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INADO Update #27.4

WADA ExCo/FB Documents May 2013 Significant matters for NADOs/RADOs (3)

Versions 2.0 International Standard for Testing (IST) and International Standard for TUEs (ISTUE)

Dear Colleagues:

This is the fourth and final update summarising significant matters from the documents WADA has released for its May 2013 ExCo and Foundation Board meetings. **Please take some time to assess and to discuss these matters with your government representatives.** This is critical to ensure that the Public Authorities on the WADA ExCo and Foundation Board are properly briefed to advocate for NADO interests in WADA decision-making. And so they can otherwise play the most constructive role possible around the WADA table.

I am sorry that this update comes so close to the meeting. However, it is more for information than for action. It reviews the significant proposed changes in version 2.0 of the two most important International Standards for NADO/RADO operations. The matters summarised below will not likely be the subject of discussion this coming weekend in Montreal. But they are important to note so that NADO and RADOs can make further submissions to WADA during the final drafting phase in the coming months. In turn, that will assist WADA produce the best possible document for adoption at the World Conference on Doping in November in South Africa.

Agenda Item 7.1 Attachment 14: Version 2.0 ISTUE

- Introduction and Scope: now emphasises that the ISTUE is to advise Athletes on how to obtain the recognition by one ADO of a TUE issued by another, and to set out the role of WADA to review TUE decisions.
[iNADO Comment: this reflects the helpful changes in Article 4.4 of Version 3.0 of the 2015 Code.]
- Article 4.1: sub-article (a) is changed to rephrase the key criteria so that it reads: “The Prohibited Substance or Prohibited Method in question is needed to treat an acute or chronic medical condition such that...” Sub-article (b) now introduces some flexibility with the added wording: “...is highly unlikely to produce any additional enhancement of performance...” (emphasis added).
- Article 4.3(c) recognises that some lower-level athletes may be permitted to seek retroactive TUEs in situations other than emergencies. Article 4.3(d) permits WADA and an ADO to agree that such retroactive TUEs may be sought in the interests of fairness. **[iNADO Comment: these are helpful proposals for NADOs who test Athletes below National-Level Athletes (such as masters or recreational athletes). And to address unusual circumstances where a timely TUE application was not possible.]**
- Article 5.1 reflects the proposed version 3.0 2015 Code Article 4.4, which specifies (a) which Anti-Doping Organizations have authority to make TUE decisions; (b) how those TUE decisions should be

recognized and respected by other Anti-Doping Organizations; and (c) when TUE decisions may be reviewed and/or appealed. It includes several important new Comments:

- “Comment to 5.1: See Annex 1 for a flow-chart summarizing the key provisions of Code Article 4.4.”

...

“Where national policy requirements and imperatives lead a National Anti-Doping Organization to prioritize certain sports over others in its Test Distribution Plan (as contemplated by clause 4.4.1 of the International Standard for Testing), the National Anti-Doping Organization may decline to consider advance applications for TUEs from Athletes in some or all of the non-priority sports, but in that case it must permit any such Athlete from whom a Sample is subsequently collected to apply for a retroactive TUE.”

[iNADO Comment: the Flow Charts are certainly a useful tool. The acknowledgement of national policy requirements is a helpful proposal for NADOs who must ration limited resources across a varied testing pool that includes Athletes at all levels.]

- Article 5.4 would require IFs and Major Event Organizations to publish notices specifying (1) which Athletes coming under their jurisdiction are required to apply to them for TUEs; (2) which TUE decisions of other Anti-Doping Organizations they will automatically recognize in lieu of such application, in accordance with sub-article 7.1(a); and (3) which TUE decisions of other Anti-Doping Organizations will have to be submitted to them for recognition in accordance with sub-article 7.1(b). **[iNADO Comment: these are helpful proposals for NADOs and should provide greater clarity to Athletes.]**
- Article 6.7 proposes to shorten the normal time for deciding on a TUE application from 30 to 21 days.
- Article 7.0 is now titled: “TUE Recognition Process.” It reflects the changes proposed for Article 4.4 of Version 3.0 of the 2015 Code. **[iNADO Comment: these are helpful proposals for NADOs and should provide greater clarity to Athletes.]**
- Article 8.0 now sets out the rules for WADA review of TUE decisions. **[iNADO Comment: these proposals add procedural clarity, and reflect WADA’s enhanced role under Version 3.0 of the 2015 Code to adjudicate anti-doping decisions relating to TUEs and many other matters. iNADO welcomes such a WADA regulatory function.]**
- Annex 1 sets out Code Article 4.4 Flow Charts illustrating the expected decision paths for TUEs according to the proposals of Version 3.0 of the 2015 Code and Version 2.0 of the 2015 ISTUE. **[iNADO Comment: as mentioned relating to Article 5.1, above, these Flow Charts are a useful addition to the ISTUE.]**

Agenda Item 7.1 Attachment 11: Version 2.0 IST

[Note: version 2.0 of the 2015 proposed IST is a 92 page document with literally hundreds of changes

from Version 1.0, let alone the current IST. What follows is highly selective and, given the time available, a high-level summary of significant changes from the previous version.]

- Article 1.0 (Introduction and Scope) now adds “intelligent testing” as a purpose of the IST (along with “effective testing.”)
- IST Definitions: “Filing Failure” now states the Athlete’s responsibility to keep whereabouts information up-to-date as plans change.
- IST Definitions: “Sample Collection Session” now commences with “the point at which initial contact is made” with an Athlete, as opposed to “notification.” **[iNADO Comment: this proposal should help deal with disputes about whether notification has occurred, or not.]**
- Article 4.1.1 adds to Planning Effective Testing greater sophistication: “This includes establishing the overall pool of Athletes within the Anti-Doping Organization's anti-doping program, assessment of which Prohibited Substances and Prohibited Methods are most likely to be abused in the sport(s)/sports discipline(s) in question, followed by appropriate prioritization between sport(s) and/or sport disciplines, between categories of Athletes, between types of Testing, between types of Samples collected, and between types of Sample analysis.” Similarly, Article 4.1.4 foresees greater ongoing oversight of test distribution planning: “The main activities are therefore risk assessment and prioritization, including information- and intelligence-gathering, monitoring and follow up; risk assessment; and developing, up; developing a Test Distribution Plan based on that risk assessment and prioritization; filing and discussing that Test Distribution Plan with WADA (where applicable); monitoring, evaluating, reviewing, modifying and updating that Test Distribution Plan as necessary in light of changing circumstances; and implementing the Test Distribution Plan.” See also Article 4.2.5.
- Article 4.3 is new, titled: “Establishing the Overall Pool of Athletes.” Article 4.5 is new, titled “Prioritizing Between Different Athletes.” Article 4.6 is new, titled “Prioritizing Between Different Types of Testing .” **[iNADO Comment: together these sections require greater targeting of scarce testing resources.]**
- Article 4.7 (Sample Analysis) also provides greater ability to target testing to national or sport requirements and risks.
- Article 4.8 (Collecting Whereabouts Information) includes many adjustments, especially with respect to which Athletes should be subject to whereabouts requirements.
- Article 11 is now titled “Reporting and Cooperation.” (Whereabouts requirements continue to be set out in Annex I.) In Article 11.1, it emphasises the importance of sharing information to facilitate investigations: “In accordance with Code Article 14.1 (which requires the provision of information concerning Adverse Analytical Findings, Atypical Findings, and other potential anti-doping rule violations), the Testing Authority and the Results Management Authority (if different) shall liaise and cooperate with WADA (including providing relevant information, upon request) in relation to the investigation of potential anti-doping rule violations uncovered by or relating to the Sample collection process, including (without limitation) complying with the requirements of Annex A –

Investigating a Possible Failure to Comply (in relation to potential anti-doping rule violations under Code Article 2.3 or Code Article 2.5).”

- Annex A (Investigating a Possible Failure to Comply), Article A.3.1(a) states more directly the Testing Authority’s responsibility to investigate a possible failure to comply. Article A.3.1(c) now requires that investigation to take place without undue delay.
- Annex B (Modifications for Athletes with Impairments): this Annex replaces “disability” with “impairment,” a change advocated by the International Paralympic Committee. See also Annex D (Collection of Urine Samples). **[iNADO Comment: this proposal responds to iNADO’s submissions on the previous version of the IST.]**
- Annex E (Collection of Blood Samples) recognises, in Article E.1(f) that blood samples collected for Athlete Biological Passport (ABP) programmes need not follow all the requirements for blood sample collection for full A and B blood sample analysis. Article E.4 (Requirements) has expanded provisions relating to ABP blood sample collection. See also Article E.4.15 concerning the storage of ABP blood samples.
- Article E.4.5 clarifies the rest period and position of the Athlete before a blood sample is to be taken. **[iNADO Comment: this proposal should help blood sample collection practices and instructions to Athletes be more consistent. At present, ADO practices on this rest period vary considerably, and without obvious reason to Athletes.]**
- Annex I (Code Article 2.4 Whereabouts Requirements): Article I.1.4 proposes transitional provisions for contracting from 18 to 12 months the period for three failures to be and ADRV: “To give Athletes the full benefit of the changes to the 2015 Code (reducing the relevant period under Code Article 2.4 from 18 months to 12 months), any Whereabouts Failure that occurred prior to 1 January 2015 will “expire” (for purposes of Code Article 2.4) twelve months after the date of their occurrence.”
- Article I.3.3 sets out exceptions to the requirement that whereabouts information include a daily 60 minute window of fixed availability if the Athlete is in an in-competitions period and the relevant ADOs have other sources of information permitting the Athlete to be located for testing.
- Article I.3.4, Comment, adds this additional guidance to Athletes for when they cannot be certain of their exact whereabouts in the coming quarter: “Where an Athlete does not know precisely what his/her whereabouts will be at all times during the forthcoming quarter, he/she must provide his/her best information, based on where he/she expects to be at the relevant times, and then update that information as necessary in accordance with clause I.3.5.”
- Article I.3.5 clarifies Athletes’ responsibilities to update their whereabouts information.
- Article I.3.6, Comment, clarifies for ADOs when a second whereabouts failure can be pursued while a first failure is still in process: “The requirement is to give the Athlete notice of the first Filing Failure in the quarter and an opportunity to avoid a subsequent one, before a subsequent Filing Failure may be pursued against him or her that quarter. But that is all that is required. In particular, it is not necessary to complete the results management process with respect to the first Filing

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Failure before pursuing a second Filing Failure against the Athlete.” See also Article I.4.2.

- Article I.5 (Results Management) seeks to clarify the responsibility when multiple ADOs have authority over an Athlete.

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iNADO is the Institute of National Anti-Doping Organisations. It promotes best practices by NADOs and RADOs, and is their collective voice.