

Significant Changes Between the 2009 Code And the 2015 Code, Version 4.0

During the 2015 Code consultation process, 315 separate submissions were received. The submissions recommended a total of 3,987 changes to the Code. In addition, the Code Drafting Team engaged in dozens of face-to-face and telephonic meetings with stakeholders to discuss the Code.

Version 4.0 is the fourth published version of the 2015 Code. In between the published versions, more than 50 different working drafts were considered. In some cases, changes from the 2009 Code were made in an early published version and then changed back in a later version based on continuing stakeholder feedback (for example, the initial proposals to eliminate the B Sample and to change the criteria for adding a substance or method to the Prohibited List). In several other cases, changes were made to make the Code language consistent with the legal opinion on Code enforceability provided by Judge Jean-Paul Costa, the former President of the European Court of Human Rights.

As was the case with the 2003 and 2009 Codes, stakeholder input was invaluable in making Version 4.0 of the 2015 Code a more clear and effective document. This input has resulted in 2,269 changes between the 2009 Code and Version 4.0 of the 2015 Code. All of these changes are reflected in the document, "Version 4.0 2015 Code redlined to 2009 Code," which is posted on WADA's website. This document provides an overview of those changes organized into seven general themes, including the key changes related to each theme.

1. Theme One: The 2015 Code amendments provide for longer periods of Ineligibility for real cheats, and more flexibility in sanctioning in other specific circumstances.

There was a strong consensus among stakeholders, and in particular, Athletes, that intentional cheaters should be Ineligible for a period of four years. Under the current Code, there is the opportunity for a four-year period of Ineligibility for an Adverse Analytical Finding if the Anti-Doping Organization can show "Aggravating Circumstances." However, in the more than four years since that provision has been part of the Code, it has been rarely used. Some examples of provisions which lengthen the period of Ineligibility for intentional dopers include:

Article 10.2: For Presence, Use or Possession of a Non-Specified Substance, the period of Ineligibility is four years, unless the Athlete can establish that the violation was not intentional. For Specified Substances, the period of Ineligibility is four years, where the Anti-Doping Organization can prove that the violation was intentional. (Intentional means that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute an anti-doping rule violation and manifestly disregarded that risk.)

Article 10.6.3: Prompt admission no longer automatically reduces a potential four-year anti-doping rule violation for an Adverse Analytical Finding to two years. The proposed article requires the approval of both WADA and the Anti-Doping Organization with results management authority to approve the reduction for prompt admission.

Article 2.5: The text of the violation for Tampering has been expanded to include intentionally interfering or Attempting to interfere with a Doping Control Official, providing

fraudulent information to an Anti-Doping Organization, or intimidating or Attempting to intimidate a potential witness.

Article 2.9: The text of the violation for Complicity has been expanded to include “assisting” and “conspiring” involving an anti-doping rule violation, as well as the prohibition on participation during a period of Ineligibility.

Article 2.3: This Article has been expanded to include “evading” sample collection.

There was also stakeholder consensus that more flexibility in sanctioning should be permitted in certain circumstances where the Athlete can demonstrate that he or she was not cheating. Some examples include:

Article 10.5.1: Where the Athlete can establish No Significant Fault for an Adverse Analytical Finding involving a Contaminated Product, the period of Ineligibility may range from at a minimum a reprimand and at a maximum, two years. (Note, however, that for the period of Ineligibility involving a Specified Substance to be reduced below two years, the Athlete must now establish No Significant Fault.)

Article 2.4: The window in which an Athlete may accumulate three whereabouts filings (Filing Failures Or Missed Tests) which trigger an anti-doping rule violation has been reduced from 18 months to 12 months. The consensus was that twelve months is ample time for an Anti-Doping Organization to accumulate three whereabouts failures on an Athlete who is trying to avoid Testing and that shortening the window reduces the risk that Athletes who are simply careless in handling their paperwork will be found to have committed anti-doping rule violations.

2. Theme 2: Consideration of the Principles of Proportionality and Human Rights.

A number of stakeholders suggested that the applicability of the principles of proportionality and human rights should be expressly stated in the Code. Several Code provisions have been modified to better take those principles into account. Some examples include:

Purpose of the Code, pg. 1: “The Code has been drafted giving consideration to the principles of proportionality and human rights.”

Introduction, pg. 5: Code proceedings are “intended to be applied in a manner which respects the principles of proportionality and human rights.”

Article 14.3.2: The mandatory public disclosure of anti-doping rule violations need not occur until after the final appellate decision. Under the current Code, disclosure was required after hearing.

Article 14.3.6 and Definition of Athlete: Mandatory public disclosure of anti-doping rule violations is not required for Minors or Athletes who are not International- or National-Level Athletes.

Definition of No Significant Fault: A Minor need not establish how a Prohibited Substance entered his or her system to establish No Significant Fault.

Lower-Level Athletes: Athlete Definition: Some countries choose to test lower-level Athletes and even fitness club participants. The definition of Athlete has been clarified to

provide that where a National Anti-Doping Organization elects to test individuals who are neither national- nor international-level Athletes, not all of the Code requirements are applicable.

Legal Opinion: In connection with both the 2003 and 2009 Codes, WADA obtained legal opinions on the enforceability of various aspects of the Code. The same approach has been taken in connection with drafting the 2015 Code. WADA engaged Judge Costa to opine on various aspects of the Code, particularly as they relate to the principles of proportionality and human rights. Dialog between WADA and Judge Costa has influenced the drafting of several articles found in Code Version 4.0. Judge Costa's opinion can be found on WADA's website.

3. Theme Three: The 2015 Code amendments support the increasing importance of investigations and use of intelligence in the fight against doping.

The current Code makes clear that anti-doping rule violations can be proved by any reliable means. This includes both analytical and non-analytical evidence obtained through investigations. Many of the most high-profile successes in the fight against doping have been based largely on evidence obtained either by Anti-Doping Organizations or the civil authorities through the investigations process. There is a strong consensus among the stakeholders that the role of investigations in the fight against doping should be highlighted in the Code and that cooperation of governments and all stakeholders in anti-doping rule violation investigations is important. Some examples of the increased role of investigations reflected in the Code amendments include:

Articles 5 and 5.8: The title of Article 5 has been changed to Testing and Investigations. Article 5.8 describes each Anti-Doping Organization's investigations and intelligence-gathering responsibilities.

Articles 20.3.6, 20.4.4, 21.2.6 and 21.2.5: The roles and responsibilities of International Federations, National Olympic Committees, Athletes, and Athlete Support Personnel have been expanded to require cooperation with Anti-Doping Organizations investigating anti-doping rule violations.

Article 22.2: The expectations of Signatories with respect to governments have been expanded to include governments putting in place legislation, regulation, policies or administrative practices for cooperation in sharing of information with Anti-Doping Organizations.

Articles 10.6.1.2 and 10.6.1.3: The article on reduction of sanctions for Substantial Assistance has been amended to allow WADA to give assurance to an Athlete or other Person willing to provide Substantial Assistance that the agreed-upon reduction in the period of Ineligibility cannot be challenged on appeal; that in appropriate circumstances, the disclosure of the Substantial Assistance may be limited or delayed and that in exceptional circumstances, WADA may approve a Substantial Assistance agreement that provides for no period of Ineligibility. For assistance provided to a criminal or disciplinary body to result in Substantial Assistance treatment under the Code, the information must also be made available to the Anti-Doping Organization with results management responsibility.

Article 17: The statute of limitations has been extended to ten years from the eight-year statute found in the current Code. Recent events demonstrate that sometimes it takes a long time before sophisticated doping schemes can be uncovered.

4. Theme Four: Amendments to the 2015 Code have been included to better reach Athlete Support Personnel who are involved in doping.

Doping frequently involves coaches, trainers, or other Athlete Support Personnel. Additionally, in many cases, those Athlete Support Personnel are outside the jurisdiction of anti-doping authorities. There was widespread support among the stakeholders to revise the Code to better address the problem of the role of Athlete Support Personnel in doping. Some examples include:

Article 20.3.5: Establishes that one of the roles and responsibilities of International Federations is to adopt rules which obligate their National Federations to require Athlete Support Personnel who participate in their activities to agree to the results management authority of applicable Anti-Doping Organizations.

Article 20.3.10 and 20.5.9: Requires International Federations and National Anti-Doping Organizations to conduct an automatic investigation of Athlete Support Personnel in the case of any anti-doping rule violation by a Minor or any Athlete Support Personnel who has provided support to more than one Athlete found to have committed an anti-doping rule violation.

Article 2.10: For those Athlete Support Personnel who have been involved in doping activities but are currently outside the jurisdiction of anti-doping authorities, the 2015 amendments add a new anti-doping rule violation article entitled "Prohibited Association." This article makes it an anti-doping rule violation for an Athlete or other Person to associate in a professional or sport-related capacity with Athlete Support Personnel who are currently Ineligible, who have been convicted in a criminal, disciplinary, or professional proceeding for conduct that would constitute doping, for the longer of six years from the conviction/decision or the duration of the criminal, disciplinary, or professional sanction imposed; or someone who is serving as a front for such a Person. Before an Athlete is found to have violated this article, he or she must have received notice of the Athlete Support Personnel's disqualified status and the Consequence of continued association. The Athlete Support Personnel also has the opportunity to explain that the disqualified status is not applicable to him or her. Finally, this article does not apply in circumstances where the association is unavoidable, such as a child/parent or wife/husband relationship.

Articles 21.2.6, 20.3.15 and 20.4.13: Under the current Code, Athlete Support Personnel commit anti-doping rule violations by administering a Prohibited Substance or Method to an Athlete, Possession of a Prohibited Substance or Method in Competition without an acceptable justification, Trafficking, or Complicity. The current Code does not address Use of Prohibited Substances and Methods by Athlete Support Personnel themselves. A new Article 21.2.6, has been added to the Roles and Responsibilities of Athlete Support Personnel, which provides that "Athlete Support Personnel shall not Use or Possess any Prohibited Substance or Prohibited Method without valid justification." Violation of this article by an Athlete Support Personnel is not an anti-doping rule violation, but does give rise to disciplinary action under sport disciplinary rules. To enforce this, Articles 20.3.15 and 20.4.13 require International Federations and National Olympic Committees to have disciplinary rules in place which prevent Athlete Support Personnel who violate Article 21.2.6 from providing support to Athletes.

5. Theme Five: The 2015 Code amendments place additional emphasis on the concepts of smart test distribution planning, and smart menus for Sample analysis.

Today, as is evident from the 2012 Anti-Doping Testing Figures Report published on WADA's website, not all Anti-Doping Organizations collect both blood and urine, nor do they direct the laboratories to conduct full menu analysis on all Samples collected. Indeed, some Anti-Doping Organizations do minimal or no Testing for Prohibited Substances or Prohibited Methods which are likely to be among the most beneficial in particular sports. The 2015 Code amendments address this problem by providing that WADA, in consultation with International Federations and other Anti-Doping Organizations, will adopt a Technical Document that identifies those Prohibited Substances or Prohibited Methods that are most likely to be abused in particular sports and sport disciplines. That document will be used by Anti-Doping Organizations in test distribution planning and by laboratories in the analysis of Samples. Specific articles which address this include:

Articles 5.4.1 and 5.4.2: Anti-Doping Organizations are to use the risk assessment component of the Technical Document as the basis for developing their Test Distribution Plan. WADA may request a copy of that Test Distribution Plan as part of its Code compliance monitoring activity.

Article 6.4: The Sample analysis menu component of the Technical Document shall be the basis for Sample analysis in particular sports and disciplines. An Anti-Doping Organization may always direct the laboratory to analyze a Sample for a broader range of substances, but a more narrow range of substances is only authorized where the Anti-Doping Organization has satisfied WADA that because of the particular circumstances of its country or sport, as set out in its test distribution plan, less extensive analysis would be appropriate. Laboratories are also authorized, at their own expense, to analyze Samples for substances or methods beyond those requested by the Testing authority.

6. Theme Six: The 2015 Code amendments attempt to be both more clear and fair in balancing the interests of International Federations and National Anti-Doping Organizations.

International Federations and National Anti-Doping Organizations both play a critical role in the fight against doping. The efforts of both should be collaborative and coordinated. If they are not, the system is less effective and in many cases it is the clean Athletes who suffer. The following are some examples of changes which have been made to better clarify and balance the responsibilities of International Federations and National Anti-Doping Organizations:

Article 4.4: International Federations still control therapeutic use exemptions (TUEs) for International-Level Athletes. National Anti-Doping Organizations still control TUEs for National-Level Athletes. Under the 2015 Code amendments, each organization must recognize a TUE granted by the other unless the organization provides a written explanation of its finding that the TUE which it has been asked to recognize does not comply with the International Standard for TUEs. In such case, a National Anti-Doping Organization TUE remains in effect for national Events and an International Federation's TUE remains in effect for international Events until the appeal process through WADA and ultimately to CAS is completed. Major Event Organizations continue to have authority to grant TUEs for their Events. However, a Major Event Organization's denial of a TUE has no effect on any TUE previously granted beyond its Event.

Article 5.3: The rule that a National Anti-Doping Organization may not test during an International Federation or Major Event Organization Event without that organization's agreement, or as a last resort, approval from WADA, has been limited to Event Venues (as defined by the International Federation or Major Event Organization). At the request of the

ruling body for the Event, during the Event Period outside of the Event Venues shall be coordinated with that ruling body (e.g., when the Athlete is still back in his or her country when the Event begins). If WADA, after consulting with the International Federation or Major Event Organization authorizes a National Anti-Doping Organization to test during an Event, WADA's decision is not subject to appeal.

Articles 5.2.6 and 7.1.1: Where an International Federation or Major Event Organization delegates Testing to a National Anti-Doping Organization, then that National Anti-Doping Organization may collect additional Samples or direct the laboratory to perform additional types of analysis at the National Anti-Doping Organization's expense. The National Anti-Doping Organization shall notify the International Federation or Major Event Organization when that occurs. If the additional Testing or analysis results in an anti-doping rule violation, then the National Anti-Doping Organization is responsible for results management.

Article 7.1: Results management authority rests with the Anti-Doping Organization that initiated Testing or, for other violations, the Anti-Doping Organization which first provides notice to the Athlete or other Person of an asserted anti-doping rule violation and then diligently pursues that anti-doping rule violation. Where there is a dispute over results management authority, WADA decides. WADA's decision may be appealed to CAS in an expedited process.

Article 7.1.2: Whereabouts violations under Article 2.4 may include a combination of filing failures and missed tests reported by either an International Federation or National Anti-Doping Organization. Article 7.1.2 clarifies that the authority to conduct results management on account of the whereabouts violations is the responsibility of the Anti-Doping Organization with whom the Athlete files his or her whereabouts information.

7. Theme Seven: Making the Code clearer and shorter.

The stakeholders want the Code to be clear and to address the many different types of situations which may arise so that there are no loopholes and so that the application of the Code is harmonious. On the other hand, everyone wishes that the Code could be a shorter and less technical document. It was not uncommon in the submissions for a stakeholder to express a desire that the Code should be made shorter and then to suggest a number of technical additions, which although useful in making the Code more clear, would also add to its length. Some examples of steps which have been taken to address these competing concerns include:

Articles 10.4, 10.5, and 10.6: The Code provisions addressing No Fault, No Significant Fault, special rules applicable to Specified Substances and Contaminated Products and other grounds upon which a sanction may be reduced, have been shortened and reorganized for a more clear presentation.

Article 10.7: The period of Ineligibility applicable for multiple violations has been restated as a short formula, with a result that is comparable to the lengthy chart and explanation that is currently found in the Code.

Article 23.2.2: The reference to including the comments to the Code as mandatory has been deleted from the Introduction. Article 23.2.2 makes clear that while comments will always be used for interpreting the Code, they need not be incorporated verbatim into each Signatory's rules.

Athletes' Guide to the Code: WADA will publish two different Code reference guides for Athletes. The first will be a short, non-technical document highlighting those portions of the Code which should be the most important to Athletes. The second will be a longer, more detailed guide with hyperlinks to the text of the relevant Code articles.

Eliminating Repetition: The Code Drafting Team has also gone through the Code to eliminate repetition where possible.

8. Other Miscellaneous Changes

Article 3.2.1: Anti-Doping Organizations should not be required to bear the expense of establishing the validity of WADA-approved methods in each contested case. The validity of methods should be established through scientific peer review or, in the case of an individual laboratory's application of methods, through ISO accreditation. This article addresses the concerns regarding transparency and peer review raised by CAS in the recent *Veerpalu* case and provides that analytical methods or decision limits approved by WADA, after consultation within the relevant scientific community and which have been the subject of peer review, are presumed to be scientifically valid. This Article further provides that WADA shall be given notice of any challenge to an analytical method or decision limit approved by it and may participate in the case, request that a CAS panel appoint an expert, or both.

Article 4.3: The current Code provides that a substance or method may be added to the Prohibited List if it meets any two of the following three equal criteria: 1) potential to enhance performance; 2) potential detriment to health; or 3) violates the spirit of sport. Many stakeholders have long believed that potential performance enhancement should be a mandatory criteria. That debate continued during the present Code revision process. The WADA Executive Committee has decided to leave Article 4.3 as it stands in the current Code. At the same time, the Executive Committee revised Technical Document TD 2013DL, increasing the decision limit for laboratories to report an Adverse Analytical Finding for marijuana, thus addressing the concern expressed by many Anti-Doping Organizations that a disproportionate share of their resources were being used in the results management of low-level marijuana cases, which were not consistent with In-Competition Use. (From the inception of the Code, Marijuana has been prohibited In-Competition—it has never been prohibited Out-of-Competition.)

Article 5.2: The broad testing authority of National Anti-Doping Organizations, International Federations and Major Event Organizations has been clarified.

Article 5.7: This article addresses retired Athletes returning to Competition. High-level Athletes should not be allowed to retire, train without being subject to Testing, and then return to Competition. The current Code permits each Anti-Doping Organizations to establish its own window in which a retired Athlete must make himself or herself available for Testing before returning to Competition. This article provides that Athletes who retired while in a Registered Testing Pool must give six month's prior written notice before returning to Competition, unless WADA, in consultation with the relevant International Federation and National Anti-Doping Organization, grants an exemption where the strict application of the rule would be manifestly unfair to the Athlete.

Article 6.5: This article addresses an Anti-Doping Organization's and WADA's authority to store Samples for further analysis. The procedures for further analysis of stored Samples are detailed in the amendments to the International Standard for Laboratories. This article also makes clear that once an Anti-Doping Organization initiates

an Article 2.1 anti-doping rule violation proceeding against an Athlete, the Sample should not be subject to further analysis. Hearings should be based on the laboratory analysis which triggered the initiation of the anti-doping rule violation proceeding. The laboratory has a responsibility to perform the analysis correctly the first time and should not be given the opportunity to correct errors in the middle of a proceeding. On the other hand, the Athlete should not be allowed to re-test the Sample, since in some cases, the Presence of a Prohibited Substance in a Sample will degrade over time. This rule provides equal treatment to both the Anti-Doping Organization and the Athlete in a disputed proceeding.

Article 8.1: The requirements for a fair hearing have been simplified to track the language found in Article 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms. These are principles generally accepted in international law.

Article 8.5: This article provides the opportunity for a single hearing before CAS where all parties who would otherwise have an appeal right agree. In highly-contested cases, this may eliminate the need for separate long and expensive hearings, both in the first instance and on appeal. Consent of all parties is required because there would be no appeal right from the single CAS hearing.

Article 10.10: This article affirms that Anti-Doping Organizations may, in their own rules, impose financial sanctions, but only where those sanctions are proportionate and do not reduce the period of Ineligibility which would otherwise have been applicable under the Code. Athletes should not be allowed to pay their way out of any period of Ineligibility.

Article 10.12.2: This article provides an exception to the general rule that Athletes are not allowed to participate in training or any other activity of their National Federation or club during their period of Ineligibility. The exception allows an Athlete to return to train with his or her team or to use the facilities of a club or other organization during the shorter of: 1) the last two months of the Athlete's period of Ineligibility; or 2) the last one-quarter of the period of Ineligibility imposed. The burden of not being able to train with a team or club during a period of Ineligibility is much heavier in some sports. For example, unlike distance runners, ski jumpers and gymnasts cannot effectively train without access to facilities. Athletes in many Team Sports cannot effectively train on their own.

Articles 13.1.1, 13.1.2 and 13.2.4: The role of the Court of Arbitration for Sport is to resolve disputes in accordance with the agreement of the parties. In doping cases, that agreement is set out in the Code. Article 13.1.1 makes clear that the scope of CAS review is not limited to the issues before the initial decision-maker. Article 13.1.2 makes clear that CAS need not give deference to the discretion exercised by the body whose decision is being appealed. Article 13.2.4 specifically allows cross-appeals (and other subsequent appeals which are not technically cross-appeals) in doping cases under Article 13. Cross-appeals are not currently permitted by CAS.

Articles 18 and 20.3.12: Article 18 makes clear that educational programs should focus on prevention. Article 20.3.12 requires International Federations to conduct anti-doping education in coordination with the applicable National Anti-Doping Organization.

Articles 22.6 and 20.4.3: These articles address the need for governments and National Olympic Committees to respect the autonomy of National Anti-Doping Organizations and the need for these organizations to be free from interference in their operational decisions and activities.

Articles 23.5.1 and 23.5.2: Currently, Signatories are required to report on Code compliance every two years. These articles provide that the monitoring criteria and monitoring schedule will be established by the WADA Executive Committee. A number of stakeholders pointed out that it would be better to have a more flexible compliance schedule to take into consideration factors such as compliance with the new Code on January 1, 2015, or timing in relation to the Olympic Games or the Conference of Parties.