

Q&A: 2009 Code

While the World Anti-Doping Code (Code), approved in 2003 and effective January 1, 2004 - December 31, 2008, maintains its key principles and elements, several revisions were approved by the WADA Foundation Board for implementation by January 2009. The following provides responses to frequently asked questions on the process for making the revisions and what these revisions are.

Why did WADA decide to revise the World Anti-Doping Code (Code)?

The Code—the core document that provides the framework for harmonized anti-doping policies, rules, and regulations within sport organizations and among public authorities—has proven to be a very powerful and effective tool in the harmonization of anti-doping efforts worldwide since its coming into force on January 1, 2004. This has been demonstrated by the overwhelming support of governments and sports in adopting the Code, in addition to the growing body of jurisprudence from the Court of Arbitration for Sport (CAS) supporting the Code's tenets.

As outlined in Article 23.6, the Code was always intended to serve as a living document, evolving to meet needs.

To this end, WADA initiated a consultation process beginning in 2006 for a practical review of the Code's provisions and their fine-tuning to enhance anti-doping programs, building on the experience gained by the Agency and its stakeholders in the application of the Code.

At the same time, in cooperation with its stakeholders, WADA launched a review of the International Standards associated to improve all anti-doping protocols and processes.

How did the revisions occur?

The Code consultation process was similar to that used in the original drafting of the document between 2001 and 2003.

The Code consultation process began in April 2006, included three stages of consultation, and culminated at the Third World Conference on Doping in Sport, which took place in November, 2007. The revised Code was endorsed by delegates at the World Conference on November 17, 2007, and unanimously adopted by WADA's Foundation Board.



Throughout this process, WADA solicited and carefully considered stakeholders' recommendations on various matters resulting from several years' experience of operating under and implementing the Code.

All stakeholders were urged to consider their experiences in providing suggestions for any amendments. In view of the successful and harmonious operation to date, stakeholders were asked to look carefully at the areas which would benefit from changes, and reflect on the benefits to the global community of athletes arising from any suggested alteration.

Who could submit comments as part of the consultation process?

Anyone. All stakeholders were encouraged to send their suggestions. Comments received included feedback from athletes, governments, international organizations, national anti-doping organizations, the International Olympic Committee, the International Paralympic Committee, international sports federations, national Olympic committees, and many other organizations and individuals. In addition, WADA initiated 40 individual meetings with and 70 presentations to various stakeholder groups.

Who oversaw this process?

The consultation process was managed by an expert project management team which was overseen by WADA's Executive Committee.

Who approved the changes to the Code?

WADA's Executive Committee and Foundation Board reviewed comments from stakeholders from each phase of the consultation process and, on November 17, 2007, the Foundation Board unanimously approved the revised Code.

When did the revised Code go in force?

Revisions to the Code took effect on January 1, 2009.

What major changes does the 2009 Code include?

Firmness & Fairness

Two general themes emerge—firmness and fairness—both targeted at strengthening the fight against doping in sport.

Increased Sanctions

The 2009 Code provides for an increase of sanctions in doping cases involving aggravating circumstances such as being part of a large doping scheme, the athlete having used multiple prohibited substances or a prohibited substance on multiple occasions, or the athlete engaging in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation. Aggravating circumstances also include situations in which a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of ineligibility. While the 2003 Code allowed for a 4-year ban for a first serious anti-doping rule violation only in cases of trafficking or administration of a prohibited substance or method, the 2009 Code thus broadens the spectrum of anti-doping rule violations that can lead to a 4-year ban for a first serious doping offence.

Greater Flexibility

At the same time, a greater flexibility is introduced as relates to sanctions in general. While this flexibility provides for enhanced sanctions, for example in cases involving aggravating circumstances (see above), lessened sanctions are possible where the athlete can establish that the substance involved was not intended to enhance performance.

Specified Substances

For this purpose, the definition of “specified substances” changed with the of the 2009 Code. The 2003 Code stated that “The Prohibited List may identify specified substances which are particularly susceptible to unintentional anti-doping rule violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents.” Where an athlete could establish that the use of such a specified substance was not intended to enhance sport performance, a doping violation could result in a reduced sanction (at a minimum a warning and reprimand and no period of ineligibility, and at a maximum a 1-year ban). The 2009 Code now provides that all prohibited substances, except substances in the classes of anabolic agents and hormones and those stimulants so identified on the Prohibited List, shall be “specified substances” for the purposes of sanctions. This means that where an athlete can establish how a specified substance entered his/her body or came into his/her possession and that such specified substance was not intended to enhance sport performance, the sanction may be reduced to a reprimand and no period of ineligibility at a minimum, and a 2-year ban at a maximum. It is important to note that the newly defined specified substances are not necessarily less serious agents for purposes of sports doping than other prohibited substances (for example, a stimulant that is listed as a specified substance could be effective to an athlete in competition). For that reason, an athlete who does not meet the reduction criteria could receive up to a 4-year period of ineligibility in case of aggravating circumstances. However, there is a

greater likelihood that specified substances, as opposed to other prohibited substances, could be susceptible to a credible, non-doping explanation.

Incentives to Come Forward

Incentives to come forward have also been strengthened. The potential extent of the suspension of an ineligibility period (one-half of the otherwise applicable ineligibility period in the 2003 Code) has been enhanced to three-quarters of the otherwise applicable ineligibility period in the 2009 Code, for substantial assistance to an anti-doping organization, criminal authority or professional disciplinary body which results in the anti-doping organization discovering or establishing an anti-doping rule violation by another person or which results in a criminal or disciplinary body discovering a criminal offence or the breach of professional rules by another person. In addition, where an athlete or other person voluntarily admits the commission of an anti-doping rule violation prior to receiving notice of a sample collection which could establish an anti-doping rule violation, or in circumstances where no anti-doping organization is aware that an anti-doping rule violation might have been committed, the period of ineligibility may be reduced, but not below one-half of the period of ineligibility otherwise applicable.

Financial Sanctions

The 2009 Code does not preclude anti-doping organizations from providing, in their own rules, for financial sanctions against cheaters, in addition to the period of ineligibility or other sanction imposed.

Accelerated Management of Doping Cases

The 2009 Code addresses delays and calls for the acceleration of the process and management of doping cases (e.g., reduced period between analysis of the A- and B-samples, and mandatory provisional suspension following an adverse analytical finding through analysis of the A-sample for non-specified substances).

WADA's Right of Appeal

The 2009 Code also clarifies WADA's right to appeal directly to the Court of Arbitration for Sport a case in which an anti-doping organization fails to render a decision with respect to whether an anti-doping rule violation was committed within a reasonable deadline, as if the anti-doping organization had rendered a decision finding no anti-doping rule violation.

Greater Harmonization

Stakeholders have requested greater harmonization, now included in the 2009 Code, in some areas where stakeholders had initially wanted some flexibility in the original drafting of the 2003 Code. For example, the 2003 Code did not set requirements as to the number of missed tests that should lead to a potential anti-doping rule violation, leaving it to anti-doping organizations to determine

this number based upon varying circumstances encountered in different sports and countries. These rules were harmonized and made more uniform and mandatory as part of the Code review. The 2009 Code formalizes the past WADA recommendation that any combination of three missed tests and/or failures by an athlete to provide accurate whereabouts information within an 18-month period as determined by the anti-doping organizations with jurisdiction over the athlete shall constitute an anti-doping rule violation.

UNESCO Convention

As relates to the UNESCO International Convention against Doping in Sport, the International Olympic Committee will accept bids for the Olympic Games only from countries where the government has ratified, accepted, approved or acceded to the UNESCO Convention and where the National Olympic Committee, National Paralympic Committee and National Anti-Doping Organization are in compliance with the Code. Starting on January 1, 2010, International Federations will do everything possible to award World Championships only to countries where the government has ratified, accepted, approved or acceded to the UNESCO Convention and where the National Olympic Committee, National Paralympic Committee and National Anti-Doping Organization are in compliance with the Code.

Were changes in relation to the strict liability principle introduced as part of the Code review?

No. The strict liability has been maintained in the 2009 Code.

Strict liability means that each athlete is strictly liable for the substance found in his or her bodily specimen, and that an anti-doping rule violation occurs whenever a prohibited substance (or its metabolites or markers) is found in a bodily specimen, whether or not the athlete intentionally or unintentionally used a prohibited substance or was negligent or otherwise at fault.

As consistently confirmed by CAS, the strict liability rule for the finding of a prohibited substance in an athlete's specimen, with a possibility that sanctions may be modified based on specific criteria, provides a reasonable balance between effective anti-doping enforcement for the benefit of clean athletes and fairness in the exceptional circumstances where a prohibited substance entered an athlete's system through no fault or negligence on the athlete's part.

Was the List of Prohibited Substances and Methods being reviewed as part of the Code review?

No. The Code review and the annual updating of the Prohibited List are two separate processes.



The Prohibited List is reviewed and updated annually by WADA through a year-long consultative process involving groups of international scientific and anti-doping experts and stakeholders' feedback.