

Art. 3 of the WBF Ordinance on the Release of Compulsory Stocks of Protein Feed (SR 531.211.11): Release procedure

Function and place in the system of economic national supply

Art. 3 is the procedural core of the ordinance. A compulsory stockholder may apply for release of its compulsory stock of protein feed only if two conditions are met: it lacks sufficient free stocks, and it cannot procure the missing quantity. The application must state reasons. The Fachbereich Ernährung (food division) of the economic national supply organisation then decides by ruling (Verfügung) and fixes both the released quantity and the duration of the release **Art. 3 (SR 531.211.11)**.

The provision is the last link in a chain of delegations:

- Statute. Art. 31 para. 2 lit. f LVG allows the Federal Council to issue rules on "die Freigabe von Pflichtlagern und anderen Vorräten" ("the release of compulsory stocks and other reserves"). These rules are part of time-limited economic intervention measures that may be taken only in an immediately threatening or existing severe shortage **Art. 31 NESA**.
- Advance delegation. Under Art. 57 para. 3 LVG, the Federal Council may delegate the power to release compulsory stocks to the WBF in advance, in order to remedy severe shortages **Art. 57 NESA**. The 2014 dispatch explains the reason: delegating the release power ahead of a crisis speeds up decision-making **BBI 2014 7119**.
- Federal Council ordinance. Art. 21 para. 1 VWLV authorises the WBF to order release in a threatening or existing severe shortage. Under Art. 21 para. 2 VWLV, the WBF may make release subject to conditions and attach technical or administrative requirements, after hearing the economic organisations concerned **Art. 21 VWLV**.
- Departmental ordinance. The ordinance rests expressly on Art. 21 para. 1 VWLV **Preamble (SR 531.211.11)**. It applies to the protein carriers listed in its annex **Art. 1 (SR 531.211.11)**.

The purpose of the release follows from the system of the Act. Compulsory stocks are mobilised when a crisis prevents demand for essential goods from being met through the market **BBI 2014 7119**. Outside a release, a compulsory stock may be changed or dissolved only with the written consent of the BWL. Art. 13 para. 1 LVG expressly reserves release under Art. 31 para. 2 lit. f LVG from that rule **Art. 13 NESA**. Art. 3 therefore opens a separate crisis channel alongside the ordinary consent regime. It does not replace that regime.

Art. 3 has applied in its original wording since the ordinance entered into force on 15 October 2026 **Art. 9 (SR 531.211.11)**. The ordinance contains no expiry date **Art. 9 (SR 531.211.11)**. This matters because Art. 31 para. 1 LVG authorises only "zeitlich begrenzte" ("time-limited") intervention measures **Art. 31 NESA**. Within the individual case, this limit is met by the duration fixed under para. 2 (see below on quantity and duration).

A revision of the LVG adopted on 19 June 2026 will change the statutory basis once it enters into force. The Federal Council

determines the date of entry into force **BBI 2026 1771**. Under the revision:

- release moves to Art. 32 para. 1 lit. b LVG;
- the new Art. 31 para. 3 LVG provides that measures "sind zu befristen" ("must be time-limited");
- the Federal Council may act when a severe shortage threatens to occur within a few months **BBI 2026 1771**.

Until then, the provisions in force cited in this commentary remain decisive. In parliament, the release of compulsory stocks was named as the first of the crisis measures the revised Act makes available **AB 2026 N 552**.

Who may apply: the compulsory stockholder

Only a Pflichtlagerhalter (compulsory stockholder) is entitled to apply. That status rests on a contract. The BWL concludes stockholding contracts with the undertakings concerned. If no contract is concluded within a reasonable time, the BWL orders its conclusion by ruling **Art. 7 NESA**. Undertakings that import, produce, process or first place essential goods on the market are obliged to conclude a contract. The BWL may exempt undertakings whose contribution to security of supply would be marginal **Art. 8 NESA**.

For feed, the ordinance on compulsory stockholding of food and feed defines who must hold stocks: whoever imports feed listed in Annex 5 no. 2, or first places it on the domestic market as a processor. Operators below the threshold quantity in Annex 5 no. 3 are exempt from the duty to conclude a contract **Art. 10 531.215.11**. Protein carriers for feed purposes are among the goods subject to compulsory stockholding **Art. 1 531.215.11**.

Three limits on the circle of applicants follow from these provisions:

- Importers who pay instead of storing. A general import permit may also be granted to importers who undertake only to make the financial contributions that a stockholding contract would entail, rather than to conclude such a contract **Art. 2 531.215.11**. These importers hold no compulsory stock. They therefore have nothing that could be released under Art. 3.
- Ownership and third parties. Compulsory stock goods must be owned by the stockholder. Goods in which third parties have ownership claims may be held only if all entitled persons accept joint and several liability towards the Confederation **Art. 12 NESA**. Where the storage duty is transferred to a third party, the BWL concludes a separate contract with that third party **Art. 11 NESA**. In that case, the third party is the stockholder for the quantities covered by its contract.
- Warehouse keepers. A warehouse keeper that merely stores goods for the stockholder is not a party to the contract. The Federal Supreme Court held that only the stockholder is bound by the stockholding contract, "nicht allfällige Dritte, die für ihn die Einlagerung übernehmen" ("not any third parties who carry out the storage for it") **BGE 103 Ib 335**. By the same reasoning, the warehouse keeper cannot apply for release in its own name.

The Federal Administrative Court confirmed that the parties to stockholding contracts are the BWL and the stockholder **b-1483-2019**.

Substantive conditions of the application

Insufficient free stocks and inability to procure

The two conditions in para. 1 are cumulative, and together they express the subsidiarity of release.

The first condition is that the stockholder lacks sufficient "freie Vorräte" ("free stocks"). The Italian text speaks of "scorte d'esercizio" ("operating stocks") **Art. 3 (SR 531.211.11)**. This points to the stocks the undertaking holds outside its compulsory stock. The compulsory stock itself does not count as free stock.

The second condition is that the stockholder cannot procure the missing quantity. The German and Italian texts refer to procuring the quantity ("die fehlende Menge zu beschaffen"; "reperire la quantità mancante"). The French text is broader: the stockholder "n'arrive pas à compenser ce déficit par d'autres moyens" ("is unable to make good the shortfall by other means") **Art. 3 (SR 531.211.11)**. On the French reading, the authority could also ask whether the shortfall can be covered other than by buying, for example by substitution or by reorganising deliveries.

The broader French wording sits comfortably with the statutory concept of release as a measure of last resort, available only where the market can no longer meet demand **BBI 2014 7119 Art. 31 NESA**.

Reasons, proof and cooperation

The requirement "Das Gesuch ist zu begründen" ("the application must state reasons") **Art. 3 (SR 531.211.11)** operates within the general rules of federal administrative procedure:

- The authority establishes the facts ex officio **Art. 12 APA**.
- In proceedings the party has initiated by its own request, that party must cooperate in establishing the facts. The authority need not enter into the request if the party refuses the necessary and reasonable cooperation. Under para. 1bis, the duty to cooperate does not extend to the surrender of correspondence with a lawyer **Art. 13 APA**.

In practice, the applicant must substantiate and document three points:

- its free stocks;
- its customers' requirements;
- its unsuccessful attempts to obtain goods on the market.

The holder must also report stocks and changes in stocks weekly (see the section on duties after release) **Art. 6 (SR 531.211.11)**. Those reports give the Fachbereich an independent basis on which to check the application.

Drawing on the stock without a release

Absent a release ruling, the stock remains bound. A decision published in VPB, concerning a contractual penalty for a stock shortfall, states: "Eine nichtbewilligte Unterschreitung der Pflichtlagermenge stellt daher eine Verletzung der primären Vertragspflicht des Lagerhalters dar" ("an unauthorised shortfall below the compulsory stock quantity therefore constitutes a breach of the stockholder's primary contractual duty") **150003983**.

The same decision held that a shortfall must be judged relative to the total agreed stock quantity, and that a shortfall of more than 10 per cent can no longer be regarded as minor **150003983**. It also called for a graduated response (a warning and a period to cure) in the case of a single, non-serious breach **150003983**. The decision does not concern release. It shows, however, the legal risk of withdrawing goods before a release ruling, and before the contract adjustment required by Art. 4, has been obtained.

Competent authority and form of the decision

The Fachbereich Ernährung as deciding body

Para. 2 gives the decision to the Fachbereich Ernährung, and Art. 8 makes the BWL and the Fachbereich jointly responsible for enforcing the ordinance **Art. 8 (SR 531.211.11)**. The Fachbereich Ernährung is responsible for food and agricultural means of production **Art. 7 VWLV**. Since 1 November 2025, the Fachbereiche have also been responsible for enforcing rules and measures of economic national supply "sofern ihnen dieser übertragen wurde" ("where this has been delegated to them") **Art. 7 VWLV**.

The BWL issues rulings only where the Act and its implementing provisions have not assigned this task to the economic organisations or the Fachbereiche **Art. 6 VWLV**. On the statutory level, the Federal Council may assign tasks to the Fachbereiche in the context of measures under Arts. 31-33 LVG and may empower them to issue rulings **Art. 58b NESA**.

Tension with Art. 21 para. 3 VWLV

The allocation in Art. 3 para. 2 departs from the wording of the Federal Council ordinance. Art. 21 para. 3 VWLV provides that the BWL fixes the release in the individual case "im Einvernehmen mit den Pflichtlagerhaltern" ("in agreement with the stockholders") and involves the economic organisations concerned **Art. 21 VWLV**. The departmental ordinance instead assigns the individual decision to the Fachbereich and requires a unilateral ruling.

Two points reconcile the provisions:

- The departmental ordinance qualifies as an implementing provision within the meaning of Art. 6 para. 1 lit. c VWLV, which can assign rulings to the Fachbereiche **Art. 6 VWLV**.
- Agreement with the stockholder is in substance preserved, because a release presupposes the stockholder's application and the contract must be adjusted with the BWL before goods are withdrawn **Art. 4 (SR 531.211.11)**.

Art. 58b para. 5 LVG, however, names the Federal Council as the body that empowers the Fachbereiche to issue rulings **Art. 58b NESA**. This raises the question whether a departmental ordinance may validly confer that power. A stockholder whose application is refused could raise this point in an objection or appeal.

Formal requirements of the ruling

The decision is a ruling, and the general requirements apply. It must be designated as a ruling, state reasons and include instructions on available remedies. These instructions must name the remedy, the competent body and the time limit. The authority may dispense with reasons and instructions only if it grants the request in full and no party asks for reasons **Art. 35 APA**.

A partial release or a shorter duration than requested is not a full grant. Such a ruling must therefore state its reasons. If the ruling is to be criminally enforceable, it must also carry an express warning of the penalty (see the section on criminal sanctions) **Art. 49 NESA**.

Fixing quantity and duration

The Fachbereich fixes "die freigegebene Menge und die Dauer der Freigabe" ("the released quantity and the duration of the release") **Art. 3 (SR 531.211.11)**. Its discretion is limited in three ways:

- Market-wide cap. Art. 2 limits the maximum releasable quantity to "der Differenz zwischen dem ausgewiesenen Bedarf im Inland und der auf dem Markt im Inland frei verfügbaren Menge" ("the difference between the demonstrated domestic demand and the quantity freely available on the domestic market") **Art. 2 (SR 531.211.11)**. This is an aggregate ceiling. Where

several stockholders apply, the sum of individual releases must stay within it. The individual quantity cannot therefore be derived solely from the applicant's own shortfall.

- Individual need. The applicant's documented shortfall, its customers' effective demand (see Art. 5 para. 2 **Art. 5 (SR 531.211.11)**) and its inability to procure goods define the individual measure. Read with para. 1, this excludes releases that would merely replace stocks the stockholder could obtain on the market.
- Time limit. The mandatory fixing of a duration gives effect, in the individual case, to the statutory requirement that intervention measures be time-limited **Art. 31 NESA**. Release is a temporary authorisation to draw on a stock whose required quantity the WBF has fixed for a given period **Art. 9 NESA**.

Supplementary compulsory stocks follow a different rule: undertakings may use at least half of them for their own needs or to supply customers in the event of intervention measures **Art. 14 NESA**. No such automatic quota applies to compulsory stocks of protein feed. Every draw requires a ruling under Art. 3.

Ruling, contract and guarantee fund: the two-track structure

Contract adjustment before withdrawal

The release ruling does not by itself authorise physical withdrawal. Under Art. 4, the stockholding contract with the BWL must be adjusted first **Art. 4 (SR 531.211.11)**. The contract governs, among other things:

- the type and quantity of stock;
- financing and insurance;
- coverage of storage costs and price losses;
- participation in the guarantee fund;
- any contractual penalty **Art. 10 NESA**.

The release thus has two tracks: a unilateral ruling of the Fachbereich, and a consensual adjustment of a public-law contract.

The case law confirms that this distinction matters. Stockholding contracts are public-law contracts concluded between an authority with sovereign powers and private parties in areas governed by public law **b-1483-2019**. Where the BWL acts outside the contract, however, it acts sovereignly. The Federal Supreme Court held that "Bei der Genehmigung von Reglementen von Pflichtlagerorganisationen tritt das Bundesamt jedoch hoheitlich und nicht als Vertragspartei auf" ("when approving regulations of compulsory stock organisations, the Federal Office acts sovereignly and not as a contracting party"). Its revocation of such an approval was therefore an appealable ruling, not a matter for the action procedure **2C_376/2008**. Likewise, an instruction given to a stockholder within the contractual relationship was treated as a ruling subject to administrative appeal **BGE 103 Ib 335**.

For Art. 3, this means:

- disputes about the release itself (whether, how much, how long) concern the ruling;
- disputes about the content of the contract adjustment concern the contract.

If the adjustment cannot be agreed, Art. 7 para. 3 LVG allows the BWL to order the conclusion of a contract by ruling when no contract comes about within a reasonable time **Art. 7 NESA**. The Federal Administrative Court applied that power in a case where the BWL had ordered signature of a contract annex by a ruling that became final unchallenged **b-1483-2019**. The provision's wording refers to the conclusion of a contract; whether it also covers the adjustment required by Art. 4 is a matter of interpretation.

Financial consequences: loans and guarantee fund

Before a stock is reduced or dissolved, the stockholder must repay federally guaranteed loans pro rata and meet its obligations towards the guarantee fund. If it cannot, the BWL may require appropriate security instead **Art. 13 NESA**. The Confederation guarantees bank loans financing compulsory stock goods **Art. 20 NESA**. These financial obligations are therefore typical contents of the adjustment under Art. 4.

The reservation in Art. 13 para. 1 LVG, read literally, exempts release only from the requirement of BWL consent. It is not clear from the provision's text that the release also escapes the financial rules in para. 2 **Art. 13 NESA**.

Settlement with the guarantee fund follows the rules of the compulsory stock organisation. In a case on the reduction of durum wheat stocks, the Federal Administrative Court explained that guarantee fund income includes "Preisdifferenzen aus der Abrechnung von Pflichtlagerveränderungen" ("price differences arising from the settlement of changes in compulsory stocks") **b-1990-2009**. The settlement price was set by an average-price system based on a rolling reference period. Because the market had moved extraordinarily in 2008, the court corrected the price under the *clausula rebus sic stantibus*, which "setzt ausserordentliche Veränderungen voraus" ("presupposes extraordinary changes") **b-1990-2009**.

That decision concerned a reduction of stocks, not a crisis release. It nevertheless applies by analogy to a release, because a release also changes the stock and therefore triggers settlement. Price volatility is particularly likely in a severe shortage, so the *clausula rebus sic stantibus* correction is directly relevant.

The compulsory stock organisation

The compulsory stock organisation is a private self-help organisation, and its invoices are not rulings. The Federal Administrative Court held that it "handelte daher nicht hoheitlich" ("therefore did not act sovereignly") **b-1990-2009**. Despite its private form, it is bound by the principles of equal treatment, proportionality, good faith and the prohibition of arbitrariness. Within those limits, it may reduce compensation, provided full reimbursement of storage costs remains guaranteed **150002066**. Benefits from the guarantee fund may be claimed only by members **2C_376/2008**. A member's duty to pay contributions arises from membership, independently of any unresolved compensation claim **b-1483-2019**.

For feed, Réservesuisse receives the reports of feed processors and informs the BWL with a view to concluding, changing or dissolving stockholding contracts **Art. 11 531.215.11**. Art. 21 para. 3 VWLV requires the economic organisations concerned to be involved in fixing a release **Art. 21 VWLV**. The departmental ordinance does not mention them.

Duties after release and revocation

A release changes the legal position of the stockholder:

- Duty to supply. The stockholder must supply Swiss customers with the released goods **Art. 5 (SR 531.211.11)**. The statutory basis is the separate power to impose a duty to supply under Art. 31 para. 2 lit. g LVG **Art. 31 NESA**.
- Needs-based deliveries. Deliveries are limited to the quantities customers need to cover their effective demand **Art. 5 (SR 531.211.11)**. This prevents released goods from being used for stockpiling by customers.
- Customer insolvency. The stockholder may refuse delivery to an insolvent customer **Art. 5 (SR 531.211.11)**.
- Bookkeeping and reporting. Stockholders must keep records of all stocks and stock changes and report weekly to the Fachbereich **Art. 6 (SR 531.211.11)**. This is in addition to the general duty to provide all information, documents and access needed to enforce the LVG **Art. 64 NESA**. Untrue or incomplete information is punishable **Art. 50 NESA**.

If these supply duties are breached, the Fachbereich may revoke a granted release or refuse a planned one **Art. 5 (SR 531.211.11)**. The provision is framed as a discretionary power ("kann", "may"). Revocation is itself a decision affecting the stockholder's rights. On the reasoning of the Federal Supreme Court in BGE 103 Ib 335, it must therefore be issued as an appealable ruling **BGE 103 Ib 335**.

The VPB decision on stock shortfalls favours a graduated response to a single, minor breach **150003983**. Applied by analogy, a proportionate reaction (such as a warning, or reducing rather than revoking the release) should be considered before a full revocation.

Legal protection

Objection, appeal and time limits

A release ruling rests on implementing provisions of Art. 31 LVG. Its challenge therefore follows the special crisis regime:

- Objection. Rulings based on Arts. 31-33 LVG or their implementing provisions may be challenged by objection (Einsprache). The objection must be lodged in writing with the authority that issued the ruling within five days of notification. It must contain a request and state the facts supporting it **Art. 45 NESA**.
- Appeal. Appeals against such rulings must be filed within five days and have no suspensive effect **Art. 46 NESA**. Otherwise, the general rules of federal administrative justice apply **Art. 46 NESA**.

The very short time limits and the absence of suspensive effect are the main procedural trap. Once refused, a stockholder must act within days, and cannot rely on the appeal to stop a revocation from taking effect.

Uncertain appeal authority

Which body hears the appeal is not settled by the text. Art. 46 para. 1 LVG sends appeals to the BWL only where the ruling was issued by an economic organisation within the meaning of Art. 60 LVG **Art. 46 NESA**. The Fachbereiche are governed separately by Art. 58b LVG **Art. 58b NESA**.

On the other hand, Art. 6 para. 1 lit. d VWLV makes the BWL responsible for dealing with appeals against rulings "nach Artikel 46 Absätze 1 und 3 LVG" ("under Article 46 paragraphs 1 and 3 LVG") **Art. 6 VWLV**. This points towards the BWL as first appeal body for rulings of the crisis regime. Under the former law, the Federal Supreme Court described a provision under which appeals against rulings of the "Bereiche" and of the economic organisations lay to the Federal Office **2C_376/2008**.

The Federal Administrative Court decides appeals against rulings within the meaning of Art. 5 VwVG. Not every act in the field of economic national supply is such a ruling, and the action route is likewise narrow **b-8057-2007**. The Federal Supreme Court recalled that the appeal in public-law matters to that court is excluded for "Entscheide auf dem Gebiet der wirtschaftlichen Landesversorgung, die bei zunehmender Bedrohung oder schweren Mangellagen getroffen worden sind" ("decisions in the field of economic national supply taken in situations of increasing threat or severe shortage") **2C_376/2008**. A release under Art. 3 is a decision of that kind. A cautious applicant will lodge the objection with the Fachbereich and then follow the instructions on remedies in the objection decision.

Action procedure for contractual disputes

Disputes between parties to public-law contracts under the LVG, and between stockholders and compulsory stock organisations, are decided by the Federal Administrative Court on action (Klage) **Art. 47 NESA**. This covers disputes about the adjustment under Art. 4 and about guarantee fund settlement. In the durum wheat case, the Federal Administrative Court entered into a price dispute between a stockholder and the organisation in action proceedings, because the

organisation's invoice was not a ruling **b-1990-2009**. Contractual penalties fixed by the BWL are submitted to the Federal Administrative Court if they are disputed. A penalty does not release the stockholder from performing the contract **Art. 43 NESA**.

The pending revision keeps the objection and redirects it to rulings based on the new Arts. 32 and 33 LVG. It also clarifies that the five-day time limit applies to appeals against objection decisions **BBI 2026 1771**.

Criminal sanctions

Under Art. 7 of the ordinance, breaches of its provisions are punished under Art. 49 LVG **Art. 7 (SR 531.211.11)**. Art. 49 LVG distinguishes three cases **Art. 49 NESA**:

- intentional breach of the rules on measures issued under, among others, Art. 31 para. 1 LVG (lit. a);
- intentional failure to comply with a ruling, but only "trotz Hinweis auf die Strafdrohung dieses Artikels" ("despite a reference to the penalty under this article") (lit. b);
- breach of a contract concluded under the Act, subject to the same warning (lit. c).

The penalty is imprisonment of up to three years or a monetary penalty. Negligence is punished by a monetary penalty of up to 180 daily units **Art. 49 NESA**.

For Art. 3, two practical points follow:

- Ruling conditions. The conditions attached to a release ruling are criminally enforceable under lit. b only if the ruling carries the warning.
- Withdrawal before release. Withdrawing goods without release primarily breaches the contract **150003983**. It is punishable under lit. c only if the contract contains the warning.

False weekly reports are separately punishable under Art. 50 LVG **Art. 50 NESA**.

Under the pending revision, Art. 49 para. 1 lit. a LVG will refer to Art. 32 para. 1 lits. a-e. Release (Art. 32 para. 1 lit. b) will therefore remain within the main offence. The revision also adds fines in a new Art. 49a LVG **BBI 2026 1771**.