

ALMOND BOARD OF CALIFORNIA
1150 9th Street, Suite 1500
Modesto, CA 95354
Tel: (209) 549-8262 Fax: (209) 550-5494

**AGENCY AGREEMENT
DISPOSITION OF RESERVE TO NON-COMPETITIVE OUTLETS**

20__ - 20__

This Agreement, made this _____ day of _____, 20__, between the Almond Board of California (ABC) and _____, a handler of almonds (Agent; collectively the Parties), witnesseth that:

WHEREAS section 981.66 of the Marketing Order of the Secretary of Agriculture regulating the handling of almonds grown in California (Order), authorizes the ABC to dispose of reserve almonds in non-competitive outlets; and

WHEREAS section 981.67 of the Order permits handlers of almonds to become agents of the ABC 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 ABC in the disposition of the reserve of almonds; and

WHEREAS timely information on Agent's intentions to dispose, and dispositions of, almonds into non-competitive outlets is necessary for the effective administration of the reserve and for future marketing policy determinations of the ABC;

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 ABC to dispose of reserve almonds held or acquired by Agent and which are subject to the ABC's disposal authority. Such disposition shall conform with such inspection, certification, and other disposition terms and conditions as the ABC may herein prescribe or from time to time specify, and shall be subject to the limitations placed on the ABC's disposal authority for the crop year.
- b. Agent agrees that there shall be no obligation on the part of the ABC 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.

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.

- c. ABC 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 dispositions.
- d. Agent agrees that no reserve almonds will be sold or delivered to any outlets or geographic locations where ABC 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

- a. Agent agrees that all reserve almonds shall be disposed of as follows:
 - i. Almonds for human consumption as almonds, almond butter, school lunch programs, etc., shall be manufactured and/or packed in the 48 contiguous United States. Almonds may, however, be shipped to Canada for manufacturing into almond butter.
 - ii. 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.
 - iii. 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 ABC at ABC's option.
 - iv. 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
 - i. Individual handlers may participate in a non-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
 - i. 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 in any dimension.

d. Charitable Institutions for Charitable Purposes

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

e. Certified Organic Almonds

- i. 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 Health and Safety Code § 26569.11 §26569.17. Those handlers wishing to dispose of reserve through this outlet must provide to ABC 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 ABC giving the name, address, and phone number of the buyer.
- ii. Handlers transferring or receiving transfers of certified organic almonds via inter-handler 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, 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 paragraph 3(e)(i) above.

f. Other Approved Reserve Outlets

- i. As specified in §981.66 of the Order, additional non-competitive outlets may be added by ABC 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

- i. Shall not contain serious damage by decay, rancidity, insect injury, or mold.
- ii. Shall not contain foreign material.

- iii. 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 $\frac{1}{4}$ 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.
- iv. 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.
- v. Shall be free from the following other defects:
 - 1. Gum, when a film of shiny resinous-appearing substance covers more than $\frac{1}{4}$ inch in diameter;
 - 2. 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;
 - 3. Brown spot on the kernel, either single or multiple, when the affected area aggregates more than a circle $\frac{1}{8}$ inch diameter.
- vi. Minimum size shall be $\frac{8}{64}$ inch in diameter.

Tolerances

- i. 3% for serious damage by decay, rancidity, insect injury, or mold.
 - ii. 0.2% for foreign material.
 - iii. 3% for adhering skin.
 - iv. 2% for kernels or pieces that are not well dried, not clean or are affected by other defects.
 - v. 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

- a. All reserve almonds shall be inspected by the Federal-State Inspection Service at Agent's expense as follows:
- b. Almond butter
 - i. 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:

1. Each delivery shall be accompanied by a copy of the inspection certificate and AFC forms 13 and 14.
2. At manufacturer's premises, the Federal or Federal-State Inspection Service shall certify that the almonds were received and made into the produce in the manner specified in § 5(f) of this Agreement.

ii. 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).

iii. Shrinkage factor

There may be a difference (shrinkage) between the actual kernel weight of almonds received for manufacture into almond butter and the actual weight of the finished product. A loss factor of 6% will be allowed.

- c. 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.
- d. 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 forms ABC 13 and 14.
- e. Almond oil
See paragraphs 7(a) and (b) below.
- f. Livestock and poultry feed
See paragraphs 7(a) and (b) below.
- g. Federal or Federal-State Inspection Certification.

In order to complete the certification required by paragraphs 5(a)(1) and 5(b) of this Agreement, the Federal or Federal-State Inspection Service must:

- i. Visit the packer or manufacturer's facility following receipt of almonds and before processing, to verify that the quantity of almonds reported on form ABC-14 was received;
- ii. Visit the packer or manufacturer's facility after processing to verify the quantity of finished product that the packer or manufacturer certified on form ABC-14

was made from the product received and observed under paragraph 5(f)(1) of this Agreement; and

- iii. Issue a certificate to the packer or manufacturer attesting to what was observed under paragraphs 5(f)(1) and 5(f)(2) of this Agreement.

h. Canadian certification procedure for almond butter.

- i. 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 providing that to the USDA.
- ii. Only shipments to approved manufacturers will be eligible for reserve credit.
- iii. Approved manufacturers are required to have an independent chartered accountant audit their record to certify that reserve almonds were processed into almond butter.
- iv. The independent chartered accountant will conduct a physical examination of the manufacturer's inventory both before and after processing to verify that the quantity of almonds reported on form ABC-14 was received and to verify that the quantity of finished product that the manufacturer certified on form ABC-14 was made from the product received and observed.
- v. Approved manufacturers are required to complete the Manufacturer Certification on form ABC-14, which accompanies the shipment.
- vi. 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 the quantity of almonds received and manufactured into almond butter per forms ABC-13 and 14, which accompany the shipment, and submit them to the ABC.

6. Minimum Prices

- a. 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. Agent will be notified of any such minimum price schedule established.

7. Dual Credit (Reserve and Inedibles)

- a. A lot of reserve almonds delivered to non-human 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 the handler's 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 ABC for full credit against his reserve obligation credit to non-human consumption outlets. Reserve percentages will be reduced, and the handler will have the option to apply any excess reserve credit to his inedible obligation.

Examples: All for shipment to non-human 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

- a. Agent may dispose of authorized quantities and qualities of reserve almonds either directly or through another agent following ABC approval. All reserve dispositions made to non-human consumption outlets pursuant to paragraphs 2(b) and (c), and 7(a) and (b) of this Agreement shall be made, at ABC's option, under direct supervision of ABC. ABC 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 ABC of his intentions to dispose of reserve almonds on form ABC-13.
- b. Any of Agent's reserve almonds remaining unsold on _____, 20____, shall be disposed of by ABC as soon as practicable through the most readily available reserve outlets.
- c. Form ABC-13 shall be accepted as evidence of a reserve sale, and Agent, manufacturer, or user shall submit supporting documentation with form ABC-14 on completion of the disposition of reserve almonds. For example, sales of reserve almonds for manufacture into almond butter will require the manufacturer to complete the processing of the reserve almonds into butter so that the handler may file form ABC-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 paragraph 6 herein, as recommended by ABC and established by the Secretary of Agriculture, and on filing with ABC an executed form ABC-14, the completion of the disposition of reserve almonds, together with supporting documentation as follows:
 - i. For shipment to authorized non-competitive outlets, the inspection certificate(s) on the almonds shipped.
 - ii. For conversion to an authorized non-competitive product, the inspection certificate(s) on the almonds diverted. If Agent did not do the converting, form

ABC-14 shall also be supported by a manufacturer’s certification and a Federal or Federal-State Inspection Service certification.

- iii. 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 non-competitive outlets, he or she shall comply with any minimum prices of almonds recommended by ABC and established by the Secretary of Agriculture.

11. This Agency Agreement shall apply to the 20__ - 20__ crop year reserve almonds disposed of by handlers beginning on _____, 20__, and shall remain in effect until _____, 20__, 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 Agreement as of _____, 20__ by giving written notice on or before _____, 20__.

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

Date

Agent

By

Title

ALMOND BOARD OF CALIFORNIA

President and Chief Executive Officer

No handler shall dispose of reserve almonds to non-competitive outlets as an agent of the ABC unless a completed Agency Agreement has been received. (7 U.S.C. 608(d), 7 C.F.R. 981.66, 981.67, 981.467)

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA’s TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

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