

2027 CODE & IS UPDATE PROCESS

Stakeholder Consultation Phase: Summary of Major Changes

World Anti-Doping Code

Executive Summary

The World Anti-Doping Code (the Code) is the fundamental and universal document upon which the World Anti-Doping Program in sport is based. The Code was first adopted in 2003 and came into effect in 2004. It was subsequently amended several times.

The Code's purpose is to advance the anti-doping effort through universal harmonization of core anti-doping elements.

The key proposed amendments are consistent with the feedback received from stakeholders during the [Stakeholder Engagement Phase](#), in particular on the different concepts presented by WADA at the beginning of this consultation phase, including:

- Concept 1: Lack of intent without establishing origin
- Concept 2: Results management of substances of abuse
- Concept 3: Results Management of Whereabouts cases
- Concept 4: Increase in sanction flexibility
- Concept 5: Results management agreements
- Concept 6: Substantial assistance
- Concept 7: Use of data
- Concept 8: NADO operational independence
- Concept 9: Uncorrectable non-conformities¹

The changes to the Code also incorporate additional proposals that emerged during the consultation process with stakeholders and the anti-doping community, or during discussions with stakeholders.

The following section offers a concise summary of the key changes proposed by the Code Drafting Team.

CONCEPTS 1 & 4

¹ No changes were made in relation to this concept.

ARTICLE 10.2: SANCTIONING SCHEME FOR PRESENCE, USE OR ATTEMPTED USE OR POSSESSION

The basic scheme under the current Code is as follows:

- Non-Specified Substances and Methods:
 - 4-year period of Ineligibility unless the Athlete can prove that the use was not intentional. (Intentional is defined as the Athlete knew that the conduct constituted an anti-doping rule violation or knew that there was a significant risk that the conduct would constitute an anti-doping rule violation.)
 - 2-year period of Ineligibility if the Athlete can prove that the use was not intentional.
- Specified Substances or Methods. (Except for special rules for Substances of Abuse and substances which are only prohibited in-competition).
 - 4-years if the Results Management Authority (RMA) can prove that the use was intentional.
 - 2-years if the RMA cannot prove that the use was intentional.

To go below a 2-year period of Ineligibility the Athlete was, and still is, required to demonstrate No Fault or Negligence, or No Significant Fault or Negligence. Both require the Athlete to establish the source of the prohibited substance in their system with exceptions for Protected Persons and Recreational Athletes.

A number of questions have been raised since the implementation of the 2021 Code. Should the period of Ineligibility be different when the Athlete is simply reckless as opposed to knowingly committing a violation? Can the Athlete prove that the use was not intentional without establishing the source of the prohibited substance in their system? What facts should be considered in establishing the source of the prohibited substance? In analyzing the facts of a particular case, in what order should the Athlete's degree of fault be considered in determining whether the use was intentional, reckless, or involved No Significant Fault or No Fault? These issues are particularly prominent when the case involves the Athlete's attempts to establish that the Adverse Analytical Finding came from a contaminated source.

In this first draft of the 2027 Code, the difference between who has the burden to prove that the use was not intentional for non-Specified and Specified Substances and Methods remains the same. The exceptions for Substances of Abuse and substances which are only prohibited in-competition remain the same. The special treatment of Protected Persons and Recreational Athletes not being required to establish the source of the prohibited substance in their system also remains the same.

Two new distinctions are introduced in this draft:

- 1) Whether the violation was reckless as opposed to intentional; and,
- 2) whether the Athlete can establish how the prohibited substance entered their system.

The new sanctions scheme is as follows:

Article 10.2.1: Non-Specified Substances or Methods & the Athlete can establish how the Prohibited Substances Entered their System

- 4-year period of Ineligibility unless the Athlete can prove that the use was not intentional.

- 3-year period of Ineligibility where the Athlete can establish that the use was reckless but not intentional.
- 2-year period of Ineligibility where the Athlete can establish that the use was neither reckless nor intentional.
- 0-2-year period Ineligibility if the Athlete can establish No Significant Fault or Negligence.
- No Ineligibility if the Athlete can establish No Fault.

Article 10.2.2: Non-Specified Substance or Method and the Athlete CANNOT establish how the Prohibited Substance Entered their System

- 4-year period of Ineligibility is the default sanction.
- 3-year period of Ineligibility where, in exceptional cases, the Athletes can establish to the comfortable satisfaction of the decision-making body that based on reliable analytical evidence, the anti-doping rule violation was not compatible with the intentional use of a prohibited substance. Comment 63 provides examples of what would, and would not, be considered reliable analytical evidence.
- Reduction of sanction is not available based on No Significant Fault or Negligence or No Fault or Negligence when the Athlete is not able to establish the source of the Prohibited Substance.

In applying the above, Comment 60 provides that before considering whether No Significant Fault or Negligence or No Fault or Negligence apply the decision-making body must first determine whether, in the case of a non-specified substance, the Athlete has satisfied their burden of establishing that the violation was not intentional.

Article 10.2.3: Specified Substances or Methods & the Athlete can establish how the Prohibited Substance Entered their System

- 4-year period of Ineligibility if the RMA can establish that the use was intentional.
- 3-year period of Ineligibility if the RMA can establish that the use was reckless.
- 2-year period of Ineligibility if the RMA cannot establish that the use was either intentional or reckless.
- Burden remains on the Athlete to obtain a further reduction based on No Significant Fault or Negligence or No Fault or Negligence.

CONCEPT 2

ARTICLE 10.2.4: SUBSTANCE OF ABUSE

While stakeholder feedback on the 2021 Code's treatment of Substances of Abuse has generally been favorable, questions were raised in the following areas:

- The potential one-month period of Ineligibility does not give the RMA sufficient time to evaluate and process a case.
- It is logistically impractical to require that the Athlete "complete" a Substance of Abuse program to have their period of Ineligibility reduced from 3 months to 1 month.
- Requiring enrollment in a Substance of Abuse program is overkill for many first-time violators.
- There are some circumstances, like the inadvertent ingestion of coca tea, where requiring rehabilitation to reduce the period of Ineligibility is simply not appropriate.

- A number of stakeholders continue to argue that having to deal with rehabilitation at all is outside their area of expertise.

Taking these concerns into consideration the first draft of the new Code takes the following approach:

- A flat two-month period of Ineligibility for a first violation. There is no requirement for rehabilitation or opportunity for reduction on a first violation.
- For a second violation involving the same Substance of Abuse, the period of Ineligibility is four months which may be reduced to two months if the Athlete “enters” a Substance of Abuse program. The RMA may also, at its discretion, impose the two-month period of Ineligibility where it determines that a treatment program is not necessary (e.g. the ingestion of coca tea).

CONCEPT 3

ARTICLE 10.3.2: SANCTIONS FOR WHEREABOUTS FAILURES

A new Comment 66 has been added to Article 10.3.2 to emphasize the importance of whereabouts information in the effort to combat doping in sport.

The sanction for a Whereabouts Failure violation under Article 2.4 is two years subject to reduction down to a minimum of one year, depending on whether the Athlete can establish circumstances mitigating the Athlete’s degree of fault. The changes to this Article make clear that fault shall be assessed equally against all three Whereabouts Failures with the expectation that the Athlete should be on heightened alert after the first and second failures.

CONCEPT 5

ARTICLE 10.8.1: RESULTS MANAGEMENT AGREEMENTS

Article 10.8.1 of the current Code allows an Athlete charged with an anti-doping rule violation which would result in a four-year period of an eligibility to admit the violation no later than 20 days after receiving notice of the charge and have the period of Ineligibility reduced by one year. Stakeholders have reported that this has been a very useful tool to quickly resolve cases and have requested that the scope of Article 10.8.1 be expanded. Accordingly, this provision has been expanded to apply to anti-doping rule violations with the charged period of Ineligibility of less than 4 years providing for a reduction of 25%.

CONCEPT 6

ARTICLE 10.7.1: SUBSTANTIAL ASSISTANCE

There was widespread stakeholder support, particularly from those stakeholders with investigation units, to expand the scope of Article 10.7.1. It was pointed out that the utility of 10.7.1 was limited by the requirement that the substantial assistance had to “result” in criminal or disciplinary action. That requirement has been eliminated. A provision has also been added allowing the RMA to suspend a smaller portion of the period of Ineligibility in an initial decision and, based on later reconsideration of the value of the information received, increase the amount of the period of Ineligibility suspended.

See also below on new Article 10.7.2.

CONCEPT 7

USE OF DATA

Athlete Samples and Sample data used for either Research or Quality Assurance must be made anonymous so that the information cannot be traced back, or used against, the Athlete. That is the case under the current Code and remains the case in this draft. It also remains the case that Samples used for Research require the Athlete’s consent while Samples and Sample data used for Quality Assurance do not. Changes have been made to Article 19 to better clarify the difference between Research and Quality Assurance and to address related data protection issues.

CONCEPT 8

NEW DEFINITION: NADO OPERATIONAL INDEPENDENCE

Article 20.5.1 of both the current Code and proposed first draft of the new Code require NADO’s to be independent in their operational decisions and activities from sport and government. This draft adds a new definition of “NADO Operational Independence” which further clarifies that requirement.

NEW ARTICLES 21.2.7 AND 10.14.1 (IV): ATHLETE SUPPORT PERSONNEL RESTRICTIONS

The problem of Athlete Support Personnel doping Athletes is already addressed with prohibitions and extra Consequences in various parts of the Code. New Articles 21.2.7 and 10.14.1(iv) make clear that no person subject to a period of Ineligibility or a Provisional Suspension may provide Athlete Support Personnel services to any Athlete who is bound by rules adopted pursuant to the Code. This would include Athletes seeking to work as Athlete Support Personnel while they are serving a period of Ineligibility.

Comment 75 has been added to Article 10.7.1 (Substantial Assistance) noting that assistance provided in uncovering doping of Protected Persons by Athlete Support Personnel is particularly valuable.

ARTICLE 4.4: THERAPEUTIC USE EXEMPTIONS

Much of the detail in this Article of the Code has been moved to the International Standard for Therapeutic Use Exemptions. One substantive addition could be described as follows: Following strong stakeholder feedback, it is now recommended that for national-level TUE appeals the appellate body include at least one physician with experience in the care and treatment of Athletes and a sound knowledge of clinical, sports and exercise medicine. There is one other substantive aspect of the TUE process which has generated considerable discussion, but which has not yet been resolved. The question is whether there should be greater flexibility, particularly in the imposition of Consequences, in connection with retroactive TUE's. Based on the stakeholder feedback received, the Code Drafting Team is continuing to consider appropriate sanctioning flexibility in anti-doping rule violation cases where the criteria for obtaining a TUE in Article 4.2 of the International Standard for Therapeutic Use Exemptions are met (but the athlete has not met the criteria for a retroactive TUE).

While there was strong stakeholder support for a more lenient and flexible sanctioning regime in such cases, the Code Drafting Team is seeking further feedback on what such a regime might look like. In particular:

1. Applying a standard "fault" analysis to impose a period of Ineligibility between a reprimand to two years does not appear to work well in such cases. In particular, the fault of the Athlete can often be assessed as high in that context/using such definition, as the Athlete has not met the criteria for a retroactive TUE and often has simply failed to apply for a TUE in advance.
2. One potential option would be to have a specific, standalone sanctioning regime for such therapeutic use cases (similar to the regime for substances of abuse). For example, a provision such as the following:

"Notwithstanding any other provision in Article 10.2, if the *Athlete* can establish that the presence, *Use* or *Attempted Use* or *Possession* met the criteria in Article 4.2 of the *International Standard for Therapeutic Use Exemptions*, then the period of *Ineligibility* shall be between three (3) and six (6) months depending on the *Athlete's* degree of *Fault*. The period of *Ineligibility* established in this Article [x] is not subject to any reduction based on any provision in Article 10.6."
3. Another option would be to simply have a fixed 3-month sanction in such cases (which also has the benefit of simplicity and not requiring an ADO/hearing panel to have to spend time trying to assess fault.)
4. If no sanction at all were to be imposed, there is a concern that this would be granting a retroactive TUE in all but name (albeit through a different process to the TUE process). This may risk disincentivizing Athletes to apply for a TUE in advance, and other potential consequences would also need to be carefully considered, e.g. would this approach risk putting ADOs/hearing panels under undue pressure when trying to retroactively determine if the Article 4.2 criteria are met? There is also concern that this would be setting up a highly complex and time-intensive retroactive TUE process and accompanying Code sanctioning process only to ultimately get to the exact same outcome. If this is the desired policy approach from stakeholders, query if it would be more straightforward to just remove the need to apply for a TUE in advance and state that if an athlete meets the criteria in Article 4.2 they will get a TUE (whether prospective or retroactive)?

ARTICLE 6.5: FURTHER ANALYSIS OF SAMPLES PRIOR TO OR DURING RESULTS MANAGEMENT

This Article has been revised to make clear that a laboratory may conduct repeat or additional analysis on a sample prior to the time a Results Management Authority (RMA) notifies an Athlete that the sample is the basis for an anti-doping rule violation charge, or after that case has been finally resolved. Between the time that the Athlete has been charged and completion of the case, additional analysis on the sample may only be performed with the consent of the Athlete or the approval of the hearing panel.

ARTICLE 7.4: PROVISIONAL SUSPENSIONS

Under the current Code, stakeholders have noted the difficulty of conducting the results management process and imposing a Provisional Suspension for Substance of Abuse cases when the period of Ineligibility (with treatment) may only be one month. In this draft, the mandatory Provisional Suspension applicable to Adverse Analytical Findings and Adverse Passport Finding for Non-Specified Substances will not be applicable to Substances of Abuse.

When a Provisional Suspension imposed by a Major Event Organization does not extend beyond the completion of the Event or is not binding on other Signatories under Article 15.1.4, a revision to Article 15.2 provides that the RMA shall promptly make its own determination on whether a Provisional Suspension should be imposed.

ARTICLE 10.6.1.2: CONTAMINATED SOURCE

The previous Code Article with this number addressed a potential reduction in the period of Ineligibility for anti-doping rule violations involving “Contaminated Products.” The new “Contaminated Source” definition is broader and includes sources of contamination such as food or drink, environmental contamination, or exposure through contact with a third person or object touched by a third person.

NEW ARTICLE 10.7.2: OTHER VALUABLE INFORMATION AND ASSISTANCE IN THE EFFORT TO ELIMINATE DOPING IN SPORT

This new provision allows an RMA to suspend up to 15% of the otherwise applicable period of Ineligibility based on receipt of valuable information which does not otherwise meet the criteria for Substantial Assistance under Article 10.7.1. (Article 10.7.1 permits a suspension of up to 75% of the period of ineligibility.) For example, an Athlete provides information on how he has doped and avoided detection, but without identifying any third-party with culpability as required by Article 10.7.1.

ARTICLE 10.14.1: STATUS DURING INELEGIBILITY OR PROVISIONAL SUSPENSION

This Article describes what a person serving a Provisional Suspension or period of Ineligibility can or cannot do. Multiple stakeholders have asked that the language in this Article be expanded, and examples provided. That has been done in this first draft.

ARTICLES 13 AND 14.2.2: CHANGES RELATED TO APPEALS

Article 13.2. The list of appealable decisions has been expanded to include: decision not to bring forward an Adverse Passport Finding or an Atypical Passport Finding after review; a decision not to impose a Provisional Suspension; a decision by the RMA that the requirements for recording a whereabouts failure are not met; and a decision under Article 27.3 (retroactive application of the new Code to the period of an eligibility still being served by an Athlete based on a pre-new Code decision).

Article 13.2.5. Under the current Code, decisions or approvals made by WADA under Articles 10.7 (Substantial Assistance) and 10.7.2 (Other Valuable Information) were not appealable. In this draft those decisions are appealable subject to an arbitrary standard of review. The arbitrary standard of review also applies to WADA decisions under 5.6.1 (exemption from the 6-month notice rule for retired Athletes returning to competition).

Article 13.1.2. Proceedings before CAS involving WADA, an International Federation and/or a Major Event Organization as a party shall be conducted in French or English unless the above parties agree otherwise.

Article 14.2.2. Parties with a right to appeal a decision shall be provided with a machine-readable case file produced in French or English and, to the extent practical, in electronic digital and word searchable format.

ARTICLES 14.3.2 & 14.3.4: MANDATORY PUBLIC DISCLOSURE AFTER THE FINAL DECISION IN A CASE

The general requirement under Article 14.3.2 is that after a final decision in a case, the RMA must publicly disclose the result. Current Article 14.3.4 makes an exception to that general principle and requires consent of the Athlete where the Athlete has been found not to have committed an anti-doping rule violation. The first draft of the new Code makes another exception to mandatory publication where the Athlete has been found to have had No Fault or Negligence.

ARTICLES 23.2.2 & 6.2 (IV): USE OF ANTI-DOPING SAMPLES FOR SPORT REGULATIONS PURPOSES OTHER THAN ANTI-DOPING

The current Code contains a reference in Comment 114 under Article 23.2.2 to the permitted use of Doping Control Samples for other sport regulation purposes. In this draft, the principle of that Comment has been incorporated into the text of Articles 23.2.2 and 6.2(iv). The applicable conditions for such use have been expanded to address potential data privacy concerns.

PROTECTED PERSONS AND RECREATIONAL ATHLETES

The special protections provided to Protected Persons and Recreational Athletes in the current Code have not been changed. However, a new comment has been added to the definitions of Protected Persons and Recreational Athletes, which makes clear that those circumstances in which special treatment should be given to Protected Persons and Recreational Athletes are specifically set forth in the Code and it should not be assumed that special treatment was intended with respect to other parts of the Code where it is not expressly stated.