturer's facility following receipt of almonds and before processing to verify that the quantity of almonds reported on ABC Form 14 was received,
- (2) visit the packer or manufacturer's facility after processing to verify the quantity of finished product which the packer or manufacturer certified on ABC Form 14 was made from the product received and observed under §5(f)(1), and
- (3) issue a certificate to the packer or manufacturer attesting to what was observed under §§5(f)(1) and 5(f)(2).

(g) **Canadian certification procedure for almond butter.**

- (1) **The Canadian government shall maintain a list of manufacturers of almond butter in Canada and shall certify such manufacturers on a quarterly basis by issuing a certificate of approval and provide that list to the USDA.**
- (2) **Only shipments to approved manufacturers will be eligible for reserve credit.**
- (3) **Approved manufacturers are required to have an independent chartered accountant audit their records to certify that reserve almonds were processed into almond butter.**
- (4) **The independent chartered accountant will conduct a physical examination of the manufacturers' inventory both before and after processing to verify that the quantity of almonds reported on ABC Form 14 was received and to verify that the quantity of finished product which the manufacturer certified on ABC Form 14 was made from the product received and observed.**
- (5) **Approved manufacturers are required to complete the Manufacturer Certification on the ABC Form 14 (which accompanies the shipment).**
- (6) **Approved manufacturers are required to attach both the copy of the quarterly certificate of approval issued by the Tariffs and Market Access Division (EAT), Department of Foreign Affairs and International Trade Canada and a copy of the chartered accountant's verification of quantity of almonds received and manufactured into butter to the ABC Form 13/14 (which accompanies the shipment) and submit them to the Almond Board.**

6. Minimum Prices

If established by the Secretary of Agriculture, minimum prices will apply to reserve almonds diverted to eligible outlets except for almonds diverted to oil, feed, or charities. Agents will be notified of any such minimum price schedule established.

7. Dual Credit (Reserve and inedibles)

- (a) A lot of reserve almonds delivered to nonhuman consumption outlets must contain a minimum of 30% edible kernels in order to receive credit against a reserve obligation. Each handler shall cause to be determined through the Federal-State Inspection Service, and at handler expense, the percentage of edible and inedible kernels in each lot at the time of disposition. Such inspected and certified lots will permit a handler to apply to the Board for full credit against his reserve obligation

credit to nonhuman consumption outlets, reserve percentages are reduced, the handler has the option to apply any excess reserve credit to his inedible obligation.

Examples: All for shipment to nonhuman consumption outlets;

- (1) A lot containing 30% edible kernels or more and up to 70% but not less than 50% inedible kernels is eligible to receive both reserve and inedible disposition credit according to the percentages in each outlet.
 - (2) A lot containing 20% edible kernels and 9% inedible kernels – 29% total meats – is not eligible to receive reserve credit for the 20% edible meats and no inedible credit.
 - (3) A lot containing 19% edible kernels and 31% inedible kernels – 50% total meats – is eligible to receive inedible disposition credit for the 50% meat content and no reserve credit.
- (b) All almonds shall be inspected and certified by the inspection agency at the time of disposition into an eligible outlet.

8. Disposition

Agent may dispose of authorized quantities and qualities of reserve almonds either directly or through another agent following approval by the Board. All reserve dispositions made to nonhuman consumption outlets pursuant to §§2(b) and (c) and 7(a) and (b) of this Agreement shall be made, at the Board's option, under direct supervision of the Board. The Board shall be notified by the handler at least 72 hours prior to disposition. Prior to making any disposition of any reserve almonds, agent shall notify Board of his intentions to dispose of reserve almonds on ABC Form 13.

Any of Agent's reserve almonds remaining unsold on December 31, 2000, shall be disposed of by the Board as soon as practicable through the most readily available reserve outlets.

ABC Form 13 shall be accepted as evidence of a reserve sale and Agent, manufacturer or user shall submit supporting documentation with ABC Form 14 on completion of disposition of reserve almonds. Example: For sales of reserve almonds for manufacture of almond butter, manufacturer will be required to complete processing of the reserve almonds into butter so that the handler may file ABC Form 14.

9. Credit for Reserve Disposition

- (a) Agent will be credited with disposition in reserve outlets on compliance with any minimum prices as identified in §6 as recommended by the Board and established by the Secretary of Agriculture and on filing with the Board an executed ABC Form 14, completion of disposition of reserve almonds, together with supporting documentation as follows:

- (1) For shipment to authorized noncompetitive outlets – the inspection certificate(s) on the almonds shipped.
- (2) For conversion to an authorized noncompetitive product – the inspection certificate(s) on the almonds diverted. If agent did not do the converting, the ABC Form 14 shall also be supported by a manufacturer's certification and a Federal or Federal-State Inspection Service certification.
- (3) **For Canadian shipments to almond butter, the quarterly certificate of approval and a copy of the chartered accountant's verification.**

10. Agent, by signing this Agreement, certifies that:

- (a) When almonds are to be used for almond butter, school lunch or other governmental uses, or other applicable noncompetitive outlets, he or she will comply with any minimum prices of almonds recommended by the Board and established by the Secretary; and

11. This Agency Agreement shall apply to the 1999-2000 crop year reserve almonds disposed of by handlers beginning on August 1, 1999, and shall remain in effect until December 31, 2000, or such later date as the Secretary of Agriculture may establish pursuant to §981.66(c) of the order: Provided, That Agent may terminate this agency agreement as of April 1, 2000, by written notice given on or before March 20, 2000.

IN WITNESS WHEREOF, Agent has subscribed his name through an authorized person and, if a corporation, has subscribed its corporate name and its corporate seal, and the Board has subscribed its name through its duly authorized President and Chief Executive Officer.

Date

Agent

By

Title

ALMOND BOARD OF CALIFORNIA

Rodger Wasson
President and Chief Executive Officer

In response to the Paperwork Reduction Act, OMB clearance has been granted for this form. OMB requires that the following statements be shown on ABC Form 12: "No handler shall dispose of reserve almonds to noncompetitive outlets as an agent of the Board unless a completed Agency Agreement is received (7 U.S.C. 608(d), 7 C.F.R. 981.66, 7 C.F.R. 981.67, 7 C.F.R. 981.467)."

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0178. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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