Art. 1 of the WBF Ordinance on the Release of Compulsory Stocks of Protein Carriers (SR 531.211.11): Scope

Function of the scope rule

Art. 1 provides that the ordinance applies to the protein carriers listed in the annex **Art. 1 (SR 531.211.11)**. The provision does not define "protein carrier" in the abstract. It works only through the annex. Every substantive rule of the ordinance therefore depends on Art. 1: the maximum release quantity (Art. 2), the individual release request and ruling (Art. 3), the adaptation of the compulsory stock contract (Art. 4), the delivery duty (Art. 5), bookkeeping and weekly reporting (Art. 6) and the penalty reference (Art. 7) **Art. 2 (SR 531.211.11) Art. 3 (SR 531.211.11) Art. 4 (SR 531.211.11) Art. 5 (SR 531.211.11) Art. 6 (SR 531.211.11) Art. 7 (SR 531.211.11)**. A good that is not covered by the annex falls outside this release regime altogether.

The three language versions differ in terminology. The German text uses "Proteinträger", the French "fourrages protéagineux" and the Italian "alimenti ricchi di proteine" **Art. 1 (SR 531.211.11)**. Because Art. 1 refers to the annex, these labels do not determine the scope. The annex's tariff lines do. Every line is qualified as feed use ("zu Futterzwecken"), which matches the French term "fourrages" more closely than the broader Italian wording **Annex 1 (SR 531.211.11)**.

The ordinance is an original enactment. It entered into force on 15 October 2026 and contains no expiry clause **Art. 9 (SR 531.211.11)**. Art. 1 has not been amended. The temporal questions this raises are discussed below under the time-limitation requirement.

Legal basis: release as a crisis intervention delegated in advance

The WBF issued the ordinance on the basis of Art. 21 para. 1 of the Ordinance on National Economic Supply (VWLV) **Preamble (SR 531.211.11)**. That provision allows the WBF to order the release of compulsory stocks in the event of a threatened or existing severe shortage **Art. 21 VWLV**. At statutory level, the release of compulsory stocks is one of the intervention measures that the Federal Council may adopt under Art. 31 para. 2 lit. f LVG. Under Art. 31 para. 1 LVG, such measures are available only in an imminent or existing severe shortage, and they must be time-limited **Art. 31 NESA**. Art. 57 para. 3 LVG allows the Federal Council to transfer the power to release compulsory stocks to the WBF in advance, for the purpose of remedying severe shortages **Art. 57 NESA**.

The 2014 Federal Council message explains the rationale. Releasing compulsory stocks can prevent short-term supply bottlenecks. The advance delegation to the WBF allows a rapid reaction when a crisis occurs, and it continues a practice already followed under Art. 12 of the Stockholding Ordinance of 1983 **BBl 2014 7119**. The same message states that intervention measures may be used only in severe shortages and must be proportionate **BBl 2014 7119**.

A severe shortage is defined as a considerable threat to national economic supply with imminent, major economic damage, or a considerable disruption of national economic supply **Art. 2 NESA**. The subsidiarity principle frames the threshold. Supply is primarily the task of the private sector, and the Confederation intervenes only where the private sector cannot secure supply in a severe shortage **Art. 3 NESA**. An older Federal Council decision under the former law illustrates the threshold. The Federal Council refused to release compulsory heating-oil stocks in response to price spikes and regional supply difficulties. In its view, a severe shortage requires a nationwide, lasting disruption affecting the sector as a whole, and the supply legislation does not serve to offset price fluctuations **20018574**. That decision concerned a different product and a different statute, so it applies here only by analogy. It remains a useful guide to the distinction between market tension and a legal shortage.

The ordinance itself does not contain a finding that a severe shortage exists. It moves the threshold test to the level of the individual holder. Under Art. 3 para. 1, a holder may request release only if it lacks sufficient free stocks and cannot procure the missing quantity **Art. 3 (SR 531.211.11)**. Under Art. 2, the release is capped at the difference between the established domestic demand and the quantity freely available on the domestic market **Art. 2 (SR 531.211.11)**. These rules apply the subsidiarity principle to each individual case: compulsory stocks fill a gap that the free market cannot close.

The annex as a closed list defined by tariff lines

Content of the annex

The annex referred to in Art. 1 lists the covered goods by customs tariff number **Annex 1 (SR 531.211.11)**. It covers:

- dried leguminous vegetables of heading 0713 (peas, chickpeas, various beans, lentils, broad and field beans, pigeon peas and others), whole or processed, for feed;
- soybeans (1201.9010 and 1201.9021), rapeseed (1205.1040 and 1205.1051) and sunflower seed (1206.0010, 0021, 0040, 0041), each only for feed;
- residues of starch manufacture for feed, namely potato protein (2303.1011) and other residues (2303.1018);
- oilcakes and other solid residues from soybean oil (2304.0010), groundnut oil (2305.0010) and other vegetable oils of heading 2306 (cotton seed, linseed, sunflower, rape, coconut, palm kernel, maize germ and others), each for feed.

The list is exhaustive. Art. 1 contains no residual clause, no reference to "similar" products and no rule on compound feeds or mixtures **Art. 1 (SR 531.211.11)**. A product falls within the scope only if it can be assigned to one of the listed tariff lines. Products that are only functionally comparable, such as other protein-rich feed materials or feed mixtures with their own tariff classification, are outside the release regime unless they fall under a listed line. The German annex contains minor misspellings of botanical names ("Phaseoulus", "majaor") **Annex 1 (SR 531.211.11)**. Because the tariff number is the operative criterion, these errors do not affect the scope.

Feed use as a classification criterion

Each listed line requires use for feed. The Federal Administrative

Court's customs case law shows what that means. As a rule, tariff classification depends on the nature, quantity and condition of the goods when they are placed under customs control. The intended use matters only where the tariff line expressly makes it a criterion **a-5595-2007**. The feed lines in the annex are such lines. In A-5595/2007, the court also stressed that import for feed purposes required an authorisation and that the importer bears a strict burden of proof when it later claims that the goods differed from the declaration. Documents produced after import generally have reduced evidential value **a-5595-2007**.

In A-593/2014, the court held that feed wheat and food wheat differ only in their use. The reduced feed tariff therefore required a written use commitment and a timely request. Customs remission could not later be used to correct the tariff position **a-593-2014**. In the court's words, the two products "differ not in their nature and condition but only in their different use" ("unterscheiden sich nicht durch ihre Art und Beschaffenheit, sondern lediglich durch ihre unterschiedliche Verwendung") **a-593-2014**. These are customs decisions. For the release regime, they matter by analogy: whether a lot belongs to a listed feed line depends on a proper feed declaration and on the use commitment behind it.

B-456/2022 applies the same logic directly to compulsory stockholding. Maize imported as food did not require a general import licence (GEB) and was not subject to compulsory stockholding. Once its use was changed after import to feed maize, it fell under a feed tariff line listed in Annex 5 of the Ordinance on Compulsory Stockholding of Food and Feed, and a Garantiefonds contribution became due **b-456-2022**. The court reasoned that a subsequent change of use cannot be disregarded. Otherwise the contribution duty could too easily be circumvented ("allzu leicht umgangen werden könnte") **b-456-2022**. The decision concerned the storage annex, not the release annex. Its reasoning nonetheless shows that tariff line and use are applied together and that a re-declaration can move goods into a feed line.

Relationship to the stockholding regime

Release scope and storage scope differ

Art. 1 of the Ordinance on Compulsory Stockholding of Food and Feed subjects, among other goods, cereals and energy and protein carriers for feed to compulsory stockholding **Art. 1 531.215.11**. The stockpiled feed lines are listed in Annex 5 No. 2 of that ordinance **Anhang 5 531.215.11**. The release annex is not identical to that list. The dried legumes of heading 0713 and the feed lines for soybeans, rapeseed and sunflower seed appear in both. The storage annex also covers lines for oil extraction and energy carriers such as feed cereals, which the release annex does not include **Anhang 5 531.215.11 Annex 1 (SR 531.211.11)**. A good can therefore be subject to stockholding without falling within this release ordinance. Its release would require a different legal basis.

The WBF ordinance on stock quantities confirms that protein carriers form a separate category with their own coverage target. The protein carriers held in stock must cover average Swiss demand for two months, and energy carriers for three months **Art. 4 531.215.111**. The protein carriers admitted for stockholding are narrower than the release annex: soybean extraction meal, and, within percentage caps, sunflower and rape meal, maize gluten and potato protein, seed for soybeans, rape and sunflower, and peas **Art. 4 531.215.111**. The release annex thus lists tariff lines beyond the products that may be counted towards the protein-carrier stock.

Who is bound

The ordinance addresses Pflichtlagerhalter (compulsory stockholders). For feed, the stockholding duty falls on anyone who imports feed listed in Annex 5 No. 2, or who, as a processor, places it on the domestic market for the first time **Art. 10 531.215.11**.

Importers, millers and processors below the threshold quantity in Annex 5 No. 3 are exempt from the duty to conclude a compulsory stock contract **Art. 10 531.215.11**. At statutory level, the duty to contract covers firms that import, produce, process or first place vital goods on the market. The BWL may exempt firms whose contribution to security of supply would be minor **Art. 8 NESA**. The BWL concludes the stockholding contracts and may order their conclusion if no agreement is reached in time **Art. 7 NESA**. Exempted firms hold no compulsory stock and therefore have nothing to release. The release regime is relevant only to firms that actually hold a contractual compulsory stock of a listed good.

Individual release: procedure and competence

The release does not take effect automatically for all goods in the annex. It requires a reasoned request by the holder and an individual ruling (Verfügung) by the Fachbereich Ernährung (food division) fixing the released quantity and the duration of the release **Art. 3 (SR 531.211.11)**.

This allocation departs from Art. 21 para. 3 VWLV, under which the BWL fixes the release in the individual case in agreement with the holders and involves the business organisations concerned **Art. 21 VWLV**. The two can be reconciled through the organisational provisions. Art. 58b para. 5 LVG allows the Federal Council to assign tasks to the Fachbereiche in the case of measures under Arts. 31 to 33 and to authorise them to issue rulings **Art. 58b NESA**. Under the VWLV, the BWL issues rulings unless that power has been transferred to the business organisations or the Fachbereiche **Art. 6 VWLV**. The Fachbereiche are responsible for enforcing measures where enforcement has been transferred to them, and the Fachbereich Ernährung covers food and agricultural inputs **Art. 7 VWLV**. Both the BWL and the Fachbereiche are led by the Delegate for National Economic Supply **Art. 2 VWLV**. Art. 8 of the ordinance makes the BWL and the Fachbereich Ernährung jointly responsible for enforcement **Art. 8 (SR 531.211.11)**.

The weak point is the source of the ruling power. Art. 58b para. 5 LVG requires an authorisation by the Federal Council. The ruling power in Art. 3 para. 2 is conferred by a departmental ordinance whose stated basis, Art. 21 para. 1 VWLV, concerns the ordering of releases but not the competence for individual rulings **Preamble (SR 531.211.11) Art. 21 VWLV**. Neither the ordinance nor the VWLV provisions cited expressly close this gap in the chain of delegation. A holder whose request is refused could raise the question in an appeal. Given this uncertainty, a holder should not treat the absence of BWL involvement as safe, particularly as Art. 4 requires the contract with the BWL to be adapted in any event.

Adapting the compulsory stock contract and settling with the Garantiefonds

Before goods are withdrawn, the compulsory stock contract with the BWL must be adapted **Art. 4 (SR 531.211.11)**. The ruling under Art. 3 therefore does not on its own authorise the physical withdrawal. As a rule, compulsory stocks may be altered or dissolved only with the written consent of the BWL. Art. 13 para. 1 LVG reserves releases under Art. 31 para. 2 lit. f LVG from that rule **Art. 13 NESA**. Art. 4 of the ordinance reintroduces BWL involvement through the contract. The 2014 message explains that the reservation exists so that owners can bring released stock to the market when it is urgently needed **BBl 2014 7119**.

The compulsory stock contract is a public-law contract. It is concluded under private-law principles, but public law sets the framework **b-1483-2019**. The Federal Supreme Court classified such contracts as administrative contracts as early as BGE 103 Ib 335. It added that the contract creates legal relations only between the Confederation and the holder, and not with third parties who store the goods for the holder **BGE 103 Ib 335**. The contract must regulate, in particular, the type and quantity of stored goods, financing, and cover for storage

costs and price losses **Art. 10 NESA**. These are the points that the adaptation under Art. 4 must address.

The relationship with the Garantiefonds is separate. According to B-1483/2019, the duty to pay Garantiefonds contributions arises from membership of the compulsory stock organisation and its statutes, independently of the contract with the BWL **b-1483-2019**. For reductions of stocks, Art. 13 para. 2 LVG requires the holder to repay federally guaranteed loans pro rata and to meet its obligations towards the Garantiefonds beforehand **Art. 13 NESA**. In B-1990/2009, which concerned a reduction of stocks rather than a crisis release, the Federal Administrative Court held that the holder owed the Garantiefonds a settlement price under the fund rules. Because of extraordinary market developments, it adjusted the settlement rule under the clausula rebus sic stantibus **b-1990-2009**. The decision shows that the financial consequences of withdrawing compulsory stock are governed by the fund rules and remain subject to judicial review. Whether Art. 13 para. 2 LVG also applies to a release under Art. 31 para. 2 lit. f LVG is not answered by the wording, since para. 1 reserves only the consent requirement. The ordinance contains no rule on the replenishment of released stock. That question is left to the adapted contract.

Garantiefonds contributions may not be levied on domestic food and feed **Art. 16 NESA**. For domestically produced protein carriers, this limits the financial settlement mechanisms from the outset.

Duties after release

A holder that has obtained a release must supply Swiss customers with the goods. It may deliver to each customer only the quantities needed to cover that customer's effective demand. It may refuse delivery to an insolvent customer **Art. 5 (SR 531.211.11)**. The delivery duty rests on Art. 31 para. 2 lit. g LVG **Art. 31 NESA**. Art. 21 para. 2 VWLV also allows the WBF to attach conditions and technical or administrative requirements to a release **Art. 21 VWLV**. The released quantity is thus tied to its purpose. It must reach domestic users in proportion to their needs, and not be stockpiled or exported.

If a holder breaches the delivery duty or the limitation to effective demand, the Fachbereich Ernährung may revoke a release already granted or refuse a planned one **Art. 5 (SR 531.211.11)**. Holders must also keep records of all stocks and stock movements and report weekly to the Fachbereich Ernährung **Art. 6 (SR 531.211.11)**. This duty is supported by the general duty under Art. 64 LVG to provide the competent authorities with all information and documents needed to enforce the Act **Art. 64 NESA**.

Sanctions and administrative measures

Art. 7 refers infringements of the ordinance to Art. 49 LVG **Art. 7 (SR 531.211.11)**. Art. 49 para. 1 lit. a LVG punishes intentional contraventions of rules on measures issued under, among others, Art. 31 para. 1 LVG. Lit. b and c punish failure to comply with a ruling or breach of a contract only where the person was warned of the penalty under that article. Negligence is punishable by a monetary penalty of up to 180 daily rates **Art. 49 NESA**. Because the ordinance is a departmental rule issued under a delegation, the primary route is lit. a. Breaches of the individual ruling or of the adapted contract fall under lit. b or c only if the warning was given. Authorities should include such a warning in the release ruling and in the adapted contract.

False or incomplete information given under Art. 64 LVG, a ruling or a contract is a separate offence, punishable by up to one year's imprisonment or a monetary penalty **Art. 50 NESA**. This covers inaccurate weekly reports under Art. 6. Prosecution is a matter for the cantons, except for offences concerning import licences and export restrictions, which the BAZG prosecutes **Art. 55 NESA**.

Criminal sanctions are not the only consequence. Goods and financial advantages obtained through a breach of the Act, its implementing provisions, rulings or contracts fall to the Confederation regardless of whether the breach is punishable **Art. 41 NESA**. Where the contract provides for a contractual penalty, the BWL fixes the amount in the individual case. If the penalty is disputed, the BWL refers the matter to the Federal Administrative Court. Payment of the penalty does not release the holder from performing the contract **Art. 43 NESA**. A decision under the former law shows how such penalties are assessed: the extent and duration of the shortfall and the holder's fault are decisive, and a shortfall of more than ten percent can no longer be regarded as minor **150003983**.

Legal protection

Two routes must be distinguished. Rulings based on Arts. 31 to 33 LVG or on implementing provisions must be appealed within five days, and the appeal has no suspensive effect **Art. 46 NESA**. This short time limit applies to the release ruling under Art. 3, to its revocation and to the refusal of a planned release under Art. 5 para. 3, because the ordinance implements Art. 31 LVG. Rulings of last cantonal instances under the LVG may likewise be appealed to the Federal Administrative Court **Art. 46 NESA**. Disputes between parties to public-law contracts under the LVG, and between holders and compulsory stock organisations, are decided by the Federal Administrative Court on action **Art. 47 NESA**.

The Federal Supreme Court has drawn the line between the two routes. The action is designed for disputes about the content of compulsory stock contracts in which the parties stand on an equal footing. Where the BWL acts as a sovereign authority and not as a contracting party, its act is an appealable ruling, and the action yields to the appeal **BGE 135 II 38**. Earlier, BGE 103 Ib 335 had treated an instruction framed in imperative terms by the Delegate as a ruling rather than a mere statement by a contracting party **BGE 103 Ib 335**. Disputes with the compulsory stock organisation about Garantiefonds settlements, by contrast, are heard on action. B-1990/2009 held that the organisation's invoice was not a ruling and that the civil courts lacked jurisdiction because the LVG's system of remedies is closed **b-1990-2009**.

For the release ordinance, this means the following. A challenge to the quantity, duration, refusal or revocation of a release must be brought as an appeal within five days. A dispute about the terms of the contract adapted under Art. 4, or about payments owed to the Garantiefonds, belongs to the action procedure. Because the consensual model of Art. 21 para. 3 VWLV **Art. 21 VWLV** sits alongside the express ruling in Art. 3 para. 2 of the ordinance **Art. 3 (SR 531.211.11)** (see the section on procedure and competence above), and given the five-day time limit, a holder in doubt about the route should lodge an appeal against the ruling in time rather than wait to bring an action.

Time-limitation requirement and the 2026 amendment to the LVG

Art. 31 para. 1 LVG allows only time-limited intervention measures **Art. 31 NESA**. The ordinance has no expiry date **Art. 9 (SR 531.211.11)**. The time limit is built into the individual case instead: the Fachbereich Ernährung must fix the duration of each release **Art. 3 (SR 531.211.11)**. This reading fits the advance delegation under Art. 57 para. 3 LVG, which presupposes a standing instrument that can be activated when needed **Art. 57 NESA**. A release ruling without a defined duration would therefore be open to challenge on that ground.

On 19 June 2026, Parliament adopted an amendment to the LVG. Its commencement is to be fixed by the Federal Council **BBl 2026 1771**. The amendment restructures the intervention provisions. Art. 31 becomes a general provision, which allows measures where a severe shortage threatens to occur within a few months and which states: "The measures must be time-limited" ("Die Massnahmen sind zu befristen") **BBl 2026 1771**. The release of compulsory stocks moves

to Art. 32 para. 1 lit. b, and the reservation in Art. 13 para. 1 is adjusted accordingly. Art. 57 para. 3 would allow the Federal Council to delegate to the WBF in advance the power to release stocks, to oblige holders to market the released goods, and to restrict their use **BBl 2026 1771**. The amendment also introduces an objection procedure against rulings based on Art. 32 or 33 and adjusts the cross-references in the provisions on appeals and penalties **BBl 2026 1771**. In the Council of States, the rapporteur emphasised the time limit and the "within a few months" horizon **AB 2026 S 378**. In the National Council, a minority proposal to drop or extend that horizon was rejected **AB 2026 N 552**.

Once the amendment enters into force, the scope defined by Art. 1 and the annex will not change. The statutory references in the surrounding provisions will, however: the reservation in Art. 13 LVG, the procedure for challenging release rulings, and the penalty references. The delivery duty and use restrictions of Art. 5 would then also have an express statutory basis in Art. 57 para. 3 LVG as amended **BBl 2026 1771**. For any release, the LVG version in force on the date of the ruling is decisive.