

Art. 5 of the WBF Ordinance on the Release of Compulsory Stocks of Protein Feedstuffs (SR 531.211.11): Duty to Supply

Function of the provision within the release regime

Art. 5 sets out the obligations that follow once a compulsory stock of protein feedstuffs has been released:

- the holder must supply Swiss customers (para. 1);
- deliveries must not exceed the customer's effective need (para. 2);
- if either duty is breached, the Fachbereich Ernährung may revoke a release or refuse a further one (para. 3);
- the holder may refuse to deliver to an insolvent customer (para. 4) **Art. 5 (SR 531.211.11).**

The provision rests on two separate enabling heads in Art. 31(2) LVG. That article allows the Federal Council, during an imminent or existing severe shortage, to adopt time-limited intervention measures, including rules on "f. die Freigabe von Pflichtlagern und anderen Vorräten" and "g. die Lieferpflicht" **Art. 31 NESA**. The Federal Council may delegate the power to release compulsory stocks to the WBF in advance (Art. 57(3) LVG) **Art. 57 NESA**. The ordinance is based on Art. 21(1) VWLV, which makes use of that delegation

Preamble (SR 531.211.11) Art. 21 VWLV.

The Federal Council's Dispatch on the total revision of the LVG states the purpose plainly: "Die Lieferpflicht (Bst. g) ist im Zusammenhang mit der Pflichtlagerfreigabe als flankierende Massnahme zur Verhinderung von Hortung und Preistreiberei zu verstehen."

BBi 2014 7119 (the supply duty is a flanking measure, linked to the release, against hoarding and price gouging). The same Dispatch explains that compulsory stocks are embedded in the distribution network so that they can be brought to market quickly when needed **BBi 2014 7119**.

Art. 5 is therefore not a free-standing supply obligation. It is a condition attached to the release. Without it, a release would only free the holder from its storage duty. Art. 5 ensures that the released goods actually reach domestic demand.

Scope and temporal application

Goods and persons bound

The ordinance applies only to the protein feedstuffs listed in its annex (Art. 1) **Art. 1 (SR 531.211.11)**. Every item in the annex is designated "zu Futterzwecken" (for feed purposes). The listed tariff headings cover dried pulses, soya beans, rapeseed, sunflower seed, potato protein and oilcakes **Annex 1 (SR 531.211.11)**.

The departmental ordinance on stockholding volumes admits further goods for protein feedstuffs, notably seed for soya, rapeseed and sunflower, and maize gluten **Art. 4 531.215.111**. Art. 5 applies to those goods only insofar as they fall within the feed-only list in the annex to SR 531.211.11.

The person bound is the Pflichtlagerhalter (compulsory-stock holder). That status arises from a stockholding contract concluded with the

BWL or, if no agreement is reached in time, ordered by decision (Art. 7(2)-(3) LVG) **Art. 7 NESA**. The duty to contract falls on whoever imports, manufactures, processes or first places vital goods on the market (Art. 8(1) LVG) **Art. 8 NESA**. Where the storage duty is transferred to a third party, the BWL concludes a separate compulsory-stock contract with that third party (Art. 11(2) LVG) **Art. 11 NESA**. The VWLV likewise allows the storage duty to be transferred to a third party or to a storage company **Art. 17 VWLV**.

Art. 5(1) is triggered when the holder "die Freigabe erhalten" (has received the release). The duty therefore attaches to the addressee of the release decision under Art. 3(2) **Art. 3 (SR 531.211.11)**. If the storage duty has been transferred, that will normally be the contracting third party who holds the stock. An importer who meets its obligation by paying equivalent financial contributions to Réservesuisse, instead of holding stock, is not a holder and falls outside Art. 5 **Art. 2 531.215.11**.

"Swiss customers"

Neither the ordinance nor the LVG defines "schweizerische Kundschaft" ("clients suisses", "clienti svizzeri"). Two systematic elements fix its orientation:

- The release quantity is capped at the difference between the demonstrated domestic need ("ausgewiesenen Bedarf im Inland") and the quantity freely available on the domestic market (Art. 2) **Art. 2 (SR 531.211.11)**.
- Art. 31(2) LVG treats the supply duty (lit. g) and export restrictions (lit. i) as separate heads **Art. 31 NESA**.

The term is therefore defined by domestic demand: released stock is meant to cover Swiss consumption. Art. 5(1) is a positive duty to supply the domestic market. It is not itself an export prohibition, which would require a measure under Art. 31(2)(i) LVG.

Temporal limits

Art. 31(1) LVG permits only "zeitlich begrenzte" (time-limited) intervention measures **Art. 31 NESA**. The ordinance entered into force on 15 October 2026 and contains no expiry date (Art. 9) **Art. 9 (SR 531.211.11)**.

The time limit therefore operates at the level of the individual release. The Fachbereich Ernährung fixes both the quantity released and the duration of the release by decision (Art. 3(2)) **Art. 3 (SR 531.211.11)**. The duties under Art. 5 last as long as the holder has released goods to place on the market.

A 1990 National Council debate under the former LVG shows how narrow the trigger is. The Federal Council rejected a release of heating-oil stocks because a severe shortage meant "une pénurie dans l'ensemble du pays, qui devrait être de longue durée et frapper la totalité de la branche." **20018574** (a shortage across the whole country, of long duration and affecting the entire sector).

Trigger: the release decision and the adapted contract

The supply duty arises only after a release. A holder that lacks sufficient free stock and cannot procure the missing quantity may apply to the Fachbereich Ernährung for release, and must give reasons (Art. 3(1)) **Art. 3 (SR 531.211.11)**. The quantity released cannot exceed the domestic shortfall defined in Art. 2

Art. 2 (SR 531.211.11). Before goods are withdrawn, the compulsory-stock contract must be adapted with the BWL (Art. 4) **Art. 4 (SR 531.211.11)**.

The statutory consent rule is relaxed for releases. Under Art. 13(1) LVG, compulsory stocks may be altered only with the BWL's written consent, "vorbehalten bleibt die Freigabe nach Artikel 31 Absatz 2 Buchstabe f" **Art. 13 NESA** (release under Art. 31(2)(f) being reserved). Art. 13(2) LVG then requires two things before any "Reduktion oder Aufhebung" (reduction or dissolution) of the stock: pro rata repayment of federally guaranteed loans, and fulfilment of obligations towards the Garantiefonds. Under Art. 13(3) LVG, the BWL may accept adequate security instead **Art. 13 NESA**.

Art. 13(2) contains no express reservation for releases, so its text does not say whether it applies in full to a withdrawal under a release. The contract adaptation required by Art. 4 of the ordinance is the instrument for settling these financial consequences.

The Federal Administrative Court's judgment B-1990/2009 illustrates the economic link with the Garantiefonds. Price differences from settling changes to compulsory stocks flow into the fund. The settlement price was meant to leave the holder with "weder ein Gewinn noch ein Verlust" (neither a gain nor a loss). Because of the exceptional market of 2008, the court adjusted that price under the *clausula rebus sic stantibus* **b-1990-2009**.

That case concerned a stock reduction, not a release, so it applies to released goods only by analogy. Separately, Art. 16(5) LVG prohibits levying Garantiefonds contributions on domestic food and feed **Art. 16 NESA**.

The duty to supply (para. 1)

A public-law duty to contract

Para. 1 imposes a duty to contract. According to the Federal Supreme Court, freedom of contract, including freedom to choose one's partner, is the starting point. Duties to contract are exceptional and rest "entweder auf Vertrag (in der Regel einem Vorvertrag) oder gesetzlicher Grundlage" **BGE 129 III 35** (either on contract, usually a preliminary contract, or on a statutory basis).

The Court distinguished such duties from the private-law duty to contract derived from good morals. That private-law duty requires four cumulative conditions. The last is that the provider "keine sachlich gerechtfertigten Gründe für die Verweigerung des Vertragsabschlusses anzugeben vermag" **BGE 129 III 35** (cannot give objectively justified reasons for refusing to contract).

Art. 5(1) is an express statutory basis of the first kind. Its application therefore does not depend on the four-part test. The release alone triggers the duty, and no finding is required on the holder's market power or the customer's lack of alternatives.

The Commercial Court of Bern, ruling on postal law, illustrates how strict a mandatory statutory duty to contract can be:

- It held that such a duty "kann nicht im Rahmen von Art. 36 BV eingeschränkt werden" (cannot be restricted under Art. 36 of the Federal Constitution).
- In continuing relationships, the duty covers maintaining the contract as well as concluding it.
- It left open whether termination for important reasons remained possible **HG 2008 52**.

That decision concerns another statute and serves only as an analogy. Art. 5 itself answers the question of exceptions: the holder's duty is limited by the quantity cap in para. 2 and the insolvency ground in para. 4. The text names no other ground for refusal.

Allocation among customers and equal treatment

Art. 5 contains no rule on allocating scarce released goods among competing customers, and no price rule. The LVG provides a separate basis for price monitoring and margin limits on goods subject to intervention measures (Art. 33 LVG) **Art. 33 NESA**. The ordinance does not make use of it.

Neither Art. 5 nor the LVG says whether an individual holder is bound by equal treatment when it selects customers. A relevant point of reference is a 1993 decision of the Pflichtlagerkommission on Carburant. It held that a private compulsory-stock organisation "unterliegt deshalb ungeachtet ihrer privatrechtlichen Organisationsform den rechtsstaatlichen Bindungen, die für die öffentliche Verwaltung gelten" **150002066** (is bound, despite its private-law form, by the rule-of-law constraints that apply to public administration), including equal treatment and proportionality. The contested measure was nevertheless upheld because it applied to all members alike **150002066**.

That reasoning concerned an organisation's directives to its members, not a holder's sales. Applying it to Art. 5 is an analogy. In practice, the holder's allocation decisions are controlled mainly through para. 2 and the reporting duty.

Limiting deliveries to effective need (para. 2)

Para. 2 restricts the holder's freedom to sell. The holder "darf" (may) deliver only the quantities a customer needs "um ihren effektiven Bedarf zu decken" (to cover its effective need). The French ("effectivement besoin") and Italian ("fabbisogno effettivo") versions are to the same effect **Art. 5 (SR 531.211.11)**. Para. 1 obliges the holder to supply, and para. 2 caps what may be supplied to each customer.

The cap serves the anti-hoarding purpose stated in the Dispatch on the total revision **BBI 2014 7119**. The Federal Council's 2025 Dispatch on amending the LVG describes the long-standing WBF practice of attaching a supply duty and recipient restrictions to releases. It explains that this "verhindert, ohne ein explizites Hortungsverbot erlassen zu müssen, dass freigegebene Waren zurückgehalten werden, beispielsweise aus spekulativen Überlegungen" **BBI 2025 3538** (prevents released goods from being held back, for example for speculative reasons, without an explicit ban on hoarding). Para. 2 is thus a targeted substitute for a general hoarding prohibition, applied at the point of sale.

The 1990 debate reflects the same concern from the other side. The Federal Council warned against "une couverture publique de certaines activités spéculatives" **20018574** (public cover for certain speculative activities). Released compulsory stock is not to be used to fund speculation or stockpiling by the holder's customers.

"Effective need" in para. 2 must be read together with the "ausgewiesener Bedarf im Inland" (demonstrated domestic need) in Art. 2. Art. 2 limits the aggregate release to the domestic shortfall **Art. 2 (SR 531.211.11)**, and para. 2 carries that limit down to each individual delivery. Stockpiling by a customer beyond its current requirements is therefore not "effective" need.

The holder must keep books on all stocks and changes in stock and report weekly to the Fachbereich Ernährung (Art. 6)

Art. 6 (SR 531.211.11). Those records are the evidential basis on which the authority can check compliance with paras 1 and 2. A holder that cannot show to whom, and in what quantities, released goods went exposes itself to measures under para. 3.

Revoking or refusing release (para. 3)

Content of the measure and competent authority

If a holder breaches para. 1 or 2, the Fachbereich Ernährung "kann"

(may) revoke a release already granted or refuse a planned one **Art. 5 (SR 531.211.11)**. The language versions differ on the second option:

- German: "eine geplante Freigabe verweigern" (refuse a planned release);
- French: "refuser de lui en accorder d'autres" (refuse to grant it further ones);
- Italian: "respingere le sue successive richieste" (reject its subsequent requests).

Read together, the versions show that para. 3 also covers future applications by the same holder, and not only a release already in progress.

The general statutory parallel is Art. 40(c) LVG, which allows the BWL to "Bewilligungen entziehen oder verweigern" (withdraw or refuse authorisations) where the Act, ordinances, decisions or contracts are breached **Art. 40 NESA**. The BWL takes measures under Art. 40 and 41 LVG by decision (Art. 42(1) LVG) **Art. 42 NESA**. Under the VWLV, the BWL issues decisions unless that task is transferred to the Fachbereiche, and it is responsible for the compulsory-stock system **Art. 6 VWLV**. Since 1 November 2025, the Fachbereiche have been responsible for executing measures "sofern ihnen dieser übertragen wurde" (where this has been transferred to them). The Fachbereich Ernährung covers food and agricultural means of production **Art. 7 VWLV**.

Art. 3(2) and Art. 5(3) make that transfer for releases of protein feedstuffs, read together with the joint execution clause in Art. 8 **Art. 8 (SR 531.211.11)**. This sits uneasily with Art. 21(3) VWLV, which still provides that the BWL fixes each release in agreement with the holders **Art. 21 VWLV**. Under the ordinance, the release decision and its revocation lie with the Fachbereich Ernährung. The other coercive measures under Art. 40 and 41 LVG remain with the BWL under Art. 42 LVG. The LVG provides a third channel: the Federal Council may delegate execution tasks to organisations of the economy, which the BWL supervises (Art. 60 LVG) **Art. 60 NESA**. The ordinance does not use that channel for releases of protein feedstuffs. Execution under it therefore stays with the federal bodies named in Art. 8.

A decision subject to proportionality

A revocation or refusal under para. 3 is a decision (Verfügung) within the meaning of Art. 5(1) VwVG **Art. 5 APA**. In BGE 135 II 38, the Federal Supreme Court held that in compulsory-stock matters the Federal Office acts as a sovereign authority and not as a contracting party ("hoheitlich und nicht als Vertragspartei"). Its revocation of approvals was therefore an appealable decision, and the appeal route took precedence over an action **BGE 135 II 38**.

That case concerned approvals of an organisation's regulations, not a release. Its reasoning applies all the more to a measure directed at an individual holder.

The word "kann" confers discretion, and that discretion is bound by proportionality. After the remand, the Federal Administrative Court in B-7972/2008 upheld the blanket revocation as "geeignet, erforderlich und verhältnismässig" (suitable, necessary and proportionate). It also drew two limits:

- revocation could not be used to impose obligations the statute does not provide for;
- the authority had to grant "eine angemessene Frist zur Umsetzung" (a reasonable period for implementation) **b-7972-2008**.

Applied to para. 3, the measure must respond to the specific breach and serve the supply and anti-hoarding purpose. It may not pursue unrelated aims. Whether to revoke a running release or only refuse future ones should reflect how serious the breach is.

Para. 3 provides a specific statutory ground for revocation. It therefore largely takes the place of the general balancing test that applies where no such ground exists. Under that general test, legal certainty

usually prevails once an authorisation has been used. Revocation is nevertheless possible "lorsqu'elle est commandée par un intérêt public particulièrement important" **BGE 109 Ib 246** (when required by a particularly important public interest).

A holder that has itself breached the conditions of the release is poorly placed to invoke legitimate expectations. By analogy only, from a different field: the Federal Supreme Court allowed a tax exemption to be withdrawn retroactively where the beneficiary knowingly breached the conditions attached to it **BGE 147 II 454**.

Refusing delivery to insolvent customers (para. 4)

Para. 4 is the only express exception to para. 1. The holder "kann" (may) refuse delivery if the customer "zahlungsunfähig ist" (is unable to pay; French "n'est pas solvable", Italian "insolubile")

Art. 5 (SR 531.211.11). The provision spares the holder from having to supply on credit a customer who cannot pay. It reflects the principle, recognised for duties to contract, that an objectively justified reason may defeat the duty **BGE 129 III 35**.

The ordinance does not define insolvency, or say whether debt-enforcement or bankruptcy steps are required. Since the holder invokes para. 4 to escape its duty under para. 1, it must establish the facts showing the customer's inability to pay. The ground concerns the customer's own insolvency. The Ticino Administrative Court held that a supply concessionaire could not refuse to supply a tenant because of the landlord's unpaid bills, although it could take steps to protect itself financially **52.2011.508**.

The permissive wording also leaves room for milder means than refusal, such as prepayment or security. The Basel-Stadt Administrative Court upheld a supply stop after two reminders, noting that there is no constitutional entitlement to supply "ohne Erbringung einer Gegenleistung" (without providing consideration). It nonetheless required the provider to check proportionality in the individual case **VD.2023.159**. That decision concerns household energy and water, where basic needs are directly at stake. For feed customers it is a looser analogy.

Further consequences of breach

Criminal liability

Breaches of the ordinance are punished under Art. 49 LVG (Art. 7 of the ordinance) **Art. 7 (SR 531.211.11)**. Art. 49(1) LVG punishes intentional conduct with up to three years' imprisonment or a monetary penalty. It covers three cases:

- breach of rules on measures adopted under, among others, Art. 31(1) LVG (lit. a);
- failure to obey a decision based on the LVG, despite a warning of the penalty (lit. b);
- breach of a contract based on the LVG, despite a warning of the penalty (lit. c).

Negligent breach carries a monetary penalty of up to 180 daily units (Art. 49(2)) **Art. 49 NESA**. The Dispatch justifies the higher penalty by the importance of supply during a severe shortage **BBi 2014 7119**.

Lit. a refers to rules adopted under Art. 31(1) LVG, while the ordinance rests on the release power under Art. 31(2)(f) and (g) LVG. The wording of lit. a therefore does not clearly cover a breach of Art. 5 committed without a prior warning. The release decision itself is a decision based on implementing rules. If it repeats the Art. 5 duties and contains a warning of the penalty, lit. b clearly applies.

Contractual penalty

Where the compulsory-stock contract contains a penalty clause, the BWL fixes the amount within the agreed range. If the holder disputes the penalty in principle or in amount, the BWL refers the matter to the Federal Administrative Court. Payment of a penalty does not release

the holder from performance (Art. 43 LVG) **Art. 43 NESA**.

Earlier decisions show how seriousness is assessed. In 1997, the EVD appeal commission held that an unauthorised shortfall breached the holder's primary contractual duty. The assessment had to examine "wie gross die fehlende Menge ist, während welcher Zeitdauer die Pflichtlagermenge unterschritten wurde und welches Verschulden den Pflichtlagerhalter daran trifft" (how large the missing quantity is, for how long the stock fell short, and what fault the holder bears). Under the contract at issue, a single minor breach called first for a warning, but a shortfall of more than 10% was not minor **150003983**.

In 1991, a negligent shortfall of 1 to 47 tonnes over 14 days was treated as serious, partly because of earlier breaches. The penalty was nonetheless fixed at the contractual minimum of CHF 2,000. The same decision held that approval of one change did not cover a temporary reduction that had not been authorised **150002072**. By analogy, withdrawals beyond the release and the contract adapted under Art. 4 are not covered by the release.

Whether a breach of Art. 5 triggers a contractual penalty depends on the penalty clause in the individual contract and its adaptation under Art. 4.

Procedure and legal protection

Decisions based on Art. 31 to 33 LVG or their implementing rules follow a special procedure:

- Objection (Einsprache): a written objection must be lodged with the deciding authority within five days. It must contain a request and state the facts relied on (Art. 45 LVG) **Art. 45 NESA**.
- Appeal: the appeal deadline is also five days, and appeals have no suspensive effect (Art. 46(3) LVG) **Art. 46 NESA**. The Dispatch describes the sequence as objection, then appeal to the Federal Administrative Court **BBI 2014 7119**.
- No prior hearing: because these decisions can be challenged by objection, no prior hearing is required (Art. 30(2)(b) VwVG) **Art. 30 APA**.

This regime covers both the release decision under Art. 3(2) and any revocation or refusal under Art. 5(3). With five-day deadlines and no suspensive effect, a revocation operates immediately and the holder must react within days.

Disputes under the compulsory-stock contract, or between holders and compulsory-stock organisations, follow a different route: an action before the Federal Administrative Court (Art. 47 LVG) **Art. 47 NESA**. In BGE 135 II 38, the Federal Supreme Court confirmed that unilateral sovereign acts of the Federal Office are challenged by appeal and not by action **BGE 135 II 38**.

Planned statutory basis for release conditions

The 2025 Dispatch proposes an express statutory basis for the WBF's practice of attaching conditions, a supply duty and recipient restrictions to releases: "In der Praxis ist dies in den vergangenen Jahrzehnten bereits regelmässig erfolgt; aus rechtsstaatlichen Überlegungen ist diese Thematik neu auf Gesetzesstufe zu regeln." **BBI 2025 3538** (This has regularly been done in practice for decades; for rule-of-law reasons, the matter is now to be regulated at statutory level.)

The Dispatch also limits those powers: "Die dem WBF übertragenen Kompetenzen beschränken sich daher auf den Umgang mit Pflichtlagerware." **BBI 2025 3538** (The powers delegated to the WBF are therefore limited to the handling of compulsory-stock goods.) Art. 5 is a typical rule of that kind. In the National Council, the Federal Council's draft of Art. 31 LVG was retained, and the release rules and the supply duty were not debated **AB 2026 N 552**.

Practical checklist for holders

The points discussed above translate into the following steps:

- obtain the release decision and adapt the contract (Art. 4) before any withdrawal;
- document each customer's effective need and every delivery, consistently with the weekly reports under Art. 6;
- record the facts supporting any insolvency refusal, and consider security or prepayment as alternatives;
- treat a revocation or refusal under para. 3 as immediately effective, and lodge an objection within five days.