

New WADA Code 2021- Summary of Major Changes to FINA Rules

Anti-Doping Rule Violations (ADRVs)

Fraudulent Conduct During Results Management and Hearing Process

Tampering during Results Management will be considered as a separate first violation. The sanction for tampering during RM will be two to four years and added on to any sanction for the violation reviewed. The definition of tampering has also been consolidated.

Attempted Complicity:

Attempted complicity is now an anti-doping rule violation (ADRV)

ADRV of Prohibited Association:

For potential cases of Prohibited Association, FINA no longer has to provide athletes advanced notice that a support person is ineligible. FINA must demonstrate that an athlete knew that he/she was associated with a support personnel who was ineligible.

More Protection for Individuals Reporting Violations:

Discouraging someone from reporting information relating to doping activities (including non-compliance with the Code) is a new ADRV. Retaliating against another person for reporting information relating to doping activities is a new ADRV. Such activities will result in a sanction from two years to a lifetime ban depending on the seriousness of the violation.

Provisional Suspensions

Provisional suspensions to be imposed by FINA Staff instead of FINA Executive to prevent any challenge based on a potential conflict of interest. This was requested by WADA. Voluntary Provisional Suspensions must now be accepted within a deadline of 10 days and no credit is granted if the athlete lifts their voluntary suspension.

“In-competition” Period Reduced

The definition for ‘in-competition’ now refers to the period starting at 11:59 pm on the day before the Event until the end of Event and the sample collection process related to such Event. This was imposed by WADA to have uniformity between all Signatories, save for exceptional circumstances.

Sanctions and Result Management

Definition of “Intentional” modified

The reference to “the intention to cheat” was deleted. “Intentional” now means that the person intended to commit an act that constitutes an ADRV regardless whether the person knew it violated the Code or not.

Reduced sanction for Substances of Abuse (e.g. Cannabis, Cocaine)

Some substances on the List will be identified as ‘Substances of Abuse’ by WADA’s List Expert Group because they are frequently abused in society outside of the context of sport (e.g. Cannabis, Cocaine). A three-month sanction will be given when an athlete can prove that the use happened out-of-competition and was unrelated to sport performance. The sanction can be reduced to one month if the athlete completes a rehabilitation program.

Added Flexibility in Sanctioning for Refusal to Submit to Sample Collection or Tampering

In exceptional circumstances, the sanction for refusing to submit or tampering with the sample collection process can be from two to four years.

Increasing the Upper End of the Sanction for Complicity

The range of ineligibility for complicity is two years to a lifetime ban.

Re-Introduction of the Concept of “Aggravating Circumstances”

An additional sanction from 0-2 years can now be added if the case presents Aggravating Circumstances (e.g. use over several years or use of multiple substances).

Added Flexibility in Sanctioning for “Protected Persons” and Minors

More flexible sanctioning rules are applied to an expanded group of athletes described as ‘Protected Persons’ that includes individuals who, for reasons other than age, have been determined to lack legal capacity under applicable national legislation. Elite 16- and 17-year old athletes are not included in the definition of Protected Persons and would not benefit from the special flexible sanctioning rules. However, Elite 16- and 17-year old athletes would still, as minors, be excused from mandatory public disclosure.

‘Recreational Athletes’ Permitted More Flexibility in the Imposition of Consequences

The new category of athlete – “recreational athletes” – benefits from the same flexibility in sanctioning as Protected Persons.

Substantial Assistance: Expansion of Types of Cooperation Justifying Reduced Sanction

The possibility of having a sanction reduced for substantial assistance has been expanded to include helping to establish non-compliance with the Code and International Standards and other types of sport integrity violations. WADA can agree to not publicly disclose an ADRV in exchange for substantial assistance.

Improvements to the Multiple Violations Rules (more flexibility)

The formula for calculating the period of ineligibility for a second ADRV has been modified to be more proportionate and not so dependent on the order in which the two violations occurred. Also, if a new violation is found to have occurred more than 12 months before a first violation that an athlete or other person has been sanctioned for, the later-discovered violation will be sanctioned as if it was the first violation and will be added to the period of ineligibility for the first violation. The sanction for a second anti-doping rule violation discovered during a period of ineligibility will be served consecutively after the period of the first violation.

Clarifications Relating to Sanctions for Violation of a Provisional Suspension

An athlete who is provisionally suspended and continues to participate will not be given credit for the period of the provisional suspension. All results earned while an athlete is provisionally suspended will be disqualified.

Implementation of Decisions

All the results management decisions of Signatories, with the exception of decisions by Major Event Organisations, are automatically recognized worldwide in all sports. There is no need to officially recognise such decision. Only the original Signatory has liability if its decision was wrongly taken. All provisional suspensions are automatically binding on other Signatories.

Retired Athletes Returning to Competition before giving the mandatory 6-month notice

An athlete's results will not be disqualified when he/she returns to competition after retiring but before the end of the mandatory 6-month prior notice period, if he/she can prove that they did not know that the competition was an international or national level competition.

New Results Management/Case Resolution Agreements to resolve cases without the Doping Panel

An athlete or other person facing a four-year sanction can have the sanction reduced by a year by admitting to the ADRV and accepting the sanction within 20 days of the ADRV notice. Moreover, FINA, the athlete or other person and WADA can enter into a Case Resolution Agreement where the applicable sanction can be agreed upon based on the facts of the case. Case Resolution Agreements cannot be appealed. An athlete who is negotiating a Case Resolution Agreement is entitled to share his/her story under a 'Without Prejudice Agreement'.

New Procedural Rules for the FINA Doping Panel

Procedural rules have been drafted to formalize how proceedings shall be held in front of the FINA Doping Panel. Some of the changes proposed in order to enhance practicality and reduce costs include hearings via videoconference (when possible) and single-Member Panels to decide on cases (unless the Chair deems it necessary to have a three-member Panel). When submitting a case to the Doping Panel, FINA will also send a referral with a legal determination and prayers for reliefs.

International Standards and Athletes' Rights Act

New International Standard for Results Management (ISRM)

The ISRM establishes mandatory minimum standards for FINA to comply with in respect to the results management and hearing processes of Anti-Doping Rule Violations (ADRVs). They set up general principles related to jurisdiction, confidentiality and public disclosure, as well as timeliness of the disciplinary and adjudication processes. Measures were also taken to ensure the operational independence of the Panel members, and the right to a public hearing was again echoed. Hearing panels must be 'operationally independent' from the investigation of, or decisions to proceed with, the case. This means that the FINA Doping Panel members cannot be affiliated to any Member Federation and cannot have been involved in the prior adjudication of the case. Members of the Doping Panel will also have to sign a conflict of interest form before each case.

New Athletes' Anti-Doping Rights Act:

The Act was developed by WADA's Athlete Committee in consultation with athletes and stakeholders worldwide. It is based on the 2021 Code and Standards and aims to ensure that athlete rights within anti-doping are clearly set out, accessible, and universally applicable.

New International Standard for Education (ISE)

The International Standard for Education (ISE) provides detail on the mandatory education requirements to be included in a Signatory's anti-doping program. The objectives of this Standard are to establish mandatory standards to support Signatories with planning, implementation, monitoring and evaluation of effective education programs. In general, its goal is to enhance the education of young athletes about Doping, specifically before entering international competitions or leaving their country to compete. The main goal of the ISE is to ensure that the first interaction an athlete has with the anti-doping procedure is through education, rather than through their first Sample collection process.

International Standard for Therapeutic Use Exemptions (ISTUE)

Amendments have taken place regarding ISTUE in order to clarify and structure this section in a more logical way. For example, an athlete may only apply for a retroactive TUE if one of the Articles 4.1(a-e) is satisfied. If accepted as a retroactive application, the submitted file would next be evaluated by the FINA TUE Committee (TUEC) to ascertain whether it fulfills all of the 4.2 criteria. On the other hand, if an athlete is applying prospectively, Article 4.1 is not relevant, and the process automatically begins at Article 4.2. Some amendments were also made regarding the term "exceptional circumstances". In addition, it is important to mention that a new inclusion has been made to address situations where, for therapeutic reasons, an athlete uses a substance out-of-competition that is only prohibited in-competition, but there is a risk that the substance will remain in their system in-competition.

International Standard for Testing and Investigations (ISTI)

Due to the establishment of the ISRM, several areas and provisions were removed from the ISTI, while two new definitions have been added to ISTI. Firstly, the 'Doping Control Coordinator (DCC)', has been added to address those organizations that are coordinating any aspect of doping control on behalf of a Signatory but who are not the Testing Authority (TA) or the Sample Collection Authority regulating any organization operating any aspect of the doping control on behalf of a Signatory. Secondly, regarding Testing Authorities (TA), a Signatory may delegate its authority to test to other organizations (i.e. DCC's), but the TA shall always remain the TA responsible for ensuring that the organization conducting such testing does so in compliance with the ISTI. Any such authorization of testing shall be documented and may be captured in an agreement between the two parties. Also, enhanced conflict of interest criteria have been added to the Sample Collection Personnel (SCP). Finally, additions have been made to ensure that ADOs should develop and implement policies to facilitate and encourage whistleblowers as outlined in WADA's Whistleblower Policy.

International Standard for the Protection of Privacy and Personal Information (ISPPPI)

They have been slightly amended in order to be more harmonious with other International Standards laid out in the Code. Several updates were made to Annex A to bring into line the updates under the Code, reflect evolutions of the Athlete Biological Passport program (ABP), and stakeholder operational needs.

Others

Mandatory Anti-Doping Education Course

All Athletes participating in the FINA World Championships or the FINA World Swimming Championships (25m), shall, prior to participation, have successfully completed the eLearning Anti-Doping Education course ALPHA and uploaded their certificate of completion on the FINA GMS platform.

Improvements to Sanctions Against a Member Federation to increase fairness

The FINA DC now expressly provides that FINA can discipline member federations by excluding athletes from its Competitions if the Member Federations are found not to be in compliance with the FINA DC Rules. The focus is now on whether the Member Federations comply with the rules instead of providing for a suspension in case they have a definite number of violations from their members in a twelve-month period. This will improve fairness towards member federations.

Obligation of Signatories individual Participants to be Bound by the Code and Signatories to not Employ any Person who have Violated the Code

FINA must now ensure that those involved in anti-doping are bound by the Code (or applicable rules/laws) and that those involved in doping control are not serving a period of ineligibility, provisionally suspended or engaged in conduct in the previous six years that would violate anti-doping rules or the Code. Specific forms will need to be signed to confirm this.