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**Sports Anti-Doping Rules 2021**

**24 November 2020**

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## INTRODUCTION

Having reviewed the Sports Anti-Doping Rules (2020), the Board of Drug Free Sport New Zealand (*DFSNZ*) has made the Sports Anti-Doping Rules (2021) in order to implement the amendments to the World Anti-Doping Code and *International Standards* and *Technical Documents*.

*DFSNZ* has made these *Rules* under section 16 of the Sports Anti-Doping Act 2006 (“the Act”). The *Code* seeks to protect the fundamental rights of *Athletes* to participate in doping-free sport, and thus to promote health, fairness and equality for *Athletes* worldwide, and to bring about the harmonisation of anti-doping programs and the core anti-doping elements across *Signatories* to the *Code*. It is intended that *National Sporting Organisations* will agree to the *Rules* so that the *Rules* apply to their *Athletes*, *Athlete Support Personnel* or other *Persons* (including board members, directors, officers, and specified employees of *Signatories*, and *Delegated Third Parties* and their employees) as a condition of participation or involvement in sport.<sup>1</sup>

The *Code* and the *Rules* are reflected in the Athletes’ Anti-Doping Rights Act, which aims to ensure that *Athlete* rights within anti-doping are clearly set out, accessible, and universally applicable. The Athletes’ Anti-Doping Rights Act is available on the *WADA* website and *DFSNZ*’s website for access at any time.

*DFSNZ* is an independent Crown entity continued under the Act and is the *National Anti-Doping Organisation* responsible for implementing the *Code* in New Zealand, as provided in Article 20.5 of the *Code* and section 12 of the Act.

While all provisions of the *Code* are mandatory in substance, the *Code* requires certain Articles to be implemented without substantive change by *Signatories* to the *Code* because of their central place in harmonising anti-doping measures. The provisions which have to be implemented without substantive change in these *Rules* are: Article 1 (Definition of Doping), Article 2 (Anti-Doping Rule Violations), Article 3 (Proof of Doping), Article 4.2.2 (*Specified Substances* or *Specified Methods*), Article 4.2.3 (*Substances of Abuse*), Article 4.3.3 (*WADA*’s Determination of the *Prohibited List*), Article 7.7 (Retirement from Sport), Article 9 (Automatic *Disqualification* of Individual Results), Article 10 (Sanctions on Individuals), Article 11 (*Consequences* to Teams), Article 13 (Appeals) (with the exception of Article 13.2.2, Article 13.6, and Article 13.7), Article 15.1 (Automatic Binding Effect of Decisions), Article 17 (Statute of Limitations), Article 26 (Interpretation of the *Code*) and Appendix 1 (Definitions), together with the corresponding comments from the *Code*. The *Rules* also provide for the application of *International Standards* established by *WADA*, in particular the *Prohibited List*, the *International Standard* for Testing and Investigations (and applicable *WADA* Guidelines for Sample Collection), the *International Standard* for Laboratories, the *International Standard* for Therapeutic Use Exemptions, the *International Standard* for the Protection of Privacy and Personal Information, *International Standard* for Code Compliance by *Signatories*, the *International Standard* for Results Management, and the *International Standard* for Education.

The *Sports Tribunal* and any *NSO Anti-Doping Tribunal* established by a *National Sporting Organisation* to hear *Violation Proceedings* will function under the *Rules* when hearing *Violation Proceedings*.

It is intended that *National Sporting Organisations* will agree to the *Rules* as their *Anti-Doping Rules* in order to implement the *Code*. By agreeing to the application of the *Rules*, *National Sporting Organisations* will agree

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<sup>1</sup> [Comment: Where the *Code* requires a *Person* other than an *Athlete* or *Athlete Support Person* to be bound by the *Code*, such *Person* would of course not be subject to Sample collection or Testing, and would not be subject to an anti-doping rule violation under the *Code* for Use or Possession of a *Prohibited Substance* or *Prohibited Method*. Rather, such *Person* would only be subject to discipline for a violation of *Code* Rule 2.5 (Tampering), 2.7 (Trafficking), 2.8 (Administration), 2.9 (Complicity), 2.10 (Prohibited Association) and 2.11 (Retaliation). Furthermore, such *Person* would be subject to the additional roles and responsibilities according to Article 21.3. Also, the obligation to require an employee to be bound by the *Code* is subject to applicable law.]

that *DFSNZ* and the *Sports Tribunal* (or any *NSO Anti-Doping Tribunal*) can exercise all the functions and powers in the Act and the *Rules*.

*National Sporting Organisations* that agree to the *Rules* will do so on the basis that they agree to the application of the *Rules* as amended from time to time. In accordance with its obligations under the Act, *DFSNZ* will provide *National Sporting Organisations*, *Athletes* and the Privacy Commissioner a reasonable opportunity to comment before amending the *Rules*.

As provided in the *Code*, *DFSNZ* will be responsible for conducting all aspects of *Doping Control*. Any aspect of *Doping Control* or anti-doping *Education* may be delegated by *DFSNZ* to a *Delegated Third Parties*, however, the *DFSNZ* will require the *Delegated Third Parties* to perform such aspects in compliance with the *Code* and *International Standards*, and *DFSNZ* will remain fully responsible for ensuring that any delegated aspects are performed in compliance with the *Code*.

*DFSNZ* will collect *Samples* or *Specimens* to test for the presence of substances or methods that are prohibited under the *WADA Prohibited List*. *Samples* will be collected in accordance with the *International Standard* for Testing and Investigations and applicable *WADA* Guidelines for the Collection of Blood and Urine *Samples*. *DFSNZ* will also carry out investigations in relation to anti-doping rule violations under Rules 2.2 to 2.11. *National Sporting Organisations* will promptly refer all information relating to possible anti-doping rule violations to *DFSNZ*. *DFSNZ* will review information obtained in any investigation and decide whether the information supports the bringing of *Violation Proceedings*. *DFSNZ* will bring *Violation Proceedings* and present the evidence in support of the proceedings before either the *Sports Tribunal* or an *NSO Anti-Doping Tribunal*. Subject to its various obligations to notify and promptly report and present evidence under the *Rules*, and to certain exceptional circumstances, the process of investigating and hearing *Violation Proceedings* will be treated as a confidential process by *DFSNZ* and all *National Sporting Organisations* and *Persons* subject to the *Rules* until a decision has been made in relation to the alleged Violation.

The terms in italics in this introduction and in the *Rules* are defined as set out in the Definitions section at the end of the *Rules*. Comments in these *Rules* are intended to be explanatory rather than intended to have legislative effect.

### **Fundamental rationale for the *Code* and these *Rules***

Anti-doping programs are founded on the intrinsic value of sport. This intrinsic value is often referred to as "the spirit of sport": the ethical pursuit of human excellence through the dedicated perfection of each *Athlete's* natural talents.

Anti-doping programs seek to protect the health of *Athletes* and to provide the opportunity for *Athletes* to pursue human excellence without the *Use of Prohibited Substances* and *Prohibited Methods*.

Anti-doping programs seek to maintain the integrity of sport in terms of respect for rules, other competitors, fair competition, a level playing field, and the value of clean sport to the world.

The spirit of sport is the celebration of the human spirit, body and mind. It is the essence of Olympism and is reflected in the values we find in and through sport, including:

- Health
- Ethics, fair play and honesty
- *Athletes'* rights as set forth in the *Code*
- Excellence in performance
- Character and *Education*
- Fun and joy
- Teamwork

- Dedication and commitment
- Respect for rules and laws
- Respect for self and other *Participants*
- Courage
- Community and solidarity

The spirit of sport is expressed in how we play true.

Doping is fundamentally contrary to the spirit of sport.

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## 1. APPLICATION OF THESE RULES AND INCORPORATION OF INTERNATIONAL STANDARDS

### 1.1 The Rules apply to:

- 1.1.1 *DFSNZ*, including its board members, directors, officers and specified employees, and *Delegated Third Parties* and their employees who are involved in any aspect of *Doping Control*, and all *Doping Control* and any investigation into any anti-doping rule violation carried out by *DFSNZ* (save where *DFSNZ* carries out *Doping Control* or any investigation by agreement with foreign governments, other *Anti-Doping Organisations* or *Signatories* to the *Code* under the Act, in which case *Doping Control* or any investigation will be governed by the agreement entered into or the *Code*);
- 1.1.2 any *TUE* Committee established by *DFSNZ*;
- 1.1.3 any *National Sporting Organisation* that agrees to the *Rules*, including their board members, directors, officers and specified employees, and *Delegated Third Parties* and their employees who are involved in any aspect of *Doping Control*;
- 1.1.4 any club, team, association, league or any other *Person* that either:
  - 1.1.4.1 is a member of a *National Sporting Organisation* that has agreed to the *Rules*; or
  - 1.1.4.2 agrees to the application of the *Rules* with the *National Sporting Organisation*; or
  - 1.1.4.3 otherwise agrees to the application of the *Rules*;
- 1.1.5 all *Persons* who:
  - 1.1.5.1 are members of a *National Sporting Organisation* that has agreed to the *Rules*, regardless of where the *Persons* reside or are situated; or
  - 1.1.5.2 are members of any club, team, association, league or other organisation that has agreed to the application of the *Rules* with a *National Sporting Organisation*, regardless of where the *Persons* reside or are situated; or
  - 1.1.5.3 are *Participants* who agree to the *Rules* as part of the conditions of participation in any capacity in any activity organised, held, convened or authorised by a *National Sporting Organisation* or one or more of its member organisations, clubs, teams, associations, leagues or other organisations, regardless of whether the *Person* is a member of any such organisation; or
  - 1.1.5.4 *Compete* in sport at the international level (as defined by each International Federation) or national level (as defined by any relevant *National Anti-Doping Organisation*) and who are present in New Zealand.
  - 1.1.5.5 otherwise agrees to the *Rules*.

1.1.6 the *Sports Tribunal* and any *NSO Anti-Doping Tribunal* established in accordance with the *Rules*.

## 1.2 Application to *National Sporting Organisations*

1.2.1 A *National Sporting Organisation* may agree to the *Rules* by incorporating them by reference into its governing documents, constitution, *Rules* or anti-doping policies so that the *Rules* form part of the rules of the *National Sporting Organisation* and govern the rights and obligations of all *Persons* who are subject to the rules of the *National Sporting Organisation*. A *National Sporting Organisation* may also adopt the *Rules* as its anti-doping policy or *Anti-Doping Rules*.

1.2.2 All *Persons* to whom the *Rules* apply will recognise and accept the authority and responsibility of *DFSNZ* to enforce these *Rules*, including any *Consequences* for the breach thereof, and to the jurisdiction of the hearing panels specified in Rule 8.

1.2.3 By agreeing to the *Rules*, *National Sporting Organisations*:

1.2.3.1 recognise and accept the authority and responsibility of *DFSNZ* as the sole *National Anti-Doping Organisation* in New Zealand for implementing the *Code*; and

1.2.3.2 authorise *DFSNZ* to carry out *Doping Control*, to investigate anti-doping rule violations under the *Rules* and to present evidence in support of anti-doping rule violations before the *Sports Tribunal* or an *NSO Anti-Doping Tribunal*.

1.2.4 A *National Sporting Organisation* that has agreed to the *Rules* will take all reasonable steps to ensure that any *Person* who wishes to take part in any *Event*, *Competition* or activity organised or authorised by it who is not a member of the *National Sporting Organisation* or who has not otherwise agreed to be bound by the *Rules*, agrees to be bound by the *Rules*.

1.2.5 A *National Sporting Organisation* that has agreed to the *Rules* must ensure that any *Person* who is not a member of the *National Sporting Organisation* but who wishes to participate in *International Events* or *Events* organised, sanctioned or authorised by the *National Sporting Organisation* and who fulfils, or would otherwise fulfil, the requirements to be part of *DFSNZ's Registered Testing Pool*, becomes either a member of the *National Sporting Organisation* and/or agrees to make themselves available for *Testing*, at least twelve months before participating in any *International Event* or in any *Event*.

1.2.6 Nothing in the *Rules* shall be interpreted as limiting the functions of *DFSNZ* under the *Act* and its obligations as a *Signatory* to the *Code*. Nothing in the *Rules* prevents *DFSNZ* from collecting *Samples* from *Athletes* and arranging for *Testing* and reporting of the results of *Testing* or undertaking any other anti-doping activity or investigation in accordance with any agreement or arrangement with any other *Anti-Doping Organisation*, International Federation, *Signatory* to the *Code* or any *National Sporting Organisation* which has not agreed to the *Rules*, or in accordance with any obligation under the *Act* or *Code*.

- 1.2.7 *DFSNZ will encourage and assist National Sporting Organisations to agree to the Rules, and will encourage all Participants and Persons to agree to take part in sport on the basis of the Rules.*
- 1.2.8 *Where a National Sporting Organisation is a member of an International Federation and is bound by the Rules and the Anti-Doping Rules of the International Federation and there is a conflict or inconsistency between the Rules and the Anti-Doping Rules of the International Federation, the International Federation's Anti-Doping Rules will prevail.*
- 1.2.9 *Where an Athlete, Athlete Support Personnel or other Person has an agreement with the National Olympic and/or Paralympic Committee for it to provide financial, coaching or other support directly to that Athlete, Athlete Support Personnel or other Person (other than for support for the Olympic Games or Paralympic Games), that National Olympic and/or Paralympic Committee will, for the purposes of these Rules, be regarded as a National Sporting Organisation. To the extent that those circumstances apply, every reference in these Rules to any right or obligation of a National Sporting Organisation shall apply to the National Olympic and/or Paralympic Committee, in addition to any other rights and obligations it has as a National Olympic and/or Paralympic Committee under these Rules or under the Code.*
- 1.2.10 *The Rules are subject to the Legislation Act 2012.*
- 1.3 *International Standards incorporated into the Rules*
- 1.3.1 *The Rules incorporate the following International Standards by reference:*
- 1.3.1.1 *World Anti-Doping Agency International Standard 2021 Prohibited List, effective 1 January 2021 as further clarified in Rules 4.1 to 4.3;*
- 1.3.1.2 *World Anti-Doping Agency International Standard for Therapeutic Use Exemptions, effective 1 January 2021;*
- 1.3.1.3 *World Anti-Doping Agency International Standard for Testing and Investigations, effective 1 January 2021;*
- 1.3.1.4 *World Anti-Doping Agency International Standard for Laboratories, effective 1 January 2021;*
- 1.3.1.5 *World Anti-Doping Agency International Standard for the Protection of Privacy and Personal Information, effective 1 January 2021;*
- 1.3.1.6 *World Anti-Doping Agency International Standard for Code Compliance by Signatories, effective 1 January 2021;*
- 1.3.1.7 *World Anti-Doping Agency International Standard for Results Management, effective 1 January 2021; and*
- 1.3.1.8 *World Anti-Doping Agency International Standard for Education, effective 1 January 2021.*
- 1.3.2 *Where the Rules refer to any of the above International Standards, the reference is to the version of the International Standard dated as above.*

## 2. ANTI-DOPING RULE VIOLATIONS

Doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in Rules 2.1 to 2.11 of the *Rules*.

The purpose of Rule 2 is to specify the circumstances and conduct which constitute anti-doping rule violations. Hearings in doping cases will proceed based on the assertion that one or more of these specific rules has been violated.

*Athletes* or other *Persons* shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the *Prohibited List*.

The following constitute anti-doping rule violations:

### 2.1 Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample*

- 2.1.1 It is the *Athlete's* personal duty to ensure that no *Prohibited Substance* enters their bodies. *Athletes* are responsible for any *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in their *Samples*. Accordingly, it is not necessary that intent, *Fault*, negligence or knowing *Use* on the *Athlete's* part be demonstrated in order to establish an anti-doping rule violation under Rule 2.1.<sup>2</sup>
- 2.1.2 Sufficient proof of an anti-doping rule violation under Rule 2.1 is established by any of the following: presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in the *Athlete's A Sample* where the *Athlete* waives analysis of the *B Sample* and the *B Sample* is not analysed; or, where the *Athlete's B Sample* is analysed and the analysis of the *Athlete's B Sample* confirms the presence of the *Prohibited Substance* or its *Metabolites* or *Markers* found in the *Athlete's A Sample* or where the *Athlete's A or B Sample* is split into two parts and the analysis of the confirmation part of the split sample confirms the presence of the *Prohibited Substance* or its *Metabolites* or *Markers* found in the part of the split *Sample* or the *Athlete* waives analysis of the confirmation part of the split *Sample*.<sup>3</sup>
- 2.1.3 Excepting those substances for which a *Decision Limit* is specifically identified in the *Prohibited List* or s *Technical Document*, the presence of any reported quantity of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample* shall constitute an anti-doping rule violation.
- 2.1.4 As an exception to the general rule of Rule 2.1, the *Prohibited List*, *International Standards*, or *Technical Documents* may establish special criteria for reporting or the evaluation of certain *Prohibited Substances*.

### 2.2 *Use or Attempted Use* by an *Athlete* of a *Prohibited Substance* or a *Prohibited Method*<sup>4</sup>

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<sup>2</sup>[Comment to Rule 2.1.1: An Anti-Doping Rule Violation is committed under this Rule without regard to an Athlete's Fault. This rule has been referred to in various CAS decisions as "Strict Liability". An Athlete's Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Rule 10. This principle has consistently been upheld by CAS.]

<sup>3</sup>[Comment to Rule 2.1.2: The Anti-Doping Organisation with Results Management responsibility may, at its discretion, choose to have the B Sample analysed even if the Athlete does not request the analysis of the B Sample.]

<sup>4</sup>[Comment to Rule 2.2: It has always been the case that Use or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Rule 3.2, unlike the proof required to establish an anti-doping rule violation under Rule 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Athlete, witness

- 2.2.1 It is the *Athlete's* personal duty to ensure that no *Prohibited Substance* enters their bodies and that no *Prohibited Method* is *Used*. Accordingly, it is not necessary that intent, *Fault*, negligence or knowing *Use* on the *Athlete's* part be demonstrated in order to establish an anti-doping rule violation for *Use* of a *Prohibited Substance* or a *Prohibited Method*.
- 2.2.2 The success or failure of the *Use* or *Attempted Use* of a *Prohibited Substance* or *Prohibited Method* is not material. It is sufficient that the *Prohibited Substance* or *Prohibited Method* was *Used* or *Attempted* to be *Used* for an anti-doping rule violation to be committed.<sup>5</sup>
- 2.3 *Evading, Refusing, or Failing to submit to Sample Collection by an Athlete*
- Evading *Sample* collection; or refusing or failing to submit to *Sample* collection without compelling justification after notification by a duly authorised *Person*.<sup>6</sup>
- 2.4 *Whereabouts Failures by an Athlete*
- Any combination of three missed tests and/or filing failures, as defined in the International Standard for *Results Management*, within a twelve-month period by an *Athlete* in a *Registered Testing Pool*.
- 2.5 *Tampering, or Attempted Tampering, with any part of Doping Control by an Athlete or Other Person*
- 2.6 *Possession of a Prohibited Substance or a Prohibited Method by an Athlete or Athlete Support Person*
- 2.6.1 *Possession by an Athlete In-Competition of any Prohibited Substance or any Prohibited Method, or Possession by an Athlete Out-of-Competition of any Prohibited Substance or any Prohibited Method which is prohibited Out-of-Competition unless the Athlete establishes that the Possession is consistent with a Therapeutic Use Exemption (TUE) granted in accordance with Rule 4.4 or other acceptable justification.*<sup>7</sup>
- 2.6.2 *Possession by an Athlete Support Person In-Competition of any Prohibited Substance or any Prohibited Method, or Possession by an Athlete Support Person Out-of-Competition of any Prohibited Substance or any Prohibited*

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*statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Athlete Biological Passport, or other analytical information which does not otherwise satisfy all the requirements to establish "Presence" of a Prohibited Substance under Rule 2.1. For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organisation provides a satisfactory explanation for the lack of confirmation in the other Sample.]*

<sup>5</sup>*[Comment to Rule 2.2.2: Demonstrating the "Attempted Use" of a Prohibited Substance or a Prohibited Method requires proof of intent on the Athlete's part. The fact that intent may be required to prove this particular anti-doping rule violation does not undermine the Strict Liability principle established for violations of Rule 2.1 and violations of Rule 2.2 in respect of Use of a Prohibited Substance or Prohibited Method. An Athlete's Use of a Prohibited Substance constitutes an anti-doping rule violation unless such substance is not prohibited Out-of-Competition and the Athlete's Use takes place Out-of-Competition. (However, the presence of a Prohibited Substance or its Metabolites or Markers in a Sample collected In-Competition is a violation of Rule 2.1 regardless of when that substance might have been administered.)]*

<sup>6</sup>*[Comment to Rule 2.3: For example, it would be an anti-doping rule violation of "evading Sample collection" if it were established that an Athlete was deliberately avoiding a Doping Control official to evade notification or Testing. A violation of "failing to submit to Sample collection" may be based on either intentional or negligent conduct of the Athlete, while "evading" or "refusing" Sample collection contemplates intentional conduct by the Athlete.]*

<sup>7</sup>*[Comment to Rules 2.6.1 and 2.6.2: Acceptable justification would not include, for example, buying or Possessing a Prohibited Substance for purposes of giving it to a friend or relative, except under justifiable medical circumstances where that Person had a physician's prescription, e.g., buying Insulin for a diabetic child.]*

*Method* which is prohibited *Out-of-Competition* in connection with an *Athlete*, *Competition* or training, unless the *Athlete Support Person* establishes that the *Possession* is consistent with a *TUE* granted to an *Athlete* in accordance with Rule 4.4 or other acceptable justification.<sup>8</sup>

2.7 *Trafficking* or *Attempted Trafficking* in any *Prohibited Substance* or *Prohibited Method* by an *Athlete* or *Other Person*.

2.8 *Administration* or *Attempted Administration* by an *Athlete* or *Other Person* to any *Athlete In-Competition* of any *Prohibited Substance* or *Prohibited Method*, or *Administration* or *Attempted Administration* to any *Athlete Out-of-Competition* of any *Prohibited Substance* or any *Prohibited Method* that is prohibited *Out-of-Competition*.

2.9 *Complicity* or *Attempted Complicity* by an *Athlete* or *Other Person*

Assisting, encouraging, aiding, abetting, conspiring, covering up or any other type of intentional complicity or *Attempted* complicity involving an anti-doping rule violation, *Attempted* anti-doping rule violation, or violation of Rule 10.14.1 by another *Person*.<sup>9</sup>

2.10 *Prohibited Association* by an *Athlete* or *Other Person*

2.10.1 *Association* by an *Athlete* or other *Person* subject to the authority of an *Anti-Doping Organisation* in a professional or sport-related capacity with any *Athlete Support Person* who:

2.10.1.1 If subject to the authority of an *Anti-Doping Organisation*, is serving a period of *Ineligibility*; or

2.10.1.2 If not subject to the authority of an *Anti-Doping Organisation* and where *Ineligibility* has not been addressed in a Results Management process pursuant to the *Code*, has been convicted or found in a criminal, disciplinary, or professional proceeding to have engaged in conduct which would have constituted a violation of anti-doping rules if *Code-compliant* rules had been applicable to such *Person*. The disqualifying status of such *Person* shall be in force for the longer of six years from the criminal, professional, or disciplinary decision or the duration of the criminal, disciplinary, or professional sanction imposed; or

2.10.1.3 Is serving as a front or intermediary for an individual described in Rule 2.10.1.1 or Rule 2.10.1.2.

2.10.2 To establish a violation of Rule 2.10, an *Anti-Doping Organisation* must establish that the *Athlete* or other *Person* knew of the *Athlete Support Person's* disqualifying status.

The burden shall be on the *Athlete* or other *Person* to establish that any association with an *Athlete Support Person* described in Rule 2.10.1.1 or Rule 2.10.1.2 is not in a professional or sport-related capacity and/or that such association could not have been reasonably avoided.

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<sup>8</sup>[Comment to Rule 2.6.2: Acceptable justification may include, for example, (a) an *Athlete* or a team doctor carrying *Prohibited Substances* or *Prohibited Methods* for dealing with acute and emergency situations (e.g., an epinephrine auto-injector), or (b) an *Athlete* Possessing a *Prohibited Substance* or *Prohibited Method* for therapeutic reasons shortly prior to applying for and receiving a determination on a *TUE*.]

<sup>9</sup>[Comment to Rule 2.9: *Complicity* or *Attempted Complicity* may include either physical or psychological assistance.]

*Anti-Doping Organisations* that are aware of the *Athlete Support Personnel* who meet the criteria described in Rule 2.10.1.1, Rule 2.10.1.2 or Rule 2.10.1.3 shall submit that information to WADA.<sup>10</sup>

## 2.11 Acts by an *Athlete* or *Other Person* to Discourage or Retaliate Against Reporting to Authorities.

Where such conduct does not otherwise constitute a violation of Rule 2.5:

- 2.11.1 Any act which threatens or seeks to intimidate another *Person* with the intent of discouraging the *Person* from the good-faith reporting of information that relates to an alleged anti-doping rule violation or alleged non-compliance with the *Code to WADA*, an *Anti-Doping Organisation*, law enforcement, regulatory or professional disciplinary body, hearing body or *Person* conducting an investigation for WADA or an *Anti-Doping Organisation*.
- 2.11.2 Retaliation against a *Person* who, in good faith, has provided evidence or information that relates to an alleged anti-doping rule violation or alleged non-compliance with the *Code to WADA*, an *Anti-Doping Organisation*, law enforcement, regulatory or professional disciplinary body, hearing body or *Person* conducting an investigation for WADA or an *Anti-Doping Organisation*.<sup>11</sup>

For purposes of Rule 2.11, retaliation, threatening and intimidation include an act taken against such *Person* either because the act lacks a good faith basis or is a disproportionate response.<sup>12</sup>

## 3. PROOF OF DOPING

### 3.1 Burdens and Standards of Proof

*DFSNZ* has the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether *DFSNZ* has established an anti-doping rule violation to the comfortable satisfaction of the *Sports Tribunal* or *NSO Anti-Doping Tribunal*, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.

Where these *Rules* place the burden of proof upon the *Athlete* or other *Person* alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or

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<sup>10</sup>[Comment to Rule 2.10: *Athletes and other Persons must not work with coaches, trainers, physicians or other Athlete Support Personnel who are Ineligible on account of an anti-doping rule violation or who have been criminally convicted or professionally disciplined in relation to doping. This also prohibits association with any other Athlete who is acting as a coach or Athlete Support Person while serving a period of Ineligibility. Some examples of the types of association which are prohibited include: obtaining training, strategy, technique, nutrition or medical advice; obtaining therapy, treatment or prescriptions; providing any bodily products for analysis; or allowing the Athlete Support Person to serve as an agent or representative. Prohibited association need not involve any form of compensation.*

While Rule 2.10 does not require the *Anti-Doping Organisation* to notify the *Athlete* or other *Person* about the *Athlete Support Person's* disqualifying status, such notice, if provided, would be important evidence to establish that the *Athlete* or other *Person* knew about the disqualifying status of the *Athlete Support Person*.]

<sup>11</sup>[Comment to Rule 2.11.2: *This article is intended to protect Persons who make good faith reports, and does not protect Persons who knowingly make false reports.*

<sup>12</sup>[Comment to Rule 2.11.2: *Retaliation would include, for example, actions that threaten the physical or mental well-being or economic interests of the reporting Persons, their families or associates. Retaliation would not include an Anti-Doping Organisation asserting in good faith an anti-doping rule violation against the reporting Person. For purposes of Rule 2.11, a report is not made in good faith where the Person making the report knows the report to be false.*]

circumstances, except as provided in Rule 3.2.2 and Rule 3.2.3, the standard of proof shall be by a balance of probability.<sup>13</sup>

## 3.2 Methods of Establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions.<sup>14</sup> The following rules of proof shall be applicable in doping cases:

- 3.2.1 Analytical methods or *Decision Limits* approved by WADA after consultation within the relevant scientific community or which have been the subject of peer review are presumed to be scientifically valid. Any *Athlete* or other *Person* seeking to challenge whether the conditions for such presumptions have been met or to rebut this presumption of scientific validity shall, as a condition precedent to any such challenge, first notify WADA of the challenge and the basis of the challenge. The initial hearing body, appellate body or CAS, on its own initiative, may also inform WADA of any such challenge. Within 10 days of WADA's receipt of such notice and the case file related to such challenge, WADA shall also have the right to intervene as a party, appear as *amicus curiae* or otherwise provide evidence in such proceeding. In cases before CAS, at WADA's request, the CAS panel shall appoint an appropriate scientific expert to assist the panel in its evaluation of the challenge.<sup>15</sup>
- 3.2.2 WADA-accredited laboratories and other laboratories approved by WADA are presumed to have conducted *Sample* analysis and custodial procedures in accordance with the International Standard for Laboratories. The *Athlete* or other *Person* may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the *Adverse Analytical Finding*. If the *Athlete* or other *Person* rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the *Adverse Analytical Finding*, then DFSNZ shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding*.<sup>16</sup>
- 3.2.3 Departures from any other *International Standard* or other anti-doping rule or policy set forth in the *Code* or in these *Rules* shall not invalidate analytical results or other evidence of an anti-doping rule violation, and shall not constitute

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<sup>13</sup>[Comment to Rule 3.1: This standard of proof required to be met by DFSNZ is comparable to the standard which is applied in most countries to cases involving professional misconduct.]

<sup>14</sup>[Comment to Rule 3.2: For example, an Anti-Doping Organisation may establish an anti-doping rule violation under Rule 2.2 based on the Athlete's admissions, the credible testimony of third Persons, reliable documentary evidence, reliable analytical data from either an A or B Sample as provided in the Comments to Rule 2.2, or conclusions drawn from the profile of a series of the Athlete's blood or urine Samples, such as data from the Athlete Biological Passport.]

<sup>15</sup>[Comment to Rule 3.2.1: For certain Prohibited Substances, WADA may instruct WADA-accredited laboratories not to report Samples as an Adverse Analytical Finding if the estimated concentration of the Prohibited Substance or its Metabolites or Markers is below a Minimum Reporting Level. WADA's decision in determining that Minimum Reporting Level or in determining which Prohibited Substances should be subject to Minimum Reporting Levels shall not be subject to challenge. Further, the laboratory's estimated concentration of such Prohibited Substance in a Sample may only be an estimate. In no event shall the possibility that the exact concentration of the Prohibited Substance in the Sample may be below the Minimum Reporting Level constitute a defence to an anti-doping rule violation based on the presence of that Prohibited Substance in the Sample.]

<sup>16</sup>[Comment to Rule 3.2.2: The burden is on the Athlete or other Person to establish, by a balance of probability, a departure from the International Standard for Laboratories that could reasonably have caused the Adverse Analytical Finding. Thus, once the Athlete or other Person establishes the departure by a balance of probability, the Athlete or other Person's burden on causation is the somewhat lower standard of proof — "could reasonably have caused." If the Athlete or other Person satisfies these standards, the burden shifts to the Anti-Doping Organisation to prove to the comfortable satisfaction of the hearing panel that the departure did not cause the Adverse Analytical Finding.]

a defence to an anti-doping rule violation;<sup>17</sup> provided, however, if the *Athlete* or other *Person* establishes that a departure from one of the specific *International Standard* provisions listed below could reasonably have caused an anti-doping rule violation based on *Adverse Analytical Finding* or whereabouts failure, then *DFSNZ* shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding* or whereabouts failure:

- (i) a departure from the *International Standard* for *Testing* and *Investigations* related to *Sample* collection or *Sample* handling which could reasonably have caused an anti-doping rule violation based on an *Adverse Analytical Finding*, in which case *DFSNZ* shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding*;
- (ii) a departure from the *International Standard* for *Results Management* or *International Standard* for *Testing* and *Investigations* related to *Adverse Passport Finding* which could reasonably have caused an anti-doping rule violation, in which case *DFSNZ* shall have the burden to establish that such departure did not cause the anti-doping rule violation;
- (iii) a departure from the *International Standard* for *Results Management* related to the requirement to provide notice to the *Athlete* of the *B Sample* opening which could reasonably have caused an anti-doping rule violation based on an *Adverse Analytical Finding*, in which case the *DFSNZ* shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding*,<sup>18</sup>
- (iv) a departure from the *International Standard* for *Results Management* related to *Athlete* notification which could reasonably have caused an anti-doping rule violation based on a whereabouts failure, in which case *DFSNZ* shall have the burden to establish that such departure did not cause the whereabouts failure.

3.2.4 The facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction which is not the subject of a pending appeal shall be irrebuttable evidence against the *Athlete* or other *Person* to whom the decision pertained of those facts unless the *Athlete* or other *Person* establishes that the decision violated principles of natural justice.

3.2.5 The *Sports Tribunal* or *NSO Anti-Doping Tribunal* in a hearing on an anti-doping rule violation may draw an inference adverse to the *Athlete* or other *Person* who is asserted to have committed an anti-doping rule violation based on the *Athlete's* or other *Person's* refusal, after a request made in a reasonable time

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<sup>17</sup>[Comment to Rule 3.2.3: Departures from an *International Standard* or other rule unrelated to *Sample* collection or handling, *Adverse Passport Finding*, or *Athlete* notification relating to whereabouts failure or *B Sample* opening – e.g., the *International Standard* for *Education*, *International Standard* for the *Protection of Privacy and Personal Information* or *International Standard* on *Therapeutic Use Exemptions* – may result in compliance proceedings by *WADA* but are not a defence in an anti-doping rule violation proceeding and are not relevant on the issue of whether the *Athlete* committed an anti-doping rule violation. Similarly, *DFSNZ's* violation of the document referenced in Article 20.7.7 of the Code shall not constitute a defence to an anti-doping rule violation.]

<sup>18</sup>[Comment to Rule 3.2.3(iii) *DFSNZ* would meet its burden to establish that such departure did not cause the *Adverse Analytical Finding* by showing that, for example, the *B Sample* opening and analysis were observed by an independent witness and no irregularities were observed.]

in advance of the hearing, to appear at the hearing (either in person or telephonically as directed by the *Sports Tribunal* or *NSO Anti-Doping Tribunal*) and to answer questions from the *Sports Tribunal* or *NSO Anti-Doping Tribunal* or *DFSNZ* asserting the anti-doping rule violation.

#### 4. THE PROHIBITED LIST

##### 4.1 Publication and Revision of the *Prohibited List*

*DFSNZ* shall take reasonable steps to ensure the current *Prohibited List* is available to its *Participants*. All *Athletes* and other *Persons* shall be bound by the *Prohibited List*, and any revisions thereto, from the date they go into effect, without further formality. It is the responsibility of all *Athletes* and other *Persons* to familiarise themselves with the most up-to-date version of the *Prohibited List* and all revisions thereto.<sup>19</sup>

##### 4.2 *Prohibited Substances* and *Prohibited Methods* Identified on the *Prohibited List*

###### 4.2.1 *Prohibited Substances* and *Prohibited Methods*

The *Prohibited List* identifies those *Prohibited Substances* and *Prohibited Methods* which are prohibited as doping at all times (both *In-Competition* and *Out-of-Competition*) and those substances and methods which are prohibited *In-Competition* only. *Prohibited Substances* and *Prohibited Methods* may be included in the *Prohibited List* by general category or by specific reference to a particular substance or method.<sup>20</sup>

###### 4.2.2 *Specified Substances* or *Specified Methods*

For purposes of the application of Rule 10, all *Prohibited Substances* shall be “*Specified Substances*” except as identified on the *Prohibited List*. No *Prohibited Method* shall be a *Specified Method* unless it is specifically identified as a *Specified Method* on the *Prohibited List*.

###### 4.2.3 *Substances of Abuse*

For purposes of applying Rule 10, *Substances of Abuse* shall include those *Prohibited Substances* which are specifically identified as *Substances of Abuse* on the *Prohibited List* because they are frequently abused in society outside of the context of sport.

###### 4.2.4 *New Classes of Prohibited Substances* or *Prohibited Methods*

In the event WADA expands the *Prohibited List* by adding a new class of *Prohibited Substances* or *Prohibited Methods* in accordance with Code Article 4.1, WADA's Executive Committee shall determine whether any or all *Prohibited Substances* or

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<sup>19</sup>[Comment to Rule 4.1: The current *Prohibited List* is available on WADA's website at <https://www.wada-ama.org>. The *Prohibited List* will be revised and published on an expedited basis whenever the need arises. However, for the sake of predictability, a new *Prohibited List* will be published every year whether or not changes have been made. WADA will always have the most current *Prohibited List* published on its website. The *Prohibited List* is an integral part of the International Convention against Doping in Sport. WADA will inform the Director-General of UNESCO of any change to the *Prohibited List*.]

<sup>20</sup>[Comment to Rule 4.2.1: *Out-of-Competition* Use of a substance which is only prohibited *In-Competition* is not an anti-doping rule violation unless an adverse Analytical Finding for the substance or its Metabolites or Markers is reported for a Sample collected *In-Competition*.]

*Prohibited Methods* within the new class shall be considered *Specified Substances* or *Specified Methods* under Rule 4.2.2 or *Substances of Abuse* under Rule 4.2.3.<sup>21</sup>

#### 4.3 WADA's determination of the *Prohibited List*

WADA's determination of the *Prohibited Substances* and *Prohibited Methods* that will be included on the *Prohibited List*, the classification of substances into categories on the *Prohibited List*, the classification of a substance as prohibited at all times or *In-Competition* only, the classification of a substance or method as a *Specified Substance*, *Specified Method* or *Substance of Abuse* is final and shall not be subject to any challenge by an *Athlete* or other *Person* including, but not limited to, any challenge based on an argument that the substance or method was not a masking agent or did not have the potential to enhance performance, represent a health risk or violate the spirit of sport.

#### 4.4 Therapeutic Use Exemptions ("*TUEs*")

4.4.1 The presence of a *Prohibited Substance* or its *Metabolites* or *Markers*, and/or the *Use* or *Attempted Use*, *Possession* or *Administration* or *Attempted Administration* of a *Prohibited Substance* or *Prohibited Method* shall not be considered an anti-doping rule violation if it is consistent with the provisions of a *TUE* granted in accordance with the International Standard for Therapeutic Use Exemptions.

4.4.2 *Athletes* who are not *International-Level Athletes* should apply to DFSNZ for a *TUE*. If DFSNZ denies the application, the *Athlete* may appeal exclusively to the *Sports Tribunal* established under Rule 8.6.1. The *Athlete* must file any such appeal within 14 days of receiving notification that the application has been denied.

4.4.3 *Athletes* who are *International-Level Athletes* should apply to their International Federation.

4.4.3.1 Where the *Athlete* already has a *TUE* granted by DFSNZ for the substance or method in question, if that *TUE* meets the criteria set out in the *International Standard for Therapeutic Use Exemptions* then the International Federation must recognise it. If the International Federation considers that the *TUE* does not meet those criteria and so refuses to recognise it, it must notify the *Athlete* and DFSNZ promptly, with reasons. The *Athlete* and/or DFSNZ shall have 21 days from such notification to refer the matter to WADA for review. If the matter is referred to WADA for review, the *TUE* granted by DFSNZ remains valid for national-level *Competition* and *Out-of-Competition Testing* (but is not valid for international-level *Competition*) pending WADA's decision. If the matter is not referred to WADA for review within the 21-day deadline, DFSNZ must determine whether the original *TUE* granted by DFSNZ should nevertheless remain valid for national-level *Competition* and *Out-of-Competition Testing* (provided that the *Athlete* ceases to be an *International-Level Athlete* and does not participate in international-

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<sup>21</sup> [Comment to Rule 4.2.2: The *Specified Substances* and *Methods* identified in Rule 4.2.2 should not in any way be considered less important or less dangerous than other doping substances. Rather, they are simply substances which are more likely to have been consumed or used by an *Athlete* for a purpose other than the enhancement of sport performance.]

level *Competition*). Pending *DFSNZ*'s decision, the *TUE* remains valid for national-level *Competition* and *Out-of-Competition Testing* (but is not valid for international-level *Competition*).

4.4.3.2 If the *Athlete* does not already have a *TUE* granted by *DFSNZ* for the substance or method in question, the *Athlete* must apply directly to his or her International Federation for a *TUE* as soon as the need arises. If the International Federation (or *DFSNZ*, where it has agreed to consider the application on behalf of the International Federation) denies the *Athlete*'s application, it must notify the *Athlete* promptly, with reasons. If the International Federation grants the *Athlete*'s application, it must notify not only the *Athlete* but also *DFSNZ*, and if *DFSNZ* considers that the *TUE* does not meet the criteria set out in the International Standard for Therapeutic Use Exemptions, it has 21 days from such notification to refer the matter to *WADA* for review. If *DFSNZ* refers the matter to *WADA* for review, the *TUE* granted by the International Federation remains valid for international-level *Competition* and *Out-of-Competition Testing* (but is not valid for national-level *Competition*) pending *WADA*'s decision. If *DFSNZ* does not refer the matter to *WADA* for review, the *TUE* granted by the International Federation becomes valid for national-level *Competition* as well when the 21-day review deadline expires.<sup>22</sup>

4.4.4 A *Major Event Organisation* may require *Athletes* to apply to it for a *TUE* if they wish to *Use* a *Prohibited Substance* or a *Prohibited Method* in connection with the *Event*. In that case:

4.4.4.1 The *Major Event Organisation* must ensure a process is available for an *Athlete* to apply for a *TUE* if he or she does not already have one. If the *TUE* is granted, it is effective for its *Event* only.

4.4.4.2 Where the *Athlete* already has a *TUE* granted by *DFSNZ* or their International Federation, if that *TUE* meets the criteria set out in the *International Standard for Therapeutic Use Exemptions*, the *Major Event Organisation* must recognise it. If the *Major Event Organisation* decides the *TUE* does not meet those criteria and so refuses to recognise it, it must notify the *Athlete* promptly, explaining its reasons.

4.4.4.3 A decision by a *Major Event Organisation* not to recognise or not to grant a *TUE* may be appealed by the *Athlete* exclusively to an independent body established or appointed by the *Major Event Organisation* for that purpose. If the *Athlete* does not appeal (or the appeal is unsuccessful), the *Athlete* may not *Use* the substance or method in question in connection with the *Event*, but any *TUE*

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<sup>22</sup>[Comment to Rule 4.4.3: If the International Federation refuses to recognise a *TUE* granted by *DFSNZ* only because medical records or other information are missing that are needed to demonstrate satisfaction with the criteria in the International Standard for Therapeutic Use Exemptions, the matter should not be referred to *WADA*. Instead, the file should be completed and re-submitted to the International Federation. If an International Federation chooses to test an *Athlete* who is not an International-Level *Athlete*, it must recognise a *TUE* granted to that *Athlete* by *DFSNZ*. A *TUE* granted by *DFSNZ* is valid at national level only; it is not automatically valid for international-level *Competition*.]

granted by *DFSNZ* or their International Federation for that substance or method remains valid outside of that *Event*.<sup>23</sup>

- 4.4.5 If *DFSNZ* chooses to collect a *Sample* from an *Athlete* who is not an *International-Level Athlete* or *National-Level Athlete*, and that *Athlete* is *Using a Prohibited Substance* or *Prohibited Method* for therapeutic reasons, *DFSNZ* must permit the *Athlete* to apply for a retroactive *TUE*.
- 4.4.6 *WADA* must review an International Federation's decision not to recognise a *TUE* granted by *DFSNZ* that is referred to it by the *Athlete* or *DFSNZ*. In addition, *WADA* must review an International Federation's decision to grant a *TUE* that is referred to it by *DFSNZ*. *WADA* may review any other *TUE* decisions at any time, whether upon request by those affected or on its own initiative. If the *TUE* decision being reviewed meets the criteria set out in the International Standard for Therapeutic Use Exemptions, *WADA* will not interfere with it. If the *TUE* decision does not meet those criteria, *WADA* will reverse it.<sup>24</sup>
- 4.4.7 Any *TUE* decision by an International Federation (or by *DFSNZ* where it has agreed to consider the application on behalf of an International Federation) that is not reviewed by *WADA*, or that is reviewed by *WADA* but is not reversed upon review, may be appealed by the *Athlete* and/or *DFSNZ*, exclusively to *CAS* in accordance with Rule 13.<sup>25</sup>
- 4.4.8 A decision by *WADA* to reverse a *TUE* decision may be appealed by the *Athlete*, *DFSNZ* and/or the International Federation affected, exclusively to *CAS* in accordance with Rule 13.
- 4.4.9 A failure to render a decision within a reasonable time on a properly submitted application for grant/recognition of a *TUE* or for review of a *TUE* decision shall be considered a denial of the application thus triggering the applicable rights of review/appeal.
- 4.4.10 *Therapeutic Use Exemption Committee (TUE Committee)*
- 4.4.10.1 *DFSNZ* shall at all times have policies and procedures for the application for *TUE*s and for consideration of such applications.
- 4.4.10.2 *DFSNZ* shall appoint a *TUE Committee* to consider applications for *TUE*s. The *TUE Committee* shall be established according to the requirements of the *International Standard for Therapeutic Use Exemptions*. Where members of the *TUE Committee* have an interest in individual *National Sporting Organisations* or International Federations, they are excluded from considering applications for *TUE*s from *Athletes* who are members of the same

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<sup>23</sup>[Comment to Rule 4.4.4.3: For example, the *CAS Ad Hoc Division* or a similar body may act as the independent appeal body for particular Events, or *WADA* may agree to perform that function. If neither *CAS* nor *WADA* are performing that function, *WADA* retains the right (but not the obligation) to review the *TUE* decisions made in connection with the Event at any time, in accordance with Rule 4.4.6.]

<sup>24</sup> [Comment to Rule 4.4.6: *WADA* shall be entitled to charge a fee to cover the costs of: (a) any review it is required to conduct in accordance with Rule 4.4.6; and (b) any review it chooses to conduct, where the decision being reviewed is reversed.]

<sup>25</sup> [Comment to Rule 4.4.7: In such cases, the decision being appealed is the International Federation's *TUE* decision, not *WADA*'s decision not to review the *TUE* decision or (having reviewed it) not to reverse the *TUE* decision. However, the time to appeal the *TUE* decision does not begin to run until the date that *WADA* communicates its decision. In any Event, whether the decision has been reviewed by *WADA* or not, *WADA* shall be given notice of the appeal so that it may participate if it sees fit.]

individual *National Sporting Organisations* or *International Federations*.

4.4.10.3 The *TUE* Committee member(s) shall promptly evaluate any request for a *TUE* in accordance with the *International Standard for Therapeutic Use Exemptions* and render a decision on such request, which shall be the decision of *DFSNZ*.

4.4.10.4 *DFSNZ* and the *TUE* Committee shall conduct the administration and determination of applications for *TUE*s in strict confidence.

#### 4.4.11 Expiration, Cancellation, Withdrawal or Reversal of a *TUE*

4.4.11.1 A *TUE* granted pursuant to these *Rules*: (a) shall expire automatically at the end of any term for which it was granted, without the need for any further notice or other formality; (b) may be cancelled if the *Athlete* does not promptly comply with any requirements or conditions imposed by the *TUE* Committee upon grant of the *TUE*; (c) may be withdrawn by the *TUE* Committee if it is subsequently determined that the criteria for grant of a *TUE* are not in fact met; or (d) may be reversed on review by *WADA* or on appeal.

4.4.11.2 In such event, the *Athlete* shall not be subject to any *Consequences* based on his/her *Use* or *Possession* or *Administration* of the *Prohibited Substance* or *Prohibited Method* in question in accordance with the *TUE* prior to the effective date of expiry, cancellation, withdrawal or reversal of the *TUE*. The review pursuant to Rule 7.2 and Article 5.1.1.1 of the *International Standard for Results Management* of any subsequent *Adverse Analytical Finding* reported shortly after the *TUE* expiry, cancellation, withdrawal, or reversal shall include consideration of whether such finding is consistent with *Use* of the *Prohibited Substance* or *Prohibited Method* prior to that date, in which event no anti-doping rule violation shall be asserted.

## 5. TESTING AND INVESTIGATIONS

### 5.1 Purpose of *Testing* and Investigations

*Testing* and investigations may be undertaken for any anti-doping purpose.<sup>26</sup>

5.1.1 *DFSNZ* shall undertake *Testing* to obtain analytical evidence as to whether the *Athlete* has violated Rule 2.1 (Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample*) or Rule 2.2 (*Use* or *Attempted Use* by an *Athlete* of a *Prohibited Substance* or a *Prohibited Method*).

### 5.2 Authority to Test

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<sup>26</sup>[Comment to Rule 5.1: Where *Testing* is conducted for anti-doping purposes, the analytical results and data may be used for other legitimate purposes under the Anti-Doping Organisation's rules. See, e.g., Comment to Article 23.2.2.]

Any *Athlete* (including any *Athlete* serving a period of *Ineligibility*) may be required to provide a *Sample* at any time and at any place by any *Anti-Doping Organisation* with *Testing* authority over him or her, subject to the limitations for *Event Testing* set out in Rule 5.3.<sup>27</sup>

- 5.2.1 *DFSNZ* shall have *In-Competition* and *Out-of-Competition Testing* authority over all *Athletes* who are nationals, residents, license-holders or members of sport organisations of New Zealand or who are present in New Zealand.
- 5.2.2 Each International Federation shall have *In-Competition* and *Out-of-Competition Testing* authority over all *Athletes* who are subject to its rules, including those who participate in *International Events* or who participate in *Events* governed by the rules of that International Federation, or who are members or license-holders of that International Federation or its member *National Sporting Organisations*, or their members.
- 5.2.3 Each *Major Event Organisation*, including the International Olympic Committee and the International Paralympic Committee, shall have *In-Competition Testing* authority for its *Events* and *Out-of-Competition Testing* authority over all *Athletes* entered in one of its future *Events* or who have otherwise been made subject to the *Testing* authority of the *Major Event Organisation* for a future *Event*.
- 5.2.4 *WADA* shall have *In-Competition* and *Out-of-Competition Testing* authority as set out in Article 20.7.10 of the *Code*.
- 5.2.5 *DFSNZ* and other *Anti-Doping Organisations* may test any *Athlete* over whom they have *Testing* authority who has not retired, including *Athletes* serving a period of *Ineligibility*.
- 5.2.6 If an International Federation or *Major Event Organisation* delegates or contracts any part of *Testing* to *DFSNZ* directly or through a *National Sporting Organisation*, *DFSNZ* may collect additional *Samples* or direct the laboratory to perform additional types of analysis at *DFSNZ*'s expense. If additional *Samples* are collected or additional types of analysis are performed, the International Federation or *Major Event Organisation* shall be notified.

### 5.3 *Testing at Events*

- 5.3.1 Except as otherwise provided below, only a single organisation shall have authority to conduct *Testing* at *Event Venues* during an *Event Period*. At *International Events* taking place in New Zealand, the international Organisation which is the ruling body for the *Event* (e.g., the International Olympic Committee for the Olympic Games, the International Federation for a World Championship, and the Panam Sports for the Pan American Games) shall have authority to conduct *Testing*. At *National Events* taking place in New Zealand, *DFSNZ* shall have authority to conduct *Testing*. At the request of the ruling body for an *Event*,

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<sup>27</sup>[Comment to Rule 5.2: Additional authority to conduct *Testing* may be conferred by means of bilateral or multilateral agreements among Signatories. Unless the *Athlete* has identified a 60-minute *Testing* window during the following-described time period, or otherwise consented to *Testing* during that period, before *Testing* an *Athlete* between the hours of 11:00 p.m. and 6:00 a.m., an *Anti-Doping Organisation* should have serious and specific suspicion that the *Athlete* may be engaged in doping. A challenge to whether an *Anti-Doping Organisation* had sufficient suspicion for *Testing* during this time period shall not be a defence to an anti-doping rule violation based on such test or attempted test.]

any *Testing* during the *Event Period* outside of the *Event Venues* shall be coordinated with that ruling body.<sup>28</sup>

5.3.2 If *DFSNZ*, which would otherwise have *Testing* authority but is not responsible for initiating and directing *Testing* at an *Event*, desires to conduct *Testing* of *Athletes* at the *Event Venues* during the *Event Period*, *DFSNZ* shall first confer with the ruling body of the *Event* to obtain permission to conduct and coordinate such *Testing*. If *DFSNZ* is not satisfied with the response from the ruling body of the *Event*, *DFSNZ* may, in accordance described in the *International Standard for Testing and Investigations*, ask *WADA* for permission to conduct *Testing* and to determine how to coordinate such *Testing*. *WADA* shall not grant approval for such *Testing* before consulting with and informing the ruling body for the *Event*. *WADA*'s decision shall be final and not subject to appeal. Unless otherwise provided in the authorisation to conduct *Testing*, such tests shall be considered *Out-of-Competition* tests. *Results Management* for any such test shall be the responsibility of *DFSNZ* unless provided otherwise in the rules of the ruling body of the *Event*.<sup>29</sup>

5.3.3 *DFSNZ* shall conduct *Testing* at *National Events* and may initiate, direct and conduct *Testing* at an *International Event* in accordance with the provisions of Rule 5.3.

#### 5.4 *Testing Requirements*

5.4.1 *DFSNZ* shall conduct test distribution planning and *Testing* as required by the *International Standard for Testing and Investigations*.

5.4.2 Where reasonably feasible, *Testing* shall be coordinated through *ADAMS* in order to maximize the effectiveness of the combined *Testing* effort and to avoid unnecessary repetitive *Testing*.

#### 5.5 *Athlete Whereabouts Information*

*Athletes* who have been included in a *Registered Testing Pool* by their International Federation and/or *DFSNZ* shall provide whereabouts information in the manner specified in the *International Standard for Testing and Investigations*, and shall be subject to *Consequences* for Rule 2.4 violations as provided in Rule 10.3.2. The International Federations and *DFSNZ* shall coordinate the identification of such *Athletes* and the collection of their whereabouts information. *DFSNZ* shall make available, through *ADAMS*, a list which identifies those *Athletes* included in its *Registered Testing Pool* by name. *Athletes* shall be notified before they are included in a *Registered Testing Pool* and when they are removed from that pool. The whereabouts information they provide while in the *Registered Testing Pool* will be accessible through *ADAMS* to *WADA* and to other *Anti-Doping Organisations* having authority to test the *Athlete* as provided in Rule 5.2. Whereabouts information shall be maintained in strict confidence at all times; shall be used exclusively for purposes of planning, coordinating or conducting *Doping Control*,

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<sup>28</sup>[Comment to Rule 5.3.1: Some ruling bodies for International Events may be doing their own Testing outside of the Event Venues during the Event Period and thus want to coordinate that Testing with DFSNZ Testing.]

<sup>29</sup>[Comment to Rule 5.3.2: Before giving approval to a National Anti-Doping Organisation to initiate and conduct Testing at an International Event, WADA shall consult with the international organisation which is the ruling body for the Event. Before giving approval to an International Federation to initiate and conduct Testing at a National Event, WADA shall consult with the National Anti-Doping Organisation of the country where the Event takes place. The Anti-Doping Organisation "initiating and directing Testing" may, if it chooses, enter into agreements with a Delegated Third Party to which it delegates responsibility for Sample collection or other aspects of the Doping Control process.]

providing information relevant to the *Athlete Biological Passport* or other analytical results, to support an investigation into a potential anti-doping rule violation, or to support proceedings alleging an anti-doping rule violation; and shall be destroyed after it is no longer relevant for these purposes in accordance with the *International Standard* for the Protection of Privacy and Personal Information.

DFSNZ may, in accordance with the *International Standard* for Testing and Investigations, establish *Testing Pools*, which may include *Athletes* who are subject to less stringent whereabouts requirements than *Athletes* included in DFSNZ's *Registered Testing Pool*, and impose appropriate and proportionate non-Code Rule 2.4 consequences in case the *Athletes* do not comply with such whereabouts requirements.

DFSNZ may, in accordance with the *International Standard* for Testing and Investigations, collect whereabouts information from *Athletes* who are not included within a *Registered Testing Pool* and impose appropriate and proportionate non-Code Rule 2.4 consequences.

## 5.6 Retired *Athletes* Returning to *Competition*

5.6.1 If an *International- or National-Level Athlete* in DFSNZ's *Registered Testing Pool* retires and then wishes to return to active participation in sport, the *Athlete* shall not compete in *International Events* or *National Events* until the *Athlete* has: (a) made themselves available for *Testing* for a period of six months before returning to competition, including (if requested) complying with the whereabouts requirements of the *International Standard* for Testing and Investigations; and (b) given six months prior written notice of their intent to resume competing to their International Federation and DFSNZ. WADA, in consultation with the relevant International Federation and DFSNZ, may grant an exemption to the six-month written notice rule where the strict application of that rule would be unfair to an *Athlete*. This decision may be appealed under Rule 13.<sup>30</sup>

5.6.1.1 Any competitive results obtained in violation of Rule 5.6.1 shall be *Disqualified* unless the *Athlete* can establish that he or she could not have reasonably known that this was an *International Event* or a *National Event*.

5.6.2 If an *Athlete* retires from sport while subject to a period of *Ineligibility*, the *Athlete* must notify DFSNZ, and if applicable, the other *Anti-Doping Organisation* that imposed the period of *Ineligibility* in writing of such retirement. If the *Athlete* then wishes to return to active competition in sport, the *Athlete* shall not compete in *International Events* or *National Events* until the *Athlete* has made himself or herself available for *Testing* by giving six months prior written notice (or notice equivalent to the period of *Ineligibility* remaining as of the date the *Athlete* retired, if that period was longer than six months) to the *Athlete's* International Federation and DFSNZ, including (if requested) complying with the whereabouts requirements of the *International Standard* for Testing and Investigations.

## 5.7 Investigations and Intelligence Gathering

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<sup>30</sup>[Comment to Rule 5.6.1 Guidance for determining whether an exemption is warranted will be provided by WADA.]

DFSNZ shall have the capability to conduct, and shall conduct, investigations and gather intelligence as required by the *International Standard for Testing and Investigations*.

#### 5.8 *Independent Observer Program*

DFSNZ, *National Sporting Organisations* and the organising committees for *Events* and their employees, contractors, officials, and agents shall provide access to *Persons* participating in the *Independent Observer Program* at *Events*.

## 6. ANALYSIS OF SAMPLES

*Samples* shall be analysed in accordance with the following principles:

### 6.1 Use of Accredited, Approved Laboratories and other Laboratories

For the purposes of directly establishing an *Adverse Analytical Finding* under Rule 2.1, *Samples* shall be analysed only in WADA-accredited laboratories or laboratories otherwise approved by WADA. The choice of the WADA-accredited or WADA-approved laboratory used for the *Sample* analysis shall be determined exclusively by DFSNZ for *Results Management*. Laboratories shall analyse *Samples* and report results in conformity with the *International Standard for Laboratories*.<sup>31</sup>

6.1.1 As provided in Rule 3.2, facts related to anti-doping rule violations may be established by any reliable means. This would include, for example, reliable laboratory or other forensic testing conducted outside of WADA-accredited or approved laboratories.

### 6.2 Purpose of Analysis of *Samples* and Data

*Samples* and related analytical data or *Doping Control* information shall be analysed to detect *Prohibited Substances* and *Prohibited Methods* identified on the *Prohibited List* and other substances as may be directed by WADA pursuant to Article 4.5 of the *Code* or to assist an *Anti-Doping Organisation* in profiling relevant parameters in an *Athlete's* urine, blood or other matrix, including for DNA or genomic profiling, or for any other legitimate anti-doping purpose.<sup>32</sup>

### 6.3 Research on *Samples* and Data

*Samples*, related analytical data or *Doping Control* information may be used for anti-doping research, although, no *Sample* may be used for research without the *Athlete's* written consent. *Samples* and related analytical data or *Doping Control* information used for research purposes shall first be processed in such a manner as to prevent *Samples* and related analytical data or *Doping Control* information being traced back to a particular *Athlete*. Any research involving

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<sup>31</sup>[Comment to Rule 6.1: For cost and geographic access reasons, WADA may approve laboratories which are not WADA-accredited to perform particular analyses, for example, analysis of blood which should be delivered from the collection site to the laboratory within a set deadline. Before approving any such laboratory, WADA will ensure it meets the high analytical and custodial standards required by WADA. Violations of Rule 2.1 may be established only by Sample analysis performed by a WADA accredited laboratory or another laboratory approved by WADA. Violations of other Rules may be established using analytical results from other laboratories so long as the results are reliable.]

<sup>32</sup>[Comment to Rule 6.2: For example relevant profile information could be used to direct Target Testing or to support an anti-doping rule violation proceeding under Rule 2.2 or both.]

*Samples* and related analytical data or *Doping Control* information traced shall adhere to the principles set out in Article 19 of the *Code*.<sup>33</sup>

#### 6.4 Standards for *Sample* Analysis and Reporting

Laboratories shall analyse *Samples* and report results in conformity with the *International Standard* for Laboratories.<sup>34</sup>

6.4.1 Laboratories at their own initiative and expense may analyse *Samples* for *Prohibited Substances* or *Prohibited Methods* not included on the standard *Sample* analysis menu, or as requested by *Anti-Doping Organisation* that initiated and directed *Sample* collection. Results from any such analysis shall be reported to that *Anti-Doping Organisation* and have the same validity and *Consequences* as any other analytical result.

#### 6.5 Further analysis of a *Sample* Prior to or During *Results Management*

There shall be no limitation on the authority of a laboratory to conduct repeat or additional analysis on a *Sample* prior to the time *DFSNZ* notifies an *Athlete* that the *Sample* is the basis for a Rule 2.1 anti-doping rule violation charge. If after such notification *DFSNZ* wishes to conduct additional analysis on the *Sample*, it may do so with the consent of the *Athlete* or approval from a hearing body.

#### 6.6 Further Analysis of a *Sample* After it has been Reported as Negative or has Otherwise not Resulted in an Anti-Doping rule Violation Charge.

After a laboratory has reported a *Sample* as negative, or the *Sample* has not otherwise resulted in an anti-doping rule violation charge, it may be stored and subjected to further analyses for the purposes of Rule 6.2 at any time exclusively at the direction of either *DFSNZ* or *WADA*. Any other *Anti-Doping Organisation* with authority to test the *Athlete* that wishes to conduct further analysis on a stored *Sample* may do so with the permission of *DFSNZ* or *WADA*, and shall be responsible for any follow-up *Results Management*. Any *Sample* storage or further analysis initiated by *WADA* or another *Anti-Doping Organisation* shall be at *WADA*'s or that other organisation's expense. Further analysis of *Samples* shall conform with the requirements of the *International Standard* for Laboratories.

#### 6.7 Split of A or B *Sample*

Where *WADA*, *DFSNZ*, other *Anti-Doping Organisation* with *Results Management* authority and/or a *WADA*-accredited laboratory (with approval from *WADA* or *DFSNZ* or other *Anti-Doping Organisation* with *Results Management* authority) wishes to split an A or B *Sample* for the purpose of using the first part of the split *Sample* for an A *Sample* analysis and the second part of the split *Sample* for confirmation, then the procedures set forth in the *International Standard* for Laboratories shall be followed.

#### 6.8 *WADA*'s Right to Take Possession of *Samples* and Data

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<sup>33</sup>[Comment to Rule 6.3: As is the case in most medical or scientific contexts, use of *Samples* and related information for quality assurance, quality improvement, method improvement and development or to establish reference populations is not considered research. *Samples* and related information used for such permitted non-research purposes must also first be processed in such a manner as to prevent them from being traced back to the particular *Athlete*, having due regard to the principles set out in Article 19, as well as the requirements of the *International Standard* for Laboratories and *International Standard* for the Protection of Privacy and Personal Information.]

<sup>34</sup>[Comment to Rule 6.4: The objective of this Rule is to extend the principle of "intelligent Testing" to the *Sample* analysis menu so as to most effectively and efficiently detect doping. It is recognised that the resources available to fight doping are limited and that increasing the *Sample* analysis menu may, in some sports and countries, reduce the number of *Samples* which can be analysed.]

WADA may, in its sole discretion at any time, with or without prior notice, take physical possession of any *Sample* and related analytical data or information in the possession of a laboratory or *DFSNZ*. Upon request by WADA, the laboratory or *DFSNZ* in possession of the *Sample* or data shall immediately grant access to and enable WADA to take physical possession of the *Sample* or data. If WADA has not provided prior notice to the laboratory or *DFSNZ* before taking possession of a *Sample* or data, it shall provide such notice to the laboratory and *DFSNZ* or other *Anti-Doping Organisation* whose *Samples* or data have been taken by WADA within a reasonable time after taking possession. After analysis and any investigation of a seized *Sample* or data, WADA may direct another *Anti-Doping Organisation* with authority to test the *Athlete* to assume *Results Management* responsibility for the *Sample* or data if a potential anti-doping rule violation is discovered.<sup>35</sup>

## 6.9 Obtaining information at *Sample* Collection

Where *DFSNZ* carries out or attempts to carry out *Sample* collection it will obtain all relevant information and complete all appropriate documentation to support any possible allegation that there has been a refusal to submit to *Sample* collection contrary to Rule 2.3 or any other anti-doping rule violation under Rules 2.1 to 2.11. Information obtained before, during, or after *Sample* collection and completed documentation will be forwarded to *DFSNZ* by the *Doping Control Officer* for further consideration and investigation by *DFSNZ*.

## 7. RESULTS MANAGEMENT: RESPONSIBILITY, INITIAL REVIEW, NOTICE AND PROVISIONAL SUSPENSIONS

*Results Management* under the *Code* (as set forth in Rules 7, 8 and 13) establishes a process designed to resolve anti-doping rule violation matters in a fair, expeditious and efficient manner. *DFSNZ* shall establish a process for the pre-hearing administration of potential anti-doping rule violations that respects the principles set forth in this Rule. *DFSNZ* is permitted to adopt and implement its own *Results Management* process that meets the minimum requirements set forth in the *International Standard for Results Management*.<sup>36</sup>

### 7.1 Responsibility for Conducting *Results Management*

Except as otherwise provided in Rules 6.6 and 6.8 and 7.1.3 through 7.1.5 below, *Results Management* shall be the responsibility of *DFSNZ*, and shall be governed by these *Rules* (or if no *Sample* collection is involved, *DFSNZ* which first provides notice to an *Athlete* or other *Person* of a potential anti-doping rule violation and then diligently pursues that anti-doping rule violation). In conducting the *Results Management*, regardless of which organisation conducts *Results Management*, it shall respect the *Results Management* principles as set out in Rule 8 and Rule

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<sup>35</sup>[Comment to Rule 6.8: Resistance or refusal to WADA taking physical possession of *Samples* could constitute Tampering, Complicity or an act of non-compliance as provided in the *International Standard for Code Compliance by Signatories*, and could also constitute a violation of the *International Standard for Laboratories*. Where necessary, the laboratory and/or *DFSNZ* shall assist WADA in ensuring that the seized *Sample* and related data are not delayed in exiting the applicable country. WADA would not, of course, unilaterally take possession of *Samples* or analytical data without good cause related to a potential anti-doping rule violation, non-compliance by a *Signatory* or doping activities by another *Person*. However, the decision as to whether good cause exists is for WADA to make in its discretion and shall not be subject to challenge. In particular, whether there is good cause or not shall not be a defence against an anti-doping rule violation or its Consequences.]

<sup>36</sup>[Comment to Rule 7: Various *Signatories* have created their own approaches to *Results Management*. While the various approaches have not been entirely uniform, many have proven to be fair and effective systems for *Results Management*. The *Code* does not supplant each of the *Signatories'* *Results Management* systems. This Rule and the *International Standard for Results Management* do, however, specify basic principles in order to ensure the fundamental fairness of the *Results Management* process which must be observed by each *Signatory*. The specific anti-doping rules of each *Signatory* shall be consistent with these basic principles. Not all anti-doping proceedings which have been initiated by an *Anti-Doping Organisation* need to go to hearing. There may be cases where the *Athlete* or other *Person* agrees to the sanction which is either mandated by the *Code* or which the *Anti-Doping Organisation* considers appropriate where flexibility in sanctioning is permitted. In all cases, a sanction imposed on the basis of such an agreement will be reported to parties with a right to appeal under Rule 13.2.3, 14.2.2 and 14.3.2 published as provided in Rule 8.8.2.]

13 the principles of natural justice shall be respected and the provisions identified in Article 23.2.2 of the *Code* without substantive change.

- 7.1.1 If a dispute over which *Anti-Doping Organisation* has *Results Management* responsibility arises between *DFSNZ* and another *Anti-Doping Organisation*, *WADA* shall decide which organisation has such responsibility. *WADA*'s decision may be appealed to *CAS* within seven days of notification of the *WADA* decision by any of the *Anti-Doping Organisations* involved in the dispute. The appeal shall be dealt with by *CAS* in an expedited manner and shall be heard before a single arbitrator. Any *Anti-Doping Organisation* seeking to conduct *Results Management* outside of the authority provided in Rule 7.1 may seek approval to do so from *WADA*.
- 7.1.2 Where *DFSNZ* elects to collect additional *Samples* pursuant to Rule 5.2.6, then it shall be considered the *Anti-Doping Organisation* that initiated and directed *Sample* collection. However, where *DFSNZ* only directs the laboratory to perform additional types of analysis at *DFSNZ*'s expense, then the International Federation or *Major Event Organisation* shall be considered the *Anti-Doping Organisation* that initiated and directed *Sample* collection.
- 7.1.3 In circumstances where these *Rules* do not give *DFSNZ* authority over an *Athlete* or other *Person* who is not a national, resident, license holder, or member of a sport organisation of New Zealand, or *DFSNZ* declines to exercise such authority, *Results Management* shall be conducted by the applicable International Federation or by a third party with authority over the *Athlete* or other *Person* as directed by the rules of the International Federation. For *Results Management* and the conduct of hearings for a test or a further analysis conducted by *WADA* on its own initiative, or an anti-doping rule violation discovered by *WADA*, *WADA* shall designate an *Anti-Doping Organisation* with authority over the *Athlete* or other *Person*.<sup>37</sup>
- 7.1.4 For *Results Management* relating to a *Sample* initiated and taken during an *Event* conducted by a *Major Event Organisation*, or an anti-doping rule violation occurring during such *Event*, the *Major Event Organisation* for that *Event* shall assume *Results Management* responsibility to at least the limited extent of conducting a hearing to determine whether an anti-doping rule violation was committed and, if so, the applicable *Disqualifications* under Rule 8.11 and Rule 10.1, any forfeiture of any medals, points, or prizes from that *Event*, and any recovery of costs applicable to the anti-doping rule violation. In the event the *Major Event Organisation* assumes only limited *Results Management* responsibility, the case shall be referred by the *Major Event Organisation* to the applicable International Federation for completion of *Results Management*.
- 7.1.5 *WADA* may direct *DFSNZ* to conduct *Results Management* in a particular case. If *DFSNZ* refuses to conduct *Results Management* within a reasonable deadline set by *WADA*, such refusal shall be considered an act of non-compliance, and *WADA* may direct another *Anti-Doping Organisation* with authority over the *Athlete* or other *Person*, that is willing to do so, to take *Results Management*

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<sup>37</sup>[Comment to Rule 7.1.3: The *Athlete*'s or other *Person*'s International Federation has been made the *Anti-Doping Organisation* of last resort for results management to avoid the possibility that no *Anti-Doping Organisation* would have authority to conduct results management. An International Federation is free to provide in its own anti-doping rules that the *Athlete*'s or other *Person*'s National *Anti-Doping Organisation* shall conduct results management.]

responsibility in place of the refusing *Anti-Doping Organisation* or, if there is no such *Anti-Doping Organisation*, any other *Anti-Doping Organisation* that is willing to do so. In such case, the refusing *Anti-Doping Organisation* shall reimburse the costs and attorney's fees of conducting *Results Management* to the other *Anti-Doping Organisation* designated by *WADA*, and a failure to reimburse costs and attorney's fees shall be considered an act of non-compliance.<sup>38</sup>

7.1.6 Results management in relation to a potential whereabouts failure (a filing failure or a missed test) shall be administered by the International Federation or the *National Anti-Doping Organisation* with whom the *Athlete* in question files whereabouts information, as provided in the *International Standard for Result Management*. Where *DFSNZ* determines a filing failure or a missed test it shall submit that information to *WADA* through *ADAMS* where it will be made available to other relevant *Anti-Doping Organisations*.

## 7.2 Review and Notification Regarding Potential Anti-Doping Rule Violations

Review and notification with respect to a potential anti-doping rule violation shall be carried out in accordance with the International Standard for Results Management.

## 7.3 Identification of Prior Anti-Doping Rule Violations

Before giving an *Athlete* or other *Person* notice of a potential anti-doping rule violation as provided above, *DFSNZ* shall refer to *ADAMS* and contact *WADA* and other relevant *Anti-Doping Organisations* to determine whether any prior anti-doping rule violation exists.

## 7.4 Provisional Hearings and Provisional Suspensions<sup>39</sup>

- (a) Where *DFSNZ* has provided notice under Rule 7.2 or has provided notice of an alleged anti-doping rule violation under the rules against a *Person* who is subject to the *Rules*, *DFSNZ* shall refer the question whether to impose a *Provisional Suspension* under the *Rules* to the *Sports Tribunal*, and *DFSNZ* and the *National Sporting Organisation* will provide the *Sports Tribunal* with the information relevant to the alleged anti-doping rule violation.
- (b) Where a *National Sporting Organisation* has established an *NSO Anti-Doping Tribunal*, *DFSNZ* shall refer the question of whether to impose a *Provisional Suspension* to that *Tribunal* for consideration in accordance with the rules of the *NSO Anti-Doping Tribunal*. Every reference to the *Sports Tribunal* in Rule 7.4 shall apply to any *NSO Anti-Doping Tribunal* dealing with the question whether to impose a *Provisional Suspension*.

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<sup>38</sup> [Comment to Rule 7.1.5: Where *WADA* directs another *Anti-Doping Organisation* to conduct *Results Management* or other *Doping Control* activities, this is not considered a "delegation" of such activities by *WADA*.]

<sup>39</sup> [Comment to Rule 7.4: Before a *Provisional Suspension* can be unilaterally imposed by an *Anti-Doping Organisation*, the internal review specified in the *Code* must first be completed. In addition, the *Signatory* imposing a *Provisional Suspension* shall ensure that the *Athlete* is given an opportunity for a *Provisional Hearing* either before or promptly after the imposition of the *Provisional Suspension*, or an expedited final hearing under Article 8 promptly after imposition of the *Provisional Suspension*. The *Athlete* has a right to appeal under Rule 13.2.3.

In the rare circumstance where the *B Sample* analysis does not confirm the *A Sample* finding, the *Athlete* who had been *Provisionally Suspended* will be allowed, where circumstances permit, to participate in subsequent *Competitions* during the *Event*. Similarly, depending upon the relevant rules of the *International Federation* in a *Team Sport*, if the team is still in *Competition*, the *Athlete* may be able to take part in future *Competitions*. *Athletes* and other *Persons* shall receive credit for a *Provisional Suspension* against any period of *Ineligibility* which is ultimately imposed or accepted as provided in Rule 10.13.2.

- (c) Where *DFSNZ* has referred the question whether to impose a *Provisional Suspension* to the *Sports Tribunal*, the *Sports Tribunal* will either notify the *Person* who may be subject to a *Provisional Suspension* that it will hold an urgent *Provisional Hearing* before deciding whether to impose a *Provisional Suspension*, or will decide whether to impose a *Provisional Suspension* on the material before it, without hearing from the *Person* upon whom a *Provisional Suspension* may be imposed. The *Sports Tribunal* will, wherever possible, seek to hold an urgent *Provisional Hearing* before imposing a *Provisional Suspension*, but the choice of procedure to be followed will be a matter for the *Sports Tribunal* in the particular circumstances.
- (d) Where the *Sports Tribunal* decides to proceed without holding an urgent *Provisional Hearing*, it will, in the event that it decides to impose a *Provisional Suspension*, either hold an expedited hearing on whether the *Provisional Suspension* should be maintained, or hold an expedited hearing in relation to the anti-doping rule violation, as soon as possible after the imposition of the *Provisional Suspension*. The *Person* who is subject to the *Provisional Suspension* will be notified of the date and timing of the hearing which is to be held. It will be for the *Sports Tribunal* to decide which form of hearing it will adopt. It may, in reaching a decision on the form of hearing, hear representations on the appropriate process.
- (e) The *Sports Tribunal* will adopt such procedures for any hearing in relation to a *Provisional Suspension* (whether held before or after the imposition of a *Provisional Suspension* under the *Rules*) as the *Sports Tribunal* considers will provide the parties with a fair hearing in the matter in accordance with the principles of set out in Articles 7.9 and 8 of the *Code*.
- (f) In considering whether to impose a *Provisional Suspension*, the *Sports Tribunal* may request further information or material from *DFSNZ*, the *National Sporting Organisation* or the *Person* who may be subject to the *Provisional Suspension*. *DFSNZ*, the *National Sporting Organisation* and the *Person* who may be the subject of the *Provisional Suspension* will take all reasonable steps to comply with any request for information or material.
- (g) A decision by the *Sports Tribunal* in relation to a *Provisional Suspension* will be notified to the *Participants* or *Persons* who have been notified of the alleged anti-doping rule violation under these *Rules*, but will otherwise remain confidential until publication of the final decision on the anti-doping rule violation, unless the *Sports Tribunal* considers that it is in the interests of the *National Sporting Organisation* and its members that the decision in relation to the *Provisional Suspension* be *Publicly Reported*.
- (h) The imposition of a *Provisional Suspension*, or the decision not to impose a *Provisional Suspension*, may be appealed in an expedited process in accordance with Rule 13. The *National Sporting Organisation* shall take all necessary steps to have the *Provisional Suspension* recognised by other *Anti-Doping Organisations*, *International Federations*, *Major Event Organisers*, *National Olympic and/or Paralympic Committees* and any relevant *Signatory* to the *Code*.

- (i) Where the *Athlete* or the *Athlete's* team has been removed from a *Competition* or *Event* following a *Provisional Suspension* and the *Provisional Suspension* is then rescinded, and it is still possible for the *Athlete* or team to be reinstated without otherwise affecting the *Competition* or *Event*, the *Athlete* or team shall be allowed to continue to take part in the *Competition* or *Event*.
- (j) If *DFSNZ* declares that there has been no anti-doping rule violation, at a time when a *Provisional Suspension* is in effect, it shall immediately inform the *Athlete's* or other *Person's* International Federation, the *Athlete's* or other *Person's National Anti-Doping Organisation* (if different from *DFSNZ*), *National Sporting Organisation*, any relevant *Signatory* to the *Code*, the *Sports Tribunal* or any *NSO Anti-Doping Tribunal* (where appropriate) and *WADA*.
- (k) When the *Sports Tribunal* or *NSO Anti-Doping Tribunal* receives notification from *DFSNZ* of a declaration under Rule 7.9(j) that there has been no anti-doping rule violation, the *Sports Tribunal* or *NSO Anti-Doping Tribunal* shall immediately rescind any *Provisional Suspension*.

7.4.1 Mandatory *Provisional Suspension* after an *Adverse Analytical Finding* or *Adverse Passport Finding*

When an *Adverse Analytical Finding* or *Adverse Passport Finding* (upon completion of the *Adverse Passport Finding* review process) is received for a *Prohibited Substance* or a *Prohibited Method*, other than for a *Specified Substance* or *Specified Method*, a *Provisional Suspension* shall be imposed promptly upon or after the review an notification required by Rule 7.2.

A mandatory *Provisional Suspension* may be eliminated if:

- (i) the *Athlete* demonstrates to the *Sports Tribunal* that the violation is likely to have involved a *Contaminated Product*, or
- (ii) the violation involves a *Substance of Abuse* and the *Athlete* establishes entitlement to a reduced period of *Ineligibility* under Rule 10.2.4.1.

The *Sports Tribunal's* decision not to eliminate a mandatory *Provisional Suspension* on account of the *Athlete's* assertion regarding a *Contaminated Product* shall not be appealable.

7.4.2 Optional *Provisional Suspension* Based on an *Adverse Analytical Finding* for *Specified Substances*, *Specified Methods*, *Contaminated Products*, or Other Anti-Doping Rule Violations

7.4.2.1 Where there has been an *Adverse Analytical Finding* for a *Specified Substance* or notice has been given of another *Anti-Doping Rule Violation* under Rules 2.2 to 2.11, a *Provisional Suspension* shall be imposed except where the *Athlete* demonstrates that there is a real likelihood that no period of *Ineligibility* will be imposed.

7.4.2.2 Where a *Provisional Suspension* has been imposed after an *Adverse Analytical Finding*, the *Athlete* has requested that the B *Sample* analysis be conducted and the B *Sample* analysis does not confirm the A *Sample* analysis, then the *Provisional Suspension* shall be rescinded by the *Sports Tribunal* or *NSO Anti-Doping Tribunal* immediately upon receiving notice from *DFSNZ* that the B *Sample* analysis does not confirm the A *Sample* analysis.

#### 7.4.3 Voluntary Acceptance of *Provisional Suspension*

*Athletes* on their own initiative may voluntarily accept a *Provisional Suspension* if done so prior to the later of: (i) the expiration of ten days from the report of the B *Sample* (or waiver of the B *Sample*) or ten days from the notice of any other anti-doping rule violation, or (ii) the date on which the *Athlete* first competes after such report or notice.

Other *Persons* on their own initiative may voluntarily accept a *Provisional Suspension* if done so within 10 days from the notice of the anti-doping rule violation.

Upon such voluntary acceptance, the *Provisional Suspension* shall have the full effect and be treated in the same manner as if the *Provisional Suspension* had been imposed under Rule 7.4.1 or Rule 7.4.2; provided, however, at any time after voluntarily accepting a *Provisional Suspension*, the *Athlete* or other *Person* may withdraw such acceptance, in which event the *Athlete* or other *Person* shall not receive any credit for time previously served during the *Provisional Suspension*.

7.4.4 If a *Provisional Suspension* is imposed based on an A *Sample Adverse Analytical Finding* and a subsequent B *Sample* analysis (if requested by the *Athlete* or *DFSNZ*) does not confirm the A *Sample* analysis, then the *Athlete* shall not be subject to any further *Provisional Suspension* on account of a violation of Rule 2.1. In circumstances where the *Athlete* (or the *Athlete's* team) has been removed from an *Event* based on a violation of Rule 2.1 and the subsequent B *Sample* analysis does not confirm the A *Sample* finding, if, without otherwise affecting the *Event*, it is still possible for the *Athlete* or team to be reinserted, the *Athlete* or team may continue to take part in the *Event*.

### 7.5 Result Management Decisions

7.5.1 *Results Management* decisions or adjudications by *DFSNZ* will not be limited to a particular geographical area or sport and shall address and will determine without limitation the following issues: (i) whether an anti-doping rule violation was committed or a *Provisional Suspension* should be imposed, the factual basis for such determination, and the specific *Rules* violated, and (ii) all *Consequences* flowing from the anti-doping rule violation(s), including applicable *Disqualifications* under Rule 9 and Rule 10.10, any forfeiture or medals or prizes, any period of *Ineligibility* (and the date it begins to run) and any *Financial Consequences*.<sup>40</sup>

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<sup>40</sup>[Comment to Rule 7.5.1 Results Management decisions include Provisional Suspensions.]

7.5.2 A *Results Management* decision or adjudication by a *Major Event Organisation* in connection with one of its *Events* may be limited in its scope, including that they are not required to determine *Ineligibility* or *Financial Consequences* beyond the scope of their *Event*, but shall address and determine, at a minimum, the following issues: (i) whether an anti-doping rule violation was committed, the factual basis for such determination, and the specific *Rules* violated, and (ii) the applicable *Disqualifications* under Rule 9 and Rule 10.1, with any resulting forfeiture of medals, points and prizes. In the event a *Major Event Organisation* accepts only limited responsibility for *Results Management* decisions, it must comply with Rule 7.1.4.<sup>41</sup>

## 7.6 Notification of Results Management Decisions

*Athletes*, other *Persons*, *Signatories* and *WADA* shall be notified of *Results Management* Decisions as provided in Rule 14.2.1 and the *International Standard for Results Management*.

## 7.7 Retirement from Sport

If an *Athlete* or other *Person* retires while a *Results Management* process of *DFSNZ* is underway, *DFSNZ* continues to have authority under these *Rules* to complete the *Results Management* process. If an *Athlete* or other *Person* retires before any *Results Management* process has begun, and *DFSNZ* would have had *Results Management* authority over the *Athlete* or other *Person* at the time the *Athlete* or other *Person* committed an anti-doping rule violation, *DFSNZ* shall continue to have authority to conduct *Results Management* under these *Rules*.<sup>42</sup>

## 7.8 Laboratory results and possible refusal or failure to submit to *Sample* collection reports

7.8.1 *DFSNZ* will undertake *Testing* for anti-doping rule violations under Rule 2.1 according to the *International Standard for Testing and Investigations*.

7.8.2 *DFSNZ* shall receive the analytical results of *Doping Control Samples* from the laboratory. *DFSNZ* shall receive any *Doping Control Officer Reports* indicating a possible refusal or failure to submit to *Sample* collection under Rule 2.3 or other information relating to any possible anti-doping rule violation from the relevant *Doping Control Officer* along with other documentation from the *Sample* collection.

## 7.9 Review and investigations relating to Other Anti-Doping Rule Violations

7.9.1 In addition to carrying out *Testing* under the *International Standard for Testing and Investigations* in relation to Violations under Rule 2.1, *DFSNZ* will carry out such investigations as it sees fit (whether arising from *Sample* collection or

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<sup>41</sup>[Comment to Rule 7.5.2: With the exception of *Results Management* decisions by *Major Event Organisations*, each decision by an *Anti-Doping Organisation* should address whether an anti-doping rule violation was committed and all *Consequences* flowing from the violation, including any *Disqualifications* other than *Disqualification* under Rule 10.1 (which is left to the ruling body for an *Event*). Pursuant to Rule 15, such decision and its imposition of *Consequences* shall have automatic effect in every sport in every country. For example, for a determination that an *Athlete* committed an anti-doping rule violation based on an *Adverse Analytical Finding* for a *Sample* taken *In-Competition*, the *Athlete's* results obtained in the *Competition* would be *Disqualified* under Rule 9 and all other competitive results obtained by the *Athlete* from the date the *Sample* was collected through the duration of the period of *Ineligibility* are also *Disqualified* under Rule 10.10; if the *Adverse Analytical Finding* resulted from *Testing* at an *Event*, it would be the *Major Event Organisation's* responsibility to decide whether the *Athlete's* other individual results in the *Event* prior to *Sample* collection are also *Disqualified* under Rule 10.1.]

<sup>42</sup>[Comment to Rule 7.7: Conduct by an *Athlete* or other *Person* before the *Athlete* or other *Person* was subject to the authority of any *Anti-Doping Organisation* would not constitute an anti-doping rule violation but could be a legitimate basis for denying the *Athlete* or other *Person* membership in a sports organisation.]

otherwise) into all matters which may be relevant to the commission of any possible anti-doping rule violation under Rules 2.2 to 2.11.

- 7.9.2 Where *DFSNZ* has obtained documentation or information from *Sample* collection carried out under the *Rules* or from any other investigation which it has carried out, or from any other source, which may support an allegation that a Violation under Rules 2.2 to 2.11 has occurred, *DFSNZ* will review that information and carry out any such further investigation as it sees fit, to decide whether, in its view, an anti-doping rule violation has occurred.
- 7.9.3 At any time during the course of an investigation *DFSNZ* may, by notice in writing served on any *Participant* or *National Sporting Organisation*, require that *Participant* or *National Sporting Organisation* to furnish to *DFSNZ* within the time and in the manner specified in the notice, any information or class of information specified in the notice; or produce to *DFSNZ* any document or class of documents specified in the notice; or (in the case of a *Participant*) to attend an interview before *DFSNZ* or any person authorised by *DFSNZ* at a time and place specified in the notice to answer any questions asked at the interview.
- 7.9.4 *National Sporting Organisations* and *Participants* shall promptly report any information, documentation or materials suggesting or relating to a potential anti-doping violation to *DFSNZ* and shall take all reasonable steps to assist and co-operate with any investigation conducted by *DFSNZ* into the commission of any anti-doping rule violation. *National Sporting Organisations* shall take all reasonable steps to ensure that all *Participants* under their authority co-operate with and assist *DFSNZ* in any investigation which it carries out under the *Rules*. In particular, and without limiting the foregoing, *National Sporting Organisations* must report any information suggesting or relating to an anti-doping rule violation to *DFSNZ* and co-operate with investigations conducted by *DFSNZ* and any other *Anti-Doping Organisations*.
- 7.9.5 Where *DFSNZ* is conducting an investigation into a possible anti-doping rule violation under Rules 2.2 to 2.11, *DFSNZ* may notify the *National Sporting Organisation*, International Federation, *Major Event Organisation* or other relevant *Signatory* to the *Code* of the investigation and the information which it has obtained and the identity of the *Participant* or any other *Person* under investigation at any time before it has reached a decision on whether to bring anti-doping rule *Violation Proceedings*, where *DFSNZ* considers that such notification is necessary to allow for the consideration of the imposition of a *Provisional Suspension*, required in order to carry out the investigation effectively or to otherwise implement these *Rules*.
- 7.9.6 In the course of an investigation, *DFSNZ* may inform any other third party of the investigation where it considers that this is required in order to carry out the investigation effectively. Where *DFSNZ* informs such a third party of any aspect of an investigation, it will give notice to the third party of the confidential nature of the investigation as set out in Rule 14.
- 7.9.7 At any stage in an investigation *DFSNZ* may decide that it will bring anti-doping rule *Violation Proceedings*. Where *DFSNZ* so decides, it will proceed to notify its decision and bring the anti-doping rule *Violation Proceedings* as set out in Rule 8.

## 8. NOTIFICATION AND REFERRAL TO THE SPORTS TRIBUNAL

### 8.1 Notice to *Participant* or *Person*

Where:

- 8.1.1 there has been an *Adverse Analytical Finding* and, after *DFSNZ* has carried out the steps under Rule 7.2 which are applicable, *DFSNZ* considers that an anti-doping rule violation has been committed under Rule 2.1; or
- 8.1.2 after considering and assessing documentation or information obtained or provided during any investigation under Rule 7.9 and any further matters which it considers relevant, *DFSNZ* considers that an anti-doping rule violation under Rules 2.2 to 2.11 has occurred and decides that it will bring *Violation Proceedings* against any *Participant* or other *Person*,

*DFSNZ* will notify the *Participant* or *Person* in writing who is alleged to have committed the anti-doping rule violation setting out the anti-doping rule violation which *DFSNZ* alleges has been committed. The notice will give particulars of the alleged violation, the possible *Consequences* which may apply if the anti-doping rule violation is established, matters related to *Provisional Suspension* (if applicable), and other information required under the *International Standard for Results Management*. *DFSNZ* will also notify the other parties who will be notified of the allegation under Rule 8.2. The notice will also provide that the *Participant* or *Person* who is the subject of the *Anti-Doping Rule Violation Proceeding* may be able to obtain a suspension of *Consequences* if they provide *Substantial Assistance* under Rule 10.7.1, may admit the anti-doping rule violation in writing and potentially benefit from a one-year reduction in the period of *Ineligibility* under Rule 10.8.1 (if applicable) and/or seek to enter into a case resolution agreement by admitting the anti-doping rule violation(s) under Rule 10.8.2.

### 8.2 Notice to Organisations

When *DFSNZ* has determined as a result of any investigation that it will bring anti-Doping Rule *Violation Proceedings*, in addition to giving the notice under Rule 8.1, *DFSNZ* will simultaneously notify the *Participant's* or *Person's National Anti-Doping Organisation* (where applicable), the relevant *National Sporting Organisation(s)*, the relevant *International Federation(s)*, any other relevant *Signatory* to the *Code* and *WADA*, of the alleged *Violation*, identifying the *Participant* or *Person* who it alleges has committed the anti-doping rule violation and providing the details which are given to the *Participant* or *Person* under Rule 8.1. *DFSNZ* will also promptly report this information into *ADAMS*.

### 8.3 Waiver of Hearing

The right to a hearing may be waived either expressly or by the *Athlete's* or other *Person's* failure to challenge *DFSNZ's* assertion that an anti-doping rule violation has occurred within such time as the Rules of the *Sports Tribunal* allow.

### 8.4 Notice to *Sports Tribunal* or *NSO Anti-Doping Tribunal*

Where *DFSNZ* has determined that it will bring anti-doping rule *Violation Proceedings* against any *Participant* or *Person*, it will notify the *Sports Tribunal* or the relevant *NSO Anti-Doping Tribunal* of the alleged violation and bring anti-doping rule *Violation Proceedings* before the *Sports Tribunal* or relevant *NSO Anti-Doping Tribunal*. Where *DFSNZ* is not aware of the position in relation to the existence of any relevant *NSO Anti-Doping Tribunal* it will notify the *Sports*

*Tribunal*. DFSNZ will file and serve the documents required to commence anti-doping rule *Violation Proceedings* under the *Rules* of the *Sports Tribunal* or *NSO Anti-Doping Tribunal*.

## 8.5 Single Hearing before CAS

Anti-doping rule violations asserted against *International-Level Athletes*, *National-Level Athletes* or other *Persons* may, with the consent of the *Athlete* or other *Person*, DFSNZ and WADA, be heard in a single hearing directly at CAS.<sup>43</sup>

## 8.6 Role of *Sports Tribunal*

8.6.1 Subject to Rule 8.6.2, the *Sports Tribunal* established under the *Act* is the body responsible for hearing and determining anti-doping rule violations referred to it by DFSNZ under the *Rules*. In particular, the *Sports Tribunal* will determine whether an anti-doping rule violation has been committed and if so, the *Consequences* of the *Violation* for the *Athlete* or any other *Person* who has committed the *Violation*. The *Sports Tribunal* will regulate its own procedures and will provide a hearing which respects the principles in Article 8 of the *Code*.

8.6.2 A *National Sporting Organisation* may establish and nominate an *NSO Anti-Doping Tribunal* to hear anti-doping rule violations brought by DFSNZ provided that the *NSO Anti-Doping Tribunal* complies with all the requirements of the *Rules* (including all the requirements relating to the *Sports Tribunal*) and the *Code* and the *International Standards*, in particular the *International Standard for Results Management*, in all aspects of its consideration of an alleged violation. Any *NSO Anti-Doping Tribunal* established shall, by its *Rules*, accept the authority of DFSNZ to notify and bring *Violation Proceedings* and to appear before it to present the evidence in support of such *Violation Proceedings*. Where a *National Sporting Organisation* establishes an *NSO Anti-Doping Tribunal* it will immediately notify DFSNZ and provide DFSNZ with all relevant *Rules* relating to the operation of the *NSO Anti-Doping Tribunal*.

8.6.3 Where the *Rules* refer to the *Sports Tribunal*, the reference shall be read as also referring to any *NSO Anti-Doping Tribunal* established by a *National Sporting Organisation* under Rule 8.6.2.

## 8.7 Hearing Procedure

8.7.1 Proceedings under the *Rules* must be completed in a timely manner, and should normally be completed within three months of the date of notification of the anti-doping rule *Violation Proceedings* to the *Sports Tribunal* by DFSNZ.

8.7.2 Proceedings in connection with *Events* may be conducted on an expedited basis. Decisions may be given orally in the first instance but, in every case, written reasons for the decision will be given.

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<sup>43</sup>[Comment to Rule 8.5: In some cases, the combined cost of holding a hearing in the first instance at the international or national level, then rehearing the case *de novo* before CAS can be very substantial. Where all of the parties identified in this Rule are satisfied that their interests will be adequately protected in a single hearing, there is no need for the *Athlete* or *Anti-Doping Organisations* to incur the extra expense of two hearings. An *Anti-Doping Organisation* may participate in the CAS hearing as an observer. Nothing set out in Rule 8.5 precludes the *Athlete* or other *Person* and DFSNZ (where it has *Results Management* responsibility) to waive their right to appeal by agreement. Such waiver, however, only binds the parties to such agreement and not any other entity with a right of appeal under the *Code*.]

## 8.8 Confidentiality of Hearings and Reporting of Decisions

- 8.8.1 All hearings and deliberations before the *Sports Tribunal* in relation to anti-doping rule violations will be held in private and be confidential save where the parties otherwise agree.
- 8.8.2 Any decisions of the *Sports Tribunal* that an anti-doping rule violation has been committed, must be notified to *DFSNZ* promptly and no later than 7 working days from the date the decision has been made.

## 8.9 Appeals

Appeals from the decisions of the *Sports Tribunal* are exclusively to *CAS* as set out in Rule 13 of the *Rules*.

## 8.10 Other Matters

Subject to the application of Rule 3.2.3 in relation to departures from the *International Standard* for *Testing* and Investigations, no failure to follow, or departure from, the procedures provided for by the *Rules* by *DFSNZ* or any *National Sporting Organisation* will provide a ground to exclude evidence which is relevant to the determination whether an anti-doping rule violation has been committed from being considered by the *Sports Tribunal* or otherwise provide a ground for the *Sports Tribunal* to find that an anti-doping rule violation has not been committed. Nor will any such failure or departure provide a ground to invalidate a decision by the *Sports Tribunal* on an appeal to *CAS*, save where *CAS*, in the exercise of its jurisdiction on appeal, considers that there has been a miscarriage of justice as a direct consequence of the failure or departure.

- 8.11 Subject to the provisions of sections 46(1) and 49 to 53 of the Privacy Act 2020, and subject to any other good reason to withhold information under statute, any *Person* who is notified by *DFSNZ* under these *Rules* that they may be the subject of *Violation Proceedings*, will be entitled to copies of the documentation relevant to the allegation that there has been an anti-doping rule violation, and *DFSNZ* shall provide this to the *Person* or their representative upon request.

## 9. AUTOMATIC DISQUALIFICATION OF INDIVIDUAL RESULTS

An anti-doping rule violation in *Individual Sports* in connection with an *In-Competition* test automatically leads to *Disqualification* of the result obtained in that *Competition* with all resulting *Consequences*, including forfeiture of any medals, points and prizes.<sup>44</sup>

## 10. SANCTIONS ON INDIVIDUALS<sup>45</sup>

### 10.1 *Disqualification* of Results in the *Event* during which an Anti-Doping Rule Violation Occurs

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<sup>44</sup>[Comment to Rule 9: For Team Sports, any awards received by individual players will be Disqualified. However, Disqualification of the team will be as provided in Rule 11 (Consequences to Teams). In sports which are not Team Sports but where awards are given to teams, Disqualification or other disciplinary action against the team when one or more team members have committed an anti-doping rule violation shall be as provided in the applicable Rules of the International Federation.]

<sup>45</sup>[Comment to Rule 10: Harmonisation of sanctions has been one of the most discussed and debated areas of anti-doping. Harmonisation means that the same rules and criteria are applied to assess the unique facts of each case. Arguments against requiring harmonisation of sanctions are based on differences between sports including, for example, the following: in some sports the Athletes are professionals making a sizable income from the sport and in others the Athletes are true amateurs; in those sports where an Athlete's career is short, a standard period of Ineligibility has a much more significant effect on the Athlete than in sports where careers are traditionally much longer. A primary argument in favour of harmonisation is that it is simply not right that two Athletes from the same country who test positive for the same Prohibited Substance under similar circumstances should receive different sanctions only because they participate in different sports. In addition, too much flexibility in sanctioning has often been viewed as an unacceptable opportunity for some sporting

An anti-doping rule violation occurring during or in connection with an *Event* may, upon the decision of the ruling body of the *Event*, lead to *Disqualification* of all of the *Athlete's* individual results obtained in that *Event* with all *Consequences*, including forfeiture of all medals, points and prizes, except as provided in Rule 10.1.1.

Factors to be included in considering whether to *Disqualify* other results in an *Event* might include, for example, the seriousness of the *Athlete's* anti-doping rule violation and whether the *Athlete* tested negative in the other *Competitions*.<sup>46</sup>

10.1.1 If the *Athlete* establishes that he or she bears *No Fault or Negligence* for the violation, the *Athlete's* individual results in the other *Competitions* shall not be *Disqualified* unless the *Athlete's* results in *Competitions* other than the *Competition* in which the anti-doping rule violation occurred were likely to have been affected by the *Athlete's* anti-doping rule violation.

10.2 *Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substances or Prohibited Methods*

The period of *Ineligibility* imposed for a violation of Rules 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Rules 10.6, 10.7 or 10.7:

10.2.1 The period of *Ineligibility*, subject to Rule 10.2.4 shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a *Specified Substance* or a *Specified Method*, unless the *Athlete* or other *Person* can establish that the anti-doping rule violation was not intentional.<sup>47</sup>

10.2.1.2 The anti-doping rule violation involves a *Specified Substance* or a *Specified Method* and *DFSNZ* can establish that the anti-doping rule violation was intentional.

10.2.2 If Rule 10.2.1 does not apply, subject to Rule 10.2.4.1, the period of *Ineligibility* shall be two years.

10.2.3 As used in Rule 10.2 the term "intentional" is meant to identify those *Athletes* or other *Persons* who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an *Adverse Analytical Finding* for a substance which is only prohibited *In-Competition* shall be rebuttably presumed to be not "intentional" if the substance is a *Specified Substance* and the *Athlete* can establish that the *Prohibited Substance* was *Used Out-of-Competition*. An anti-doping rule violation resulting from an *Adverse Analytical Finding* for a substance which is only prohibited *In-*

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organisations to be more lenient with dopers. The lack of harmonisation of sanctions has also frequently been the source of conflicts between International Federations and National Anti-Doping Organisations.]

<sup>46</sup>[Comment to Rule 10.1: Whereas Rule 9 (Automatic Disqualification of Results) Disqualifies the result in a single Competition in which the Athlete tested positive (e.g., the 100 metre backstroke), this Rule may lead to Disqualification of all results in all races during the Event (e.g., the FINA World Championships).]

<sup>47</sup>[Comment to Rule 10.2.1.1: While it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Rule 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance.]

*Competition* shall not be considered “intentional” if the substance is not a *Specified Substance* and the *Athlete* can establish that the *Prohibited Substance* was *Used Out-of-Competition* in a context unrelated to sport performance.<sup>48</sup>

10.2.4 Notwithstanding any other provision in Rule 10.2, where the anti-doping rule violation involves a *Substance of Abuse*:

10.2.4.1 If the *Athlete* can establish that any ingestion or *Use* occurred *Out-of-Competition* and was unrelated to sport performance, then the period of *Ineligibility* shall be three months *Ineligibility*.

In addition, the period of *Ineligibility* calculated under this Rule 10.2.4.1 may be reduced to one month if the *Athlete* or other *Person* satisfactorily completes a *Substance of Abuse* treatment program approved by *DFSNZ*. The period of *Ineligibility* established in this Rule 10.2.4.1 is not subject to any reduction based on any provision in Rule 10.6.<sup>49</sup>

10.2.4.2 If the ingestion, *Use* or *Possession* occurred *In-Competition*, and the *Athlete* can establish that the context of the ingestion, *Use* or *Possession* was unrelated to sport performance, then the ingestion, *Use* or *Possession* shall not be considered intentional for purposes of Rule 10.2.1 and shall not provide a basis for a finding of *Aggravating Circumstances* under Rule 10.4.

### 10.3 *Ineligibility* for Other Anti-Doping Rule Violations

The period of *Ineligibility* for anti-doping rule violations other than as provided in Rule 10.2 shall be as follows, unless Rule 10.7 or Rule 10.7 are applicable:

10.3.1 For violations of Rule 2.3 or Rule 2.5, the *Ineligibility* period shall be four years except,

- (i) in the case of failing to submit to *Sample* collection, if the *Athlete* can establish that the commission of the anti-doping rule violation was not intentional, the period of *Ineligibility* shall be two years;
- (ii) in all other cases, if the *Athlete* or other *Person* can establish exceptional circumstances that justify a reduction of the period of *Ineligibility*, the period of *Ineligibility* shall be in a range from two years to four years depending on the *Athlete* or other *Person*'s degree of *Fault*; or
- (iii) in a case involving a *Protected Person* or *Recreational Athlete*, the period of *Ineligibility* shall be in a range between a maximum

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<sup>48</sup>[Comment to Rule 10.2.3: This Rule provides a special definition of “intentional” which is to be applied solely for purposes of Rule 10.2.]

<sup>49</sup>[Comment to Rule 10.2.4.1: The determinations as to whether the treatment program is approved and whether the *Athlete* or other *Person* has satisfactorily completed the program shall be made in the sole discretion of the Anti-Doping Organisation. This Article is intended to give Anti-Doping Organisations the leeway to apply their own judgment to identify and approve legitimate and reputable, as opposed to “sham”, treatment programs. It is anticipated, however, that the characteristics of legitimate treatment programs may vary widely and change over time such that it would not be practical for WADA to develop mandatory criteria for acceptable treatment programs.]

of two years and, at a minimum, a reprimand and no period of *Ineligibility*, depending on the *Protected Person* or *Recreational Athlete's* degree of *Fault*.

- 10.3.2 For violations of Rule 2.4, the period of *Ineligibility* shall be two years, subject to reduction down to a minimum of one year, depending on the *Athlete's* degree of *Fault*. The flexibility between two years and one year of *Ineligibility* in this Article is not available to *Athletes* where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the *Athlete* was trying to avoid being available for *Testing*.
- 10.3.3 For violations of Rule 2.7 or Rule 2.8, the period of *Ineligibility* imposed shall be a minimum of four years up to lifetime *Ineligibility* depending on the seriousness of the violation. A Rule 2.7 or Rule 2.8 violation involving a *Protected Person* shall be considered a particularly serious violation, and, if committed by *Athlete Support Personnel* for violations other than for *Specified Substances*, shall result in lifetime *Ineligibility* for such *Athlete Support Personnel*. In addition, significant violations of Rule 2.7 or Rule 2.8 which may also violate non-sporting laws and regulations, shall be reported to the competent administrative, professional or judicial authorities.<sup>50</sup>
- 10.3.4 For violations of Rule 2.9, the period of *Ineligibility* imposed shall be a minimum of two years, up to lifetime *Ineligibility*, depending on the seriousness of the violation.
- 10.3.5 For violations of Rule 2.10, the period of *Ineligibility* shall be two years, subject to reduction down to a minimum of one year, depending on the *Athlete* or other *Person's* degree of *Fault* and other circumstances of the case.<sup>51</sup>
- 10.3.6 For violations of Rule 2.11, the period of *Ineligibility* shall be a minimum of two years, up to lifetime *Ineligibility*, depending on the seriousness of the violation by the *Athlete* or other *Person*.<sup>52</sup>

#### 10.4 *Aggravating Circumstances* which may Increase the Period of *Ineligibility*

If the *DFSNZ* establishes in an individual case involving an anti-doping rule violation other than violations under Rule 2.7 (*Trafficking* or *Attempted Trafficking*), Rule 2.8 (*Administration* or *Attempted Administration*), Rule 2.9 (*Complicity* or *Attempted Complicity*) or Rule 2.11 (*Acts by an Athlete* or *Other Person* to Discourage or Retaliate Against Reporting) that *Aggravating Circumstances* are present which justify the imposition of a period of *Ineligibility* greater than the standard sanction, then the period of *Ineligibility* otherwise applicable shall be increased by an additional period of *Ineligibility* of up to two years depending on the seriousness of the violation and

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<sup>50</sup>[Comment to Rule 10.3.3: Those who are involved in doping Athletes or covering up doping should be subject to sanctions which are more severe than the Athletes who test positive. Since the authority of sport organisations is generally limited to *Ineligibility* for accreditation, membership and other sport benefits, reporting Athlete Support Personnel to competent authorities is an important step in the deterrence of doping.]

<sup>51</sup>[Comment to Rule 10.3.5: Where the "other Person" referenced in Rule 2.10 is an entity and not an individual, that entity may be disciplined as provided in Rule 12.]

<sup>52</sup>[Comment to Rule 10.3.6: Conduct that is found to violate both Rule 2.5 (*Tampering*) and Rule 2.11 (*Acts by an Athlete* or *Other Person* to Discourage or Retaliate Against Reporting to Authorities) shall be sanctioned based on the violation that carries the more severe sanction.]

the nature of the *Aggravating Circumstances*, unless the *Athlete* or other *Person* can establish that he or she did not knowingly commit the anti-doping rule violation.<sup>53</sup>

#### 10.5 Elimination of the Period of *Ineligibility* where there is *No Fault or Negligence*

If an *Athlete* or other *Person* establishes in an individual case that he or she bears *No Fault or Negligence*, then the otherwise applicable period of *Ineligibility* shall be eliminated.<sup>54</sup>

#### 10.6 Reduction of the Period of *Ineligibility* based on *No Significant Fault or Negligence*

##### 10.6.1 Reduction of Sanctions in Particular Circumstances for Violations of Rule 2.1, 2.2 or 2.6.

All reductions under Rule 10.6.1 are mutually exclusive and not cumulative.

###### 10.6.1.1 *Specified Substances or Specified Methods*

Where the anti-doping rule violation involves a *Specified Substance* (other than a *Substance of Abuse*) or *Specified Method*, and the *Athlete* or other *Person* can establish *No Significant Fault or Negligence*, then the period of *Ineligibility* shall be, at a minimum, a reprimand and no period of *Ineligibility*, and at a maximum, two years of *Ineligibility*, depending on the *Athlete's* or other *Person's* degree of *Fault*.

###### 10.6.1.2 *Contaminated Products*

In cases where the *Athlete* or other *Person* can establish both *No Significant Fault or Negligence* and that the detected *Prohibited Substance* (other than a *Substance of Abuse*) came from a *Contaminated Product*, then the period of *Ineligibility* shall be, at a minimum, a reprimand and no period of *Ineligibility*, and at a maximum, two years *Ineligibility*, depending on the *Athlete* or other *Person's* degree of *Fault*.<sup>55</sup>

###### 10.6.1.3 *Protected Persons or Recreational Athletes*

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<sup>53</sup>[Comment to Rule 10.4: Violations under Rule 2.7 (Trafficking or Attempted Trafficking), Rule 2.8 (Administration or Attempted Administration), Rule 2.9 (Complicity or Attempted Complicity) and Rule 2.11 (Acts by an Athlete or Other Person to Discourage or Retaliate Against Reporting) are not included in the application of Rule 10.4 because the sanctions for these violations already build in sufficient discretion up to a lifetime ban to allow consideration of any aggravating circumstance.]

<sup>54</sup>[Comment to Rule 10.5: This Rule and Rule 10.6.2 apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. They will only apply in exceptional circumstances, for example, where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, No Fault or Negligence would not apply in the following circumstances: (a) a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Rule 2.1.1) and have been warned against the possibility of supplement contamination); (b) the Administration of a Prohibited Substance by the Athlete's Personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical Personnel and for advising medical Personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Rule 10.6 based on No Significant Fault or Negligence.]

<sup>55</sup>[Comment to Rule 10.6.1.2: In order to receive the benefit of this Article, the Athlete or other Person must establish not only that the detected Prohibited Substance came from a Contaminated Product, but must also separately establish No Significant Fault or Negligence. It should be further noted that Athletes are on notice that they take nutritional supplements at their own risk. The sanction reduction based on No Significant Fault or Negligence has rarely been applied in Contaminated Product cases unless the Athlete has exercised a high level of caution before taking the Contaminated Product. In assessing whether the Athlete can establish the source of the Prohibited Substance, it would, for example, be significant for purposes of establishing whether the Athlete actually Used the Contaminated Product, whether the Athlete had declared the product which was subsequently determined to be contaminated on the Doping Control form. This Article should not be extended beyond products that have gone through some process of manufacturing. Where an Adverse Analytical Finding results from environment contamination of a "non-product" such as tap water or lake water in circumstances where no reasonable person would expect any risk of an anti-doping rule violation, typically there would be No Fault or Negligence under Rule 10.5.]

Where the anti-doping rule violation not involving a *Substance of Abuse* is committed by a *Protected Person* or *Recreational Athlete*, and the *Protected Person* or *Recreational Athlete* can establish *No Significant Fault* or *Negligence*, then the period of *Ineligibility* shall be, at a minimum, a reprimand and no period of *Ineligibility*, and at a maximum, two years *Ineligibility*, depending on the *Protected Person* or *Recreational Athlete's* degree of *Fault*.

10.6.2 Application of *No Significant Fault* or *Negligence* beyond the Application of Rule 10.6.1<sup>56</sup>

If an *Athlete* or other *Person* establishes in an individual case where Rule 10.6.1 is not applicable, that he or she bears *No Significant Fault* or *Negligence*, then, subject to further reduction or elimination as provided in Rule 10.7, the otherwise applicable period of *Ineligibility* may be reduced based on the *Athlete* or other *Person's* degree of *Fault*, but the reduced period of *Ineligibility* may not be less than one-half of the period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this Article may be no less than eight years.

10.7 Elimination, Reduction, or Suspension of Period of *Ineligibility* or other *Consequences* for Reasons Other than *Fault*

10.7.1 *Substantial Assistance* in Discovering or Establishing Code Violations<sup>57</sup>

10.7.1.1 Prior to a final appellate decision under Rule 13 or the expiration of the time to appeal, *DFSNZ* may suspend a part of the *Consequences* (other than *Disqualification* and mandatory *Public Disclosure*) imposed in an individual case where the *Athlete* or other *Person* has provided *Substantial Assistance* to an *Anti-Doping Organisation*, criminal authority or professional disciplinary body that results in: (i) the *Anti-Doping Organisation* discovering or bringing forward an anti-doping rule violation by another *Person*; or (ii) in a criminal or disciplinary body discovering or bringing forward a criminal offence or the breach of professional rules committed by another *Person* and the information provided by the *Person* providing *Substantial Assistance* is made available to *DFSNZ* or other *Anti-Doping Organisation* with the *Results Management* responsibility; or (iii) which results in *WADA* initiating a proceeding against a *Signatory*, *WADA*-accredited laboratory or *Athlete* passport management unit (as defined in the *International Standard* for Laboratories) for non-compliance with the *Code*, *International Standard* or *Technical Document*; or (iv) with the approval by *WADA*, which results in a criminal or disciplinary body bringing forward a criminal offense or the breach of professional or sport rules arising out of a sport integrity violation other than doping. After an appellate decision under Rule 13 or the expiration of time to appeal, *DFSNZ* may only suspend part of the otherwise applicable

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<sup>56</sup> [Comment to Rule 10.6.1.2: Rule 10.6.2 may be applied to any anti-doping rule violation except those Rules where intent is an element of the anti-doping rule violation (e.g., Rule 2.5, 2.7, 2.8, 2.9 or 2.11) or an element of a particular sanction (e.g., Rule 10.2.1) or a range of *Ineligibility* is already provided in a Rule based on the *Athlete* or other *Person's* degree of *Fault*.]

<sup>57</sup> [Comment to Rule 10.7.1: The cooperation of *Athletes*, *Athlete Support Personnel* and other *Persons* who acknowledge their mistakes and are willing to bring other anti-doping rule violations to light is important to clean sport.]

*Consequences* with the approval of WADA and the applicable International Federation.

The extent to which the otherwise applicable period of *Ineligibility* may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the *Athlete* or other *Person* and the significance of the *Substantial Assistance* provided by the *Athlete* or other *Person* to the effort to eliminate doping in sport, non-compliance with the *Code* and/or sport integrity violations. No more than three-quarters of the otherwise applicable period of *Ineligibility* may be suspended. If the otherwise applicable period of *Ineligibility* is a lifetime, the non-suspended period under this Rule must be no less than eight years. For the purposes of this paragraph, the otherwise applicable period of *Ineligibility* shall not include any period of *Ineligibility* that could be added under Rule 10.9.3.2.

If so requested by an *Athlete* or other *Person* who seeks to provide *Substantial Assistance*, DFSNZ shall allow the *Athlete* or other *Person* to provide the information to DFSNZ subject to a *Without Prejudice Agreement*.

If the *Athlete* or other *Person* fails to continue to cooperate and to provide the complete and credible *Substantial Assistance* upon which a suspension of *Consequences* was based, DFSNZ shall reinstate the suspended *Consequences*. If DFSNZ decides to reinstate suspended *Consequences* or decides not to reinstate suspended *Consequences* that decision may be appealed by any *Person* entitled to appeal under Rule 13.

10.7.1.2 To further encourage *Athletes* and other *Persons* to provide *Substantial Assistance* to *Anti-Doping Organisations*, at the request of DFSNZ or at the request of the *Athlete* or other *Person* who has, or has been asserted to have, committed an anti-doping rule violation, or other violation of the *Code*, WADA may agree at any stage of the *Results Management* process, including after an appellate decision under Rule 13, to what it considers to be an appropriate suspension of the otherwise-applicable period of *Ineligibility* and other *Consequences*. In exceptional circumstances, WADA may agree to suspensions of the period of *Ineligibility* and other *Consequences* for *Substantial Assistance* greater than those otherwise provided in this Rule, or even no period of *Ineligibility*, no mandatory *Public Disclosure* and/or no return of prize money or payment of fines or costs. WADA's approval shall be subject to reinstatement of *Consequences*, as otherwise provided in this Rule. Notwithstanding Rule 13, WADA's decisions in the context of this Rule 10.7.1.2 may not be appealed.

10.7.1.3 If DFSNZ suspends any part of an otherwise applicable sanction because of *Substantial Assistance*, then notice providing justification for the decision shall be provided to the other *Anti-Doping Organisations* with a right to appeal under Rule 13.2.3 as provided in Rule 14. In unique circumstances where WADA determines that it would be in the best interest of anti-doping, WADA

may authorize *DFSNZ* to enter into appropriate confidentiality agreements limiting or delaying the disclosure of the *Substantial Assistance* agreement or the nature of *Substantial Assistance* being provided.

#### 10.7.2 Admission of an Anti-Doping Rule Violation in the Absence of Other Evidence

Where an *Athlete* or other *Person* voluntarily admits the commission of an anti-doping rule violation before having received notice of a *Sample* collection which could establish an anti-doping rule violation (or, in the case of an anti-doping rule violation other than Rule 2.1, before receiving first notice of the admitted anti-doping rule violation pursuant to Rule 7) and that admission is the only reliable evidence of the anti-doping rule violation at the time of admission, then the period of *Ineligibility* may be reduced, but not below one-half of the period of *Ineligibility* otherwise applicable.<sup>58</sup>

#### 10.7.3 Application of Multiple Grounds for Reduction of a Sanction

Where an *Athlete* or other *Person* establishes entitlement to reduction in sanction under more than one provision of Rule 10.5, 10.6 or 10.7, before applying any reduction or suspension under Rule 10.7, the otherwise applicable period of *Ineligibility* shall be determined in accordance with Rules 10.2, 10.3, 10.5 and 10.6. If the *Athlete* or other *Person* establishes entitlement to a reduction or suspension of the period of *Ineligibility* under Rule 10.7, then the period of *Ineligibility* may be reduced or suspended, but not below one-fourth of the otherwise applicable period of *Ineligibility*.

### 10.8 Results Management Agreements

#### 10.8.1 One-Year Reduction for Certain Anti-Doping Rule Violations Based on Early Admission and Acceptance of Sanction

Where an *Athlete* or other *Person*, after being notified by *DFSNZ* of a potential anti-doping rule violation that carries an asserted period of *Ineligibility* of four or more years (including any period of *Ineligibility* asserted under Rule 10.4), admits the violation and accepts the asserted period of *Ineligibility* no later than 20 days after receiving notice of an anti-doping rule violation charge, the *Athlete* or other *Person* may receive a one-year reduction in the period of *Ineligibility* asserted by *DFSNZ*. Where the *Athlete* or other *Person* receives the one-year reduction in the asserted period of *Ineligibility* under this Rule 10.8.1, no further reduction in the asserted period of *Ineligibility* shall be allowed under any other Rule.<sup>59</sup>

#### 10.8.2 Case Resolution Agreement

Where the *Athlete* or other *Person* admits an anti-doping rule violation after being confronted with the anti-doping rule violation by *DFSNZ* and agrees to *Consequences* acceptable to *DFSNZ* and WADA, at their sole discretion, then: (a) the *Athlete* or other *Person* may receive a reduction in the period of *Ineligibility* based on an assessment by

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<sup>58</sup>[Comment to Rule 10.7.2: This Rule is intended to apply when an *Athlete* or other *Person* comes forward and admits to an anti-doping rule violation in circumstances where no Anti-Doping Organisation is aware that an anti-doping rule violation might have been committed. It is not intended to apply to circumstances where the admission occurs after the *Athlete* or other *Person* believes he or she is about to be caught. The amount by which *Ineligibility* is reduced should be based on the likelihood that the *Athlete* or other *Person* would have been caught had he or she not come forward voluntarily.]

<sup>59</sup>[Comment to Rule 10.8.1: For example, if *DFSNZ* alleges that an *Athlete* has violated Rule 2.1 for Use of an anabolic steroid and asserts the applicable period of *Ineligibility* is four years, then the *Athlete* may unilaterally reduce the period of *Ineligibility* to three years by admitting the violation and accepting the three-year period of *Ineligibility* within the time specified in this Article, with no further reduction allowed. This resolves the case without any need for a hearing.]

DFSNZ and WADA of the application of Rule 10.1 through 10.7 to the asserted anti-doping rule violation, the seriousness of the violation, the *Athlete* or other *Person's* degree of *Fault* and how promptly the *Athlete* or other *Person* admitted the violation; and (b) the period of *Ineligibility* may start as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Rule is applied, the *Athlete* or other *Person* shall serve at least one-half of the agreed-upon period of *Ineligibility* going forward from the earlier of the date the *Athlete* or other *Person* accepted the imposition of a sanction or a *Provisional Suspension* which was subsequently respected by the *Athlete* or other *Person*. The decision by WADA and *DFSNZ* to enter or not enter into a case resolution agreement, and the amount of the reduction to, and the starting date of the period of *Ineligibility*, are not matters for determination or review by a hearing body and are not subject to appeal under Rule 13.

If so requested by an *Athlete* or other *Person* who seeks to enter into a case resolution agreement under this Rule, *DFSNZ* shall allow the *Athlete* or other *Person* to discuss an admission of the anti-doping rule violation with it subject to a *Without Prejudice Agreement*.<sup>60</sup>

## 10.9 Multiple Violations

### 10.9.1 Second or Third Anti-Doping Rule Violation

10.9.1.1 For an *Athlete* or other *Person's* second anti-doping rule violation, the period of *Ineligibility* shall be the greater of:

- (a) A six-month period of *Ineligibility*; or
- (b) A period of *Ineligibility* in the range between:
  - (i) the sum of the period of *Ineligibility* imposed for the first anti-doping rule violation plus the period of *Ineligibility* otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, and
  - (ii) twice the period of *Ineligibility* otherwise applicable to the second anti-doping rule violation treated as if it were a first violation.

The period of *Ineligibility* within this range is to be determined based on the entirety of the circumstances and the *Athlete* or other *Person's* degree of *Fault* with respect to the second violation.

10.9.1.2 A third anti-doping rule violation will always result in a lifetime period of *Ineligibility*, except if the third violation fulfils the condition for elimination or reduction of the period of *Ineligibility* under Rule 10.5

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<sup>60</sup>[Comment to Rule 10.8.2: Any mitigating or aggravating factors set forth in this Rule 10 shall be considered in arriving at the Consequences set forth in the case resolution agreement, and shall not be applicable beyond the terms of that agreement.]

In some countries, the imposition of a period of *Ineligibility* is left entirely to a hearing body. In those countries, the Anti-Doping Organisation may not assert a specific period of *Ineligibility* for purposes of Rule 10.8.1 nor have the power to agree to a specific period of *Ineligibility* under Rule 10.8.2. In these circumstances, Rule 10.8.1 and 10.8.2 will not be applicable but may be considered by the hearing body.]

or 10.6 or involves a violation of Rule 2.4. In these particular cases, the period of *Ineligibility* shall be from eight years to lifetime *Ineligibility*.

- 10.9.1.3 The period of *Ineligibility* established in Rule 10.9.1.1 and 10.9.1.2 may then be further reduced by the application of Rule 10.7.
- 10.9.2 An anti-doping rule violation for which an *Athlete* or other *Person* has established *No Fault or Negligence* shall not be considered a violation for purposes of Rule 10.9. In addition, an anti-doping rule violation sanctioned under Rule 10.2.4.1 shall not be considered a violation for purposes of Rule 10.9.
- 10.9.3 Additional Rules for Certain Potential Multiple Violations
- 10.9.3.1 For purposes of imposing sanctions under Rule 10.9, except as provided in Rules 10.9.3.2 and 10.9.3.3, an anti-doping rule violation will only be considered a second violation if *DFSNZ* can establish that the *Athlete* or other *Person* committed the additional anti-doping rule violation after the *Athlete* or other *Person* received notice under Rule 7, or after *DFSNZ* made reasonable efforts to give notice, of the first anti-doping rule violation; if *DFSNZ* cannot establish this, the anti-doping rule violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction, including the application of *Aggravating Circumstances Results in all Competitions* dating back to the earlier anti-doping rule violation will be *Disqualified* as provided in Rule 10.10.<sup>61</sup>
- 10.9.3.2 If, *DFSNZ* establishes that an *Athlete* or other *Person* committed an additional anti-doping rule violation prior to notification, and that the additional violation occurred 12 months or more before or after the first-noticed violation, then the period of *Ineligibility* for the additional violation shall be calculated as if the additional violation were a stand-alone first violation and this period of *Ineligibility* is served consecutively, rather than concurrently, with the period of *Ineligibility* imposed for the earlier-noticed violation. Where this Rule 10.9.3.2 applies, the violations taken together shall constitute a single violation for purposes of Rule 10.9.1.
- 10.9.3.3 If, *DFSNZ* establishes that an *Athlete* or other *Person* committed a violation of Rule 2.5 in connection with the *Doping Control* process for an underlying asserted anti-doping rule violation, the violation of Rule 2.5 shall be treated as a stand-alone first violation and the period of *Ineligibility* for such violation shall be served consecutively, rather than concurrently, with the period of *Ineligibility*, if any, imposed for the underlying anti-doping rule violation. Where this

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<sup>61</sup>[Comment to Rule 10.9.3.1: The same rule applies where, after the imposition of a sanction, *DFSNZ* discovers facts involving an anti-doping rule violation that occurred prior to notification for a first anti-doping rule violation—e.g., *DFSNZ* shall impose a sanction based on the sanction that could have been imposed if the two violations had been adjudicated at the same time, including the application of *Aggravating Circumstances*.]

Rule 10.9.3.3 is applied, the violations taken together shall constitute a single violation for purposes of Rule 10.9.1.

10.9.3.4 If *DFSNZ* establishes that an *Athlete* or other *Person* has committed a second or third anti-doping rule violation during a period of *Ineligibility*, the periods of *Ineligibility* for the multiple violations shall run consecutively, rather than concurrently.

#### 10.9.4 Multiple Anti-Doping Rule Violations During a Ten-Year Period

For purposes of Rule 10.9, each anti-doping rule violation must take place within the same ten year period in order to be considered multiple violations.

#### 10.10 *Disqualification* of Results in *Competitions* Subsequent to *Sample* Collection or Commission of an Anti-Doping Rule Violation

In addition to the automatic *Disqualification* of the results in the *Competition* which produced the positive *Sample* under Rule 8.11, all other competitive results of the *Athlete* obtained from the date a positive *Sample* was collected (whether *In-Competition* or *Out-of-Competition*), or other anti-doping rule violation occurred, through the commencement of any *Provisional Suspension* or *Ineligibility* period, shall, unless fairness requires otherwise, be *Disqualified* with all of the resulting *Consequences* including forfeiture of any medals, points and prizes.<sup>62</sup>

#### 10.11 Forfeited Prize Money

An *Anti-Doping Organisation* or other *Signatory* that has recovered prize money forfeited as a result of an anti-doping rule violation shall take reasonable measures to allocate and distribute this prize money to the *Athletes* who would have been entitled to it had the forfeiting *Athlete* not competed. An International Federation may provide in its rules whether or not the redistributed prize money shall be considered for purposes of its ranking of *Athletes*.<sup>63</sup>

#### 10.12 *Financial Consequences*

Where *DFSNZ* brings proceedings before the *Sports Tribunal* the recovery of costs or imposition of financial sanctions shall be as determined by the *Sports Tribunal*.

#### 10.13 Commencement of *Ineligibility* Period

Where an *Athlete* is already serving a period of *Ineligibility* for an anti-doping rule violation, any new period of *Ineligibility* shall commence on the first day after the current period of *Ineligibility* has been served. Otherwise, except as provided below, the period of *Ineligibility* shall start on the date of the final hearing decision providing for *Ineligibility* or, if the hearing is waived or there is no hearing, on the date *Ineligibility* is accepted or otherwise imposed.

##### 10.13.1 Delays Not Attributable to the *Athlete* or other *Person*

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<sup>62</sup>[Comment to Rule 10.10: Nothing in these Rules precludes clean *Athletes* or other *Persons* who have been damaged by the actions of a *Person* who has committed an anti-doping rule violation from pursuing any right which they would otherwise have to seek damages from such *Person*.]

<sup>63</sup>[Comment to Rule 10.11: This Rule is not intended to impose an affirmative duty on the *Anti-Doping Organisation* or other *Signatory* to take any action to collect forfeited prize money. If the *Anti-Doping Organisation* elects not to take any action to collect forfeited prize money, it may assign its right to recover such money to the *Athlete(s)* who should have otherwise received the money. "Reasonable measures to allocate and distribute this prize money" could include using collected forfeited prize money as agreed upon by an International Federation and its *Athletes*.]

Where there have been substantial delays in the hearing process or other aspects of *Doping Control*, and the *Athlete* or other *Person* can establish that such delays are not attributable to the *Athlete* or other *Person*, the body imposing the sanction may start the period of *Ineligibility* at an earlier date commencing as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of *Ineligibility*, including retroactive *Ineligibility*, shall be *Disqualified*.<sup>64</sup>

#### 10.13.2 Credit for *Provisional Suspension* or Period of *Ineligibility* Served

- 10.13.2.1 If a *Provisional Suspension* is imposed and respected by the *Athlete* or other *Person*, then the *Athlete* or other *Person* shall receive a credit for such period of *Provisional Suspension* against any period of *Ineligibility* which may ultimately be imposed. If the *Athlete* or other *Person* does not respect a *Provisional Suspension*, then the *Athlete* or other *Person* shall receive no credit for any period of *Provisional Suspension* served. If a period of *Ineligibility* is served pursuant to a decision that is subsequently appealed, then the *Athlete* or other *Person* shall receive a credit for such period of *Ineligibility* served against any period of *Ineligibility* which may ultimately be imposed on appeal.
- 10.13.2.2 If an *Athlete* or other *Person* voluntarily accepts a *Provisional Suspension* in writing from *DFSNZ* and thereafter respects the *Provisional Suspension*, the *Athlete* or other *Person* shall receive a credit for such period of voluntary *Provisional Suspension* against any period of *Ineligibility* which may ultimately be imposed. A copy of the *Athlete's* or other *Person's* voluntary acceptance of a *Provisional Suspension* shall be provided promptly to each party entitled to receive notice of an asserted anti-doping rule violation under Rule 14.<sup>65</sup>
- 10.13.2.3 No credit against a period of *Ineligibility* shall be given for any time period before the effective date of the *Provisional Suspension* or voluntary *Provisional Suspension* regardless of whether the *Athlete* elected not to compete or was suspended by a team.
- 10.13.2.4 In *Team Sports*, where a period of *Ineligibility* is imposed upon a team, unless fairness requires otherwise, the period of *Ineligibility* shall start on the date of the final hearing decision providing for *Ineligibility* or, if the hearing is waived, on the date *Ineligibility* is accepted or otherwise imposed. Any period of team *Provisional Suspension* (whether imposed or voluntarily accepted) shall be credited against the total period of *Ineligibility* to be served.

#### 10.14 Status during *Ineligibility* or *Provisional Suspension*

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<sup>64</sup>[Comment to Rule 10.13.1: In cases of anti-doping rule violations other than under Rule 2.1, the time required for an Anti-Doping Organisation to discover and develop facts sufficient to establish an anti-doping rule violation may be lengthy, particularly where the *Athlete* or other *Person* has taken affirmative action to avoid detection. In these circumstances, the flexibility provided in this Rule to start the sanction at an earlier date should not be used.]

<sup>65</sup>[Comment to Rule 10.13.2.2: An *Athlete's* voluntary acceptance of a *Provisional Suspension* is not an admission by the *Athlete* and shall not be used in any way as to draw an adverse inference against the *Athlete*.]

#### 10.14.1 Prohibition against Participation during *Ineligibility* or *Provisional Suspension*

No *Athlete* or other *Person* who has been declared *Ineligible* or is subject to a *Provisional Suspension* may, during a period of *Ineligibility* or *Provisional Suspension*, participate in any capacity in a *Competition* or activity (other than authorised anti-doping *Education* or rehabilitation programs) authorised or organised by any *Signatory* or *Signatory's* member organisation, or a club or other member organisation of a *Signatory's* member organisation, or in *Competitions* authorised or organised by any professional league or any international- or national-level *Event* organisation or any elite or national-level sporting activity funded by a governmental agency.

An *Athlete* or other *Person* subject to a period of *Ineligibility* longer than four years may, after completing four years of the period of *Ineligibility*, participate as an *Athlete* in local sport events not sanctioned or otherwise under the jurisdiction of a *Code Signatory* or member of a *Code Signatory*, but only so long as the local sport event is not at a level that could otherwise qualify such *Athlete* or other *Person* directly or indirectly to compete in (or accumulate points toward) a national championship or *International Event*, and does not involve the *Athlete* or other *Person* working in any capacity with *Protected Persons*.

An *Athlete* or other *Person* subject to a period of *Ineligibility* shall remain subject to *Testing*, any requirement by *DFSNZ* to provide whereabouts information and all the provisions of the *Rules*.<sup>66</sup>

#### 10.14.2 Return to Training

As an exception to Rule 10.14.1, an *Athlete* may return to train with a team or to use the facilities of a club or other member organisation of *DFSNZ* or other *Signatory's* member organisation 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.<sup>67</sup>

#### 10.14.3 Violation of the Prohibition of Participation During *Ineligibility* or *Provisional Suspension*

Where an *Athlete* or other *Person* who has been declared *Ineligible* violates the prohibition against participation during *Ineligibility* described in Rule 10.14.1, the results of such participation shall be *Disqualified* and a new period of *Ineligibility* equal in length to the original period of *Ineligibility* shall be added to the end of the original period of *Ineligibility*. The new period of *Ineligibility*, including a reprimand and no period of *Ineligibility*, may be adjusted based on the *Athlete* or other *Person's* degree of *Fault* and other circumstances of the case. The determination of whether an *Athlete*

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<sup>66</sup>[Comment to Rule 10.14.1: For example, subject to Rule 10.14.2 below, an *Ineligible Athlete* cannot participate in a training camp, exhibition or practice organised by their *National Federation* or a club which is a member of that *National Federation* or which is funded by a governmental agency. Further, an *Ineligible Athlete* may not compete in a non-*Signatory* professional league (e.g., the *National Hockey League*, the *National Basketball Association*, etc.), *Events* organised by a non-*Signatory International Event* organisation or a non-*Signatory* national-level event organisation without triggering the *Consequences* set forth in Rule 10.14.3. The term "activity" also includes, for example, administrative activities, such as serving as an official, director, officer, employee, or volunteer of the organisation described in this Rule. *Ineligibility* imposed in one sport shall also be recognised by other sports (see Rule 15) *Automatic Binding Effect of Decisions*). An *Athlete* or other *Person* serving a period of *Ineligibility* is prohibited from coaching or serving as an *Athlete Support Person* in any other capacity at any time during the period of *Ineligibility*, and doing so could also result in a violation of Rule 2.10 by another *Athlete*. Any performance standard accomplished during a period of *Ineligibility* shall not be recognised by a *Signatory* or its *National Federations* for any purpose.]

<sup>67</sup>[Comment to Rule 10.14.2: In many *Team Sports* and some *individual sports* (e.g., *ski jumping* and *gymnastics*), an *Athlete* cannot effectively train on his or her own so as to be ready to compete at the end of the *Athlete's* period of *Ineligibility*. During the training period described in this Rule, an *Ineligible Athlete* may not compete or engage in any activity described in Rule 10.14.1 other than training.]

or other *Person* has violated the prohibition against participation, and whether an adjustment is appropriate, shall be referred by *DFSNZ* or the *Anti-Doping Organisation* whose *Results Management* led to the imposition of the initial period of *Ineligibility* to the *Sports Tribunal* under Rule 8 or the hearing body of the *Anti-Doping Organisation* whose *Results Management* led to the imposition of the initial period of *Ineligibility*. This decision may be appealed under Rule 13.

An *Athlete* or other *Person* who violates the prohibition against participation during a *Provisional Suspension* described in Rule 10.14.1 shall receive no credit for any period of *Provisional Suspension* served and the results of such participation shall be *Disqualified*.

Where an *Athlete Support Person* or other *Person* assists a *Person* in violating the prohibition against participation during *Ineligibility* or a *Provisional Suspension*, *DFSNZ* shall seek that the *Sports Tribunal* impose sanctions for a violation of Rule 2.9 for such assistance.

#### 10.14.4 Withholding of Financial Support during *Ineligibility*

In addition, for any anti-doping rule violation not involving a reduced sanction as described in Rule 10.5 or Rule 10.6, some or all sport-related financial support or other sport-related benefits received by such *Person* will be withheld by *DFSNZ*, the New Zealand Government, *National Sporting Organisations*, the New Zealand Olympic Committee and Paralympics New Zealand.

#### 10.15 Automatic Publication of Sanction

A mandatory part of each sanction shall include automatic publication, as provided in Rule 14.3.

## 11. CONSEQUENCES TO TEAMS

### 11.1 *Testing of Team Sports*

Where more than one member of a team in a *Team Sport* has been notified of an anti-doping rule violation under Rule 7 in connection with an *Event*, the ruling body for the *Event* shall conduct appropriate *Target Testing* of the team during the *Even Period*.

### 11.2 *Consequences for Team Sports*

If more than two members of a team in a *Team Sport* are found to have committed an anti-doping rule violation during an *Event Period*, the ruling body of the *Event* shall impose an appropriate sanction on the team (e.g., loss of points, *Disqualification* from a *Competition* or *Event*, or other sanction) in addition to any *Consequences* imposed upon the individual *Athletes* committing the anti-doping rule violation.

### 11.3 *Event Ruling Body or International Federation May Establish Stricter Consequences for Team Sports*

The ruling body for an *Event* may elect to establish rules for the *Event* which impose *Consequences* for *Team Sports* stricter than those in Rule 11.2 for purposes of the *Event*.

Similarly, an International Federation may elect to establish rules imposing stricter *Consequences* for *Team Sports* within its authority than those in Rule 11.2.<sup>68</sup>

## 12. SANCTIONS AGAINST SPORTING BODIES

Where any *National Sporting Organisation* fails, without reasonable excuse, to comply with any direction or request made by *DFSNZ* under these *Rules*, or with Rule 7.9.4, *DFSNZ* may report such failure to the Chief Executive Officer of Sport New Zealand.

## 13. RESULTS MANAGEMENT: APPEALS<sup>69</sup>

### 13.1 Decisions Subject to Appeal

Decisions made under the *Code* or under these *Rules* may be appealed as set forth in Rules 13.2 to 13.6 or as otherwise provided in the *Code* or *International Standards*. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise.

#### 13.1.1 Scope of Review Not Limited

The scope of review on appeal includes all issues relevant to the matter and is expressly not limited to the issues or scope of review before the initial decision maker. Any party to the appeal may submit evidence, legal arguments and claims that were not raised in the first instance hearing so long as they arise from the same cause of action or same general facts or circumstances raised or addressed in the first instance hearing.<sup>70</sup>

#### 13.1.2 CAS Shall Not Defer to the Findings Being Appealed

In making its decision, CAS shall not give deference to the discretion exercised by the body whose decision is being appealed.<sup>71</sup>

#### 13.1.3 WADA Not Required to Exhaust Internal Remedies

Where *WADA* has a right to appeal under Rule 13 and no other party has appealed a final decision within *DFSNZ*'s process, *WADA* may appeal such decision directly to *CAS* without having to exhaust other remedies in *DFSNZ*'s process.<sup>72</sup>

### 13.2 Appeals from Decisions Regarding Anti-Doping Rule Violations, *Consequences*, *Provisional Suspensions*, Implementation of Decisions and Authority

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<sup>68</sup>[Comment to Rule 11.3: For example, the International Olympic Committee could establish Rules which would require Disqualification of a team from the Olympic Games based on a lesser number of anti-doping rule violations during the period of the Games.]

<sup>69</sup>[Comment to Rule 13: The object of the Code is to have anti-doping matters resolved through fair and transparent internal processes with a final appeal. Anti-doping decisions by Anti-Doping Organisations are made transparent in Rule 14. Specified Persons and organisations, including WADA, are then given the opportunity to appeal those decisions. Note that the definition of interested Persons and organisations with a right to appeal under this Rule does not include Athletes, or their National Federations, who might benefit from having another competitor Disqualified.]

<sup>70</sup>[Comment to Rule 13.1.1: The revised language is not intended to make a substantive change to the 2015 Code, but rather for clarification. For example, where an Athlete was charged in the first instance hearing only with Tampering but the same conduct could also constitute Complicity, an appealing party could pursue both Tampering and Complicity charges against the Athlete in the appeal.]

<sup>71</sup>[Comment to Rule 13.1.2: CAS proceedings are de novo. Prior proceedings do not limit the evidence or carry weight in the hearing before CAS.]

<sup>72</sup>[Comment to Rule 13.1.3: Where a decision has been rendered before the final stage of *DFSNZ*'s process (for example, a first hearing) and no party elects to appeal that decision to the next level of *DFSNZ*'s process, then *WADA* may bypass the remaining steps in *DFSNZ*'s internal process and appeal directly to *CAS*.]

A decision that an anti-doping rule violation was committed, a decision imposing *Consequences* or not imposing *Consequences* for an anti-doping rule violation, a decision that no anti-doping rule violation was committed; a decision that an anti-doping rule violation proceeding cannot go forward for procedural reasons (including, for example, prescription); a decision by WADA not to grant an exception to the six months' notice requirement for a retired *Athlete* to return to *Competition* under Rule 5.6.1; a decision by WADA assigning *Results Management* under Rule 7.1; a decision by DFSNZ not to bring forward an *Adverse Analytical Finding* or an *Atypical Finding* as an anti-doping rule violation, or a decision not to go forward with an anti-doping rule violation after an investigation under in accordance with the *International Standard for Results Management*; a decision to impose, or lift, a *Provisional Suspension* as a result of a *Provisional Hearing*; DFSNZ's failure to comply with Rule 7.4; a decision that DFSNZ lacks authority to rule on an alleged anti-doping rule violation or its *Consequences*; a decision to suspend, or not suspend, *Consequences* or to reinstate, or not reinstate, *Consequences* under Rule 10.7.1; failure to comply with Rules 7.1.4 and 7.1.5; failure to comply with Rule 10.8.1; a decision under Rule 10.14.3; a decision by DFSNZ not to implement another *Anti-Doping Organisation's* decision under Rule 15; and a decision under Article 27.3 of the *Code* may be appealed exclusively as provided in this Rule 13.2.

#### 13.2.1 Appeals Involving *International-Level Athletes* or *International Events*

In cases arising from participation in an *International Event* or in cases involving *International-Level Athletes*, the decision may be appealed exclusively to CAS.<sup>73</sup>

#### 13.2.2 Appeals Involving Other *Athletes* or Other *Persons*

In cases where Rule 13.2.1 is not applicable, the decision of the *Sports Tribunal* may be appealed exclusively to CAS in accordance with the applicable procedural rules.

#### 13.2.3 *Persons* Entitled to Appeal<sup>74</sup>

##### 13.2.3.1 Appeals Involving *International-Level Athletes* or *International Events*

In cases under Rule 13.2.1, the following parties shall have the right to appeal to CAS: (a) the *Athlete* or other *Person* who is the subject of the decision being appealed; (b) the other party or parties to the case in which the decision was rendered; (c) the relevant International Federation; (d) DFSNZ and the *National Anti-Doping Organisation* of the *Person's* country of residence or countries where the *Person* is a national or license holder; (e) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games; and (f) WADA.

##### 13.2.3.2 Appeals Involving Other *Athletes* or Other *Persons*

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<sup>73</sup>[*Comment to Rule 13.2.1: CAS decisions are final and binding except for any review required by law applicable to the annulment or enforcement of arbitral awards.*]

<sup>74</sup>[*Comments to Rule 13.2.3: Whether governed by CAS rules or Rule 13.2.3, a party's deadline to appeal does not begin running until receipt of the decision. For that reason, there can be no expiration of a party's right to appeal if the party has not received the decision.*]

In cases under Rule 13.2.2, the following parties shall have the right to appeal: (a) the *Athlete* or other *Person* who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) the relevant International Federation; (d) the *National Anti-Doping Organisation* of the *Person's* country of residence or countries where the *Person* is a national or license holder; (e) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games, and (f) *WADA*. Any party filing an appeal shall be entitled to assistance from *CAS* to obtain all relevant information from *DFSNZ* and the *Sports Tribunal* and the information shall be provided if *CAS* so directs.

#### 13.2.3.3 Duty to Notify

All parties to any *CAS* appeal must ensure that *WADA* and all other parties with a right to appeal must have been given timely notice of the appeal.

#### 13.2.3.4 Appeal Deadline for Parties Other than *WADA*

The time for parties other than *WADA* to file an appeal shall be as provided for in these *Rules*.

#### 13.2.3.5 Appeals to *CAS*

The time to file an appeal to *CAS* shall be twenty-one days from the date of receipt of the decision by the appealing party. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings that led to the decision being appealed:

- (i) Within fifteen days from notice of the decision, such party/ies shall have the right to request a copy of the full case file from the body that issued the decision;
- (ii) If such a request is made within the fifteen-day period, then the party making such request shall have twenty-one days from receipt of the file to file an appeal to *CAS*.

#### 13.2.3.5 Appeal Deadline for *WADA*

The above notwithstanding, the filing deadline for an appeal filed by *WADA* shall be the later of:

- (a) Twenty-one days after the last day on which any other party having a right to appeal could have appealed, or

- (b) Twenty-one days after WADA's receipt of the complete file relating to the decision.<sup>75</sup>

#### 13.2.3.6 Appeal from Imposition of *Provisional Suspension*

Notwithstanding any other provision herein, the only *Person* who may appeal from the imposition of a *Provisional Suspension* is the *Athlete* or other *Person* upon whom the *Provisional Suspension* is imposed.

#### 13.2.4 Cross Appeals and other Subsequent Appeals Allowed

Cross appeals and other subsequent appeals by any respondent named in cases brought to CAS under the *Code* are specifically permitted. Any party with a right to appeal under this Rule 13 must file a cross appeal or subsequent appeal at the latest with the party's answer.<sup>76</sup>

#### 13.3 Failure to Render a Timely Decision by *Sports Tribunal*

Where, in a particular case, the *Sports Tribunal* fails to render a decision with respect to whether an anti-doping rule violation was committed within a reasonable deadline set by WADA, WADA may elect to appeal directly to CAS as if the *Sports Tribunal* had rendered a decision finding no anti-doping rule violation. If the CAS hearing panel determines that an anti-doping rule violation was committed and that WADA acted reasonably in electing to appeal directly to CAS, then WADA's costs and attorney fees in prosecuting the appeal shall be reimbursed to WADA by the *Sports Tribunal*.<sup>77</sup>

#### 13.4 Appeals from Decisions relating to *TUEs*

*TUE* decisions may be appealed exclusively as provided in Rule 4.4.

#### 13.5 Notification of Appeal Decisions

Any *Anti-Doping Organisation* that is a party to an appeal shall promptly provide the appeal decision to the *Athlete* or other *Person* and to the other *Anti-Doping Organisations* that would have been entitled to appeal under Rule 13.2.3 as provided under Rule 14.

#### 13.6 Appeals from decisions under *Code* Article 24.1.

A notice that is not disputed and so becomes a final decision under *Code* Article 24.1, finding a *Signatory* non-compliant with the *Code* and imposing consequences for such non-compliance, as well as conditions for *Reinstatement* of the *Signatory*, may be appealed to CAS as provided in the *International Standard* for *Code* Compliance by *Signatories*.

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<sup>75</sup>[Comments to Rule 13.2.3: Whether governed by CAS rules or this Rule, a party's deadline to appeal does not begin running until receipt of the decision. For that reason, there can be no expiration of a party's right to appeal if the party has not received the decision.]

<sup>76</sup>[Comment to Rule 13.2.4: This provision is necessary because since 2011, CAS rules no longer permit an *Athlete* the right to cross appeal when an *Anti-Doping Organisation* appeals a decision after the *Athlete's* time for appeal has expired. This provision permits a full hearing for all parties.]

<sup>77</sup>[Comment to Rule 13.3: Given the different circumstances of each anti-doping rule violation investigation and *Results Management* and hearing process, it is not feasible to establish a fixed time period for the *Sports Tribunal* to render a decision before WADA may intervene by appealing directly to CAS. Before taking such action, however, WADA will consult with the *Sports Tribunal* and give the *Sports Tribunal* an opportunity to explain why it has not yet rendered a decision. Nothing in this Rule prohibits an *International Federation* from also having *Rules* which authorise it to assume authority for matters in which the *Results Management* performed by one of its *National Federations* has been inappropriately delayed.]

## 14. REPORTING, CONFIDENTIALITY, AND PUBLIC DISCLOSURE

The principles of coordination of anti-doping results, public transparency and accountability and respect for the privacy of all *Athletes* or other *Persons* are as follows:

### 14.1 Information Concerning *Adverse Analytical Findings*, *Atypical Findings*, and other Asserted Anti-Doping Rule Violations

#### 14.1.1 Notice of Anti-Doping Rule Violations to *Athletes* and other *Persons*

All notices referred to in the *Rules* shall be governed by the provisions of this Rule.

14.1.1.1 Each *Athlete* in *DFSNZ Registered Testing Pool* shall provide *DFSNZ* with a physical address, a mailing address and an email address to which notice may be delivered. In the *Event* of a change of any address it is the responsibility of the *Athlete* to provide *DFSNZ* with such amended details. Where no address is provided any notice may be given to the *Athlete* by giving notice to the relevant *National Sporting Organisation*, *International Federation* or *Anti-Doping Organisation*. If the notification takes place via these organisations, they shall confirm the notification to the *DFSNZ*.

14.1.1.2 All notices to an *Athlete* in *DFSNZ Registered Testing Pool*, including but not limited to notices relating to allegations that an anti-doping rule violation has occurred, shall be delivered by courier, registered post or email to at least one of the addresses provided by the *Athlete* under Rule 14.1.1.1. Proof of delivery by courier, registered post or email shall be conclusive. In any event, notice shall be deemed to have been received upon the expiry of three working days after the date of despatch.

14.1.1.3 Any other notice to an *Athlete* or other *Person*, including but not limited to notices relating to allegations that an anti-doping rule violation has occurred, shall be given by sending the notice to the physical address, mailing address or email address provided by that *Athlete* or *Person*. Such notice shall be deemed to have been received upon the expiry of three working days after the date of despatch.

14.1.1.4 *DFSNZ* may, with the prior agreement of the intended recipient, as an alternative to, or in conjunction with, any notice provided under Rules 14.1.1.2 or 14.1.1.3 use any other method of communication available, including, but not limited to, facsimile and telephone.

#### 14.1.2 Notice of Anti-Doping Rule Violations to *National Anti-Doping Organisations*, *International Federations* and *WADA*

*DFSNZ* shall also notify the *Athlete's National Anti-Doping Organisation*, *International Federation* and *WADA* of the assertion of an anti-doping rule violation simultaneously with the notice to the *Athlete* or other *Person*.

#### 14.1.3 Content of an Anti-Doping Rule Violation Notice

Notification shall include: the *Athlete's* or other *Person's* name, country, sport and discipline within the sport, the Athlete's competitive level, whether the test was *In-Competition* or *Out-of-Competition*, the date of *Sample* collection, the analytical result reported by the laboratory and other information as required by the *International Standard for Results Management*, or, for anti-doping rule violations other than Rule 2.1, the Rule violated and the basis of the asserted violation.

#### 14.1.4 Status Reports

Except with respect to investigations which have not resulted in a notice of an anti-doping rule violation pursuant to Rule 14.1.1, the *Anti-Doping Organisations* referenced in Rule 14.1.2 shall be regularly updated on the status and findings of any review or proceedings conducted pursuant to Rule 7, 8 or 13 and shall be provided with a prompt written reasoned explanation or decision explaining the resolution of the matter.

#### 14.1.5 Confidentiality

The recipient organisations shall not disclose this information beyond those *Persons* with a need to know (which would include the appropriate personnel at the applicable *National Olympic and/or Paralympic Committee*, National Federation, and team in a *Team Sport*) until *DFSNZ* has made *Public Disclosure* as required by Rule 14.3.<sup>78</sup>

### 14.2 Notice of Anti-Doping Rule Violation or violations of *Ineligibility* or *Provisional Suspension* Decisions and Request for Files

14.2.1 Anti-doping rule violation decisions or decisions related to violations of *Ineligibility* or *Provisional Suspension* rendered pursuant to Rule 7.6, 8.4, 10.5, 10.6, 10.7, 10.14.3 or 13.5 shall include the full reasons for the decision, including, if applicable, a justification for why the maximum potential sanction was not imposed.

14.2.2 An *Anti-Doping Organisation* having a right to appeal a decision received pursuant to Rule 14.2.1 may, within 15 days of receipt, request a copy of the full case file pertaining to the decision.

### 14.3 Public Disclosure

14.3.1 After notice has been provided to the *Athlete* or other *Person* in accordance with the *International Standard for Results Management*, and to the applicable *Anti-Doping Organisations* in accordance with Rule 14.1.2, the identity of any *Athlete* or other *Person* who is notified of a potential anti-doping rule violation, the *Prohibited Substance* or *Prohibited Method* and nature of the violation involved, and whether the *Athlete* or other *Person* is subject to a *Provisional Suspension* may be *Publicly Disclosed* by the *DFSNZ* or other *Anti-Doping Organisation* with *Results Management* responsibility.

14.3.2 No later than twenty days after it has been determined in an appellate decision under Rule 13.2.1 or 13.2.2, or such appeal has been waived, or a hearing in

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<sup>78</sup>[Comment to Rule 14.1.5: Each *Anti-Doping Organisation* shall provide, in its own anti-doping rules, procedures for the protection of confidential information and for investigating and disciplining improper disclosure of confidential information by any employee or agent of the *Anti-Doping Organisation*.]

accordance with Rule 8 has been waived, or the assertion of an anti-doping rule violation has not otherwise been timely challenged, or the matter has been resolved under Rule 10.8, or a new period of *Ineligibility*, or reprimand, has been imposed under Rule 10.14.3, *DFSNZ* must *Publicly Disclose* the disposition of the anti-doping matter including the sport, the anti-doping rule violated, the name of the *Athlete* or other *Person* committing the violation, the *Prohibited Substance* or *Prohibited Method* involved (if any) and the *Consequences* imposed. *DFSNZ* must also *Publicly Disclose* within twenty days the results of appellate decisions concerning anti-doping rule violations, including the information described above.<sup>79</sup>

- 14.3.3 After an anti-doping rule violation has been determined to have been committed in an appellate decision under Rules 13.2.1 or 13.2.2 or such appeal has been waived, or in a hearing in accordance with Rule 8 or where such hearing has been waived, or the assertion of an anti-doping rule violation has not otherwise been timely challenged, or the matter has been resolved under Rule 10.8, the *DFSNZ* or other *Anti-Doping Organisation* responsible for *Results Management* may make public such determination or decision and may comment publicly on the matter.
- 14.3.4 In any case where it is determined, after a hearing or appeal, that the *Athlete* or other *Person* did not commit an anti-doping rule violation, the fact that the decision has been appealed may be *Publicly Disclosed*. However, the decision itself and the underlying facts may not be *Publicly Disclosed* except with the consent of the *Athlete* or other *Person* who is the subject of the decision. *DFSNZ* shall use reasonable efforts to obtain such consent, and if consent is obtained, shall *Publicly Disclose* the decision in its entirety or in such redacted form as the *Athlete* or other *Person* may approve.
- 14.3.5 Publication shall be accomplished at a minimum by placing the required information on *DFSNZ*'s website and leaving the information up for the longer of one month or the duration of any period of *Ineligibility*.
- 14.3.6 Except as provided in Rules 14.3.1 and 14.3.3, neither *DFSNZ* nor any *Anti-Doping Organisation*, *National Sporting Organisation* or *WADA*-accredited laboratory, nor any official of *DFSNZ* or of any such body, shall publicly comment on the specific facts of any pending case (as opposed to general description of process and science) except in response to public comments attributed to, or based on information provided by, the *Athlete*, other *Person* or their entourage or other representatives.
- 14.3.7 The mandatory *Public Disclosure* required in Rule 14.3.2 shall not be required where the *Athlete* or other *Person* who has been found to have committed an anti-doping rule violation is a *Minor*, *Protected Person* or *Recreational Athlete*. Any optional *Public Disclosure* in a case involving a *Minor*, *Protected Person* or *Recreational Athlete* shall be proportionate to the facts and circumstances of the case.

#### 14.4 Statistical Reporting

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<sup>79</sup>[Comment to Rule 14.3.2: Where *Public Disclosure* as required by this Rule would result in a breach of other applicable laws, the *Anti-Doping Organisation*'s failure to make the *Public Disclosure* will not result in a determination of non-compliance with Code as set forth in Article 4.1 of the *International Standard for the Protection of Privacy and Personal Information*.]

DFSNZ shall publish annually, a general statistical report of its *Doping Control* activities during the calendar year with a copy provided to WADA.

#### 14.5 *Doping Control* Information Database and Monitoring of Compliance

To enable WADA to perform its compliance monitoring role and to ensure the effective use of resources and sharing of applicable *Doping Control* information among *Anti-Doping Organisations*, DFSNZ shall report to WADA, through a *Doping Control* database as developed and managed by WADA, *Doping Control*- related information, including, in particular,

- (a) *Athlete Biological Passport* data for *International-Level Athletes* and *National-Level Athletes*,
- (b) Whereabouts information for *Athletes* including those in *Registered Testing Pools*,
- (c) *TUE* decisions, and
- (d) *Results Management* decisions,

as required under the applicable *International Standard(s)*.

- 14.5.1 To facilitate coordinated test distribution planning, avoid unnecessary duplication in *Testing* by various *Anti-Doping Organisations*, and to ensure that *Athlete Biological Passport* profiles are updated, DFSNZ shall report all *In-Competition* and *Out-of-Competition* tests to WADA by entering the *Doping Control* forms into ADAMS in accordance with the requirements and timelines contained in the *International Standard* for *Testing* and Investigations.
- 14.5.2 To facilitate WADA's oversight and appeal rights for *TUEs*, DFSNZ shall report all *TUE* applications, decisions and supporting documentation using ADAMS in accordance with the requirements and timelines contained in the *International Standard* for *Therapeutic Use Exemptions*.
- 14.5.3 To facilitate WADA's oversight and appeal rights for *Results Management*, DFSNZ shall report the following information into ADAMS in accordance with the requirements and timelines outlined in the *International Standard* for *Results Management*: (a) notifications of anti-doping rule violations and related decisions for *Adverse Analytical Findings*; (b) notifications and related decisions for other anti-doping rule violations that are not *Adverse Analytical Findings*; (c) whereabouts failures; and (d) any decision imposing, lifting or reinstating a *Provisional Suspension*
- 14.5.4 The information described in Rule 14.5 will be made accessible, where appropriate and in accordance with the applicable rules, to the *Athlete*, the *Athlete's National Anti-Doping Organisation* and International Federation, and any other *Anti-Doping Organisations* with *Testing* authority over the *Athlete*.

#### 14.6 Data Privacy

DFSNZ may collect, store, process or disclose personal information relating to *Athletes* and other *Persons* where necessary and appropriate to conduct their anti-doping activities under these *Rules*, the *Code* and *International Standards* (including specifically the *International*

Standard for the Protection of Privacy and Personal Information), and in compliance with applicable law, including the Privacy Act 2020.

#### 14.7 Confidentiality and Public Disclosure

*DFSNZ* may, notwithstanding anything in these *Rules*, publicise information relating to an alleged anti-doping rule violation or investigation under the *Rules* where an *Athlete* or other *Person*, who it is alleged has committed an anti-doping rule violation under the *Rules*, or is the subject of an investigation under these *Rules*, or any party notified under the *Rules*, has made public comment or comment to any third party concerning the allegation or investigation which, in *DFSNZ*'s view, requires that it publicly comments on matters concerning the alleged violation or the investigation under the *Rules*.

### 15. IMPLEMENTATION OF DECISIONS

#### 15.1 Automatic Binding Effect of Decisions by *Signatory Anti-Doping Organisations*

- 15.1.1 A decision of an anti-doping rule violation made by a *Signatory Anti-Doping Organisation*, an appellate body (Rule 13.2.2) or *CAS* shall, after the parties to the proceeding are notified, automatically be binding beyond the parties to the proceeding upon every *Signatory* in every sport with the effects described below:<sup>80</sup>
  - 15.1.1.1 A decision by any of the above-described bodies imposing a *Provisional Suspension* (after a *Provisional Hearing* has occurred or the *Athlete* or other *Person* has either accepted the *Provisional Suspension* or has waived the right to a *Provisional Hearing*, expedited hearing or expedited appeal offered in accordance with Rule 7.4.3) automatically prohibits the *Athlete* or other *Person* from participation (as described in Rule 10.14.1) in all sports within the authority of any *Signatory* during the *Provisional Suspension*.
  - 15.1.1.2 A decision by any of the above-described bodies imposing a period of *Ineligibility* (after a hearing has occurred or been waived) automatically prohibits the *Athlete* or other *Person* from participation (as described in Rule 10.14.1) in all sports within the authority of any *Signatory* for the period of *Ineligibility*.
  - 15.1.1.3 A decision by any of the above-described bodies accepting an anti-doping rule violation automatically binds all *Signatories*.
  - 15.1.1.4 A decision by any of the above-described bodies to *Disqualify* results under Rule 10.10 for a specified period automatically *Disqualifies* all results obtained within the authority of any *Signatory* during the specified period.
- 15.1.2 Each *Signatory* is under the obligation to recognize and implement a decision and its effects as required by Rule 15.1.1, without any further action required, on the

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<sup>80</sup>[Comment to Rule 15.1 : By way of example, where the rules of the Major Event Organisation give the Athlete or other Person the option of choosing an expedited CAS appeal or a CAS appeal under normal CAS procedure, the final decision or adjudication by the Major Event Organisation is binding on other Signatories regardless of whether the Athlete or other Person chooses the expedited appeal option.]

earlier of the date *DFSNZ* receives actual notice of the decision or the date the decision is placed into *ADAMS*.

- 15.1.3 A decision by *DFSNZ* or other *Anti-Doping Organisation*, an appellate body or *CAS* to suspend, or lift, *Consequences* shall be binding upon each *Signatory* without any further action required, on the earlier of the date the *Signatory* receives actual notice of the decision or the date the decision is placed into *ADAMS*.
- 15.1.4 Notwithstanding any provision in Rule 15.1.1, however, a decision of an anti-doping rule violation by a *Major Event Organisation* made in an expedited process during an *Event* shall not be binding on other *Signatories* unless the rules of the *Major Event Organisation* provide the *Athlete* or other *Person* with an opportunity to an appeal under non-expedited procedures.

## 15.2 Implementation of Other Decisions by *Anti-Doping Organisations*

*Signatories* may decide to implement other anti-doping decisions rendered by *Anti-Doping Organisations* not described in Rule 15.1 above, such as a *Provisional Suspension* prior to *Provisional Hearing* or acceptance by the *Athlete* or other *Person*.<sup>81</sup>

## 15.3 Implementation of Decisions by Body that is not a *Signatory*

An anti-doping decision by a body that is not a *Signatory* to the *Code* shall be implemented by each *Signatory* if the *Signatory* finds that the decision purports to be within the authority of that body and the anti-doping rules of that body are otherwise consistent with the *Code*.<sup>82</sup>

## 16. LIMITATION PERIOD

No anti-doping rule violation proceeding may be commenced under these *Rules* against an *Athlete* or other *Person* unless he or she has been notified of the anti-doping rule violation as provided in Rule 7, or notification has been reasonably attempted, within ten years from the date on which the violation is asserted to have occurred.

## 17. AMENDMENT AND INTERPRETATION

### 17.1 Amendment

*DFSNZ* shall be responsible for monitoring and reviewing the operation of the *Rules* and considering any amendment to the *Rules* under the Act. From time to time *National Sporting*

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<sup>81</sup>[Comment to Rule 15.1 and 15.2: *Anti-Doping Organisation* decisions under Rule 15.1 are implemented automatically by other *Signatories* without the requirement of any decision or further action on the *Signatories*' part. For example, when a *National Anti-Doping Organisation* decides to *Provisionally Suspend* an *Athlete*, that decision is given automatic effect at the *International Federation* level. To be clear, the "decision" is the one made by the *National Anti-Doping Organisation*, there is not a separate decision to be made by the *International Federation*. Thus, any claim by the *Athlete* that the *Provisional Suspension* was improperly imposed can only be asserted against the *National Anti-Doping Organisation*. Implementation of *Anti-Doping Organisations*' decisions under Rule 15.2 is subject to each *Signatory*'s discretion. A *Signatory*'s implementation of a decision under Rule 15.1 or 15.2 is not appealable separately from any appeal of the underlying decision. The extent of recognition of *TUE* decisions of other *Anti-Doping Organisations* shall be determined by Rule 4.4 and the *International Standard for Therapeutic Use Exemptions*.]

<sup>82</sup>[Comment to Rule 15.3: Where the decision of a body that has not accepted the *Code* is in some respects *Code* compliant and in other respects not *Code* compliant, the *Sports Tribunal* should attempt to apply the decision in harmony with the principles of the *Code*. For example, if in a process consistent with the *Code* a non-*Signatory* has found an *Athlete* to have committed an anti-doping rule violation on account of the presence of a *Prohibited Substance* in the *Athlete*'s body but the period of *Ineligibility* applied is shorter than the period provided for in the *Code*, then the *Sports Tribunal* should recognise the finding of an anti-doping rule violation and should conduct a hearing consistent with Article 8 to determine whether the longer period of *Ineligibility* provided these *Rules* should be imposed. A *Signatory*'s implementation of a decisions or its decision not to implement a decision under Rule 15.3, is appealable under Rule 13.]

*Organisations and Participants* will be asked by *DFSNZ* to provide comment in relation to the operation of the *Rules*.

## 17.2 Interpretation

- 17.2.1 The comments annotating various provisions of the *Rules* shall be used to interpret the *Rules*.
- 17.2.2 The *Rules* shall be interpreted as an independent and autonomous text implementing the *Code*.
- 17.2.3 The headings used in the *Rules* are for convenience only and shall not be deemed part of the substance of the *Rules* or to affect in any way the language of the provisions to which they refer.
- 17.2.4 Where the term “days” is used in these *Rules*, the *Code* or an *International Standard*, it shall mean calendar days unless otherwise specified.
- 17.2.5 The *Rules* shall not apply retroactively to matters pending before the date they entered into effect. However, anti-doping rule violations committed before the *Rules* came into effect will continue to count as “First Violations” or “Second Violations” for purposes of determining sanctions under Rule 10 where anti-doping rule violations have been committed under these *Rules*.
- 17.2.6 The **INTRODUCTION** and the **DEFINITIONS** shall be considered integral parts of the *Rules*.
- 17.2.7 The *Rules* have been adopted pursuant to the applicable provisions of the Act and *Code* and shall be interpreted in a manner that is consistent with applicable provisions of the *Code*.

## 18. EDUCATION

*DFSNZ* shall plan, implement, evaluate and promote *Education* in line with the requirements of Article 18.2 of the *Code* and the *International Standard for Education*.

## 19. COMMENCEMENT, TRANSITIONAL PROVISIONS, VALIDITY

### 19.1 Commencement

These *Rules* shall come into force on 1 January 2021 (the “Effective Date”).

### 19.2 Non-Retroactive except for Rule 10.9.4 and Rule 16 or Unless Principle of “Lex Mitior” Applies

- 19.2.1 Any anti-doping rule violation case which is pending as of the Effective Date and any anti-doping rule violation case brought after the Effective Date based on an anti-doping rule violation which occurred prior to the Effective Date shall be governed by the substantive anti-doping rules in effect at the time the alleged anti-doping rule violation occurred, and not by the substantive anti-doping rules set out in these *Rules*, unless the *Sports Tribunal* determines the principle of “lex mitior” appropriately applies under the circumstances of the case. For these purposes, the retrospective periods in which prior violations can be considered for purposes of multiple violations under Rule 10.9.4 and the statute of limitations set forth in Rule 16 are procedural rules, not substantive rules, and

should be applied retroactively along with all of the other procedural rules in these *Rules* (provided, however, that Rule 16 shall only be applied retroactively if the statute of limitation period has not already expired by the Effective Date).

- 19.2.2 Any Rule 2.4 whereabouts failure (whether a filing failure or a missed test, as those terms are defined in the *International Standard for Results Management*) prior to the Effective Date shall be carried forward and may be relied upon, prior to expiry, in accordance with the *International Standard for Results Management*, but it shall be deemed to have expired twelve (12) months after it occurred.

### 19.3 Application to Decisions Rendered Prior to the 2021 *Rules*

With respect to cases where a final decision finding an anti-doping rule violation has been rendered prior to the Effective Date, but the *Athlete* or other *Person* is still serving the period of *Ineligibility* as of the Effective Date, the *Athlete* or other *Person* may apply to DFSNZ or other *Anti-Doping Organisation* which had *Results Management* responsibility for the anti-doping rule violation to consider a reduction in the period of *Ineligibility* in light of the 2021 *Rules*. Such application must be made before the period of *Ineligibility* has expired. The application will be referred by DFSNZ to the *Sports Tribunal*. The decision on the application by the *Sports Tribunal* rendered may be appealed pursuant to Rule 13.2. The 2021 *Rules* shall have no application to any anti-doping rule violation case where a final decision finding an anti-doping rule violation has been rendered and the period of *Ineligibility* has expired.

### 19.4 Multiple Violations Where the First Violation Occurs Prior to 1 January 2021

For purposes of assessing the period of *Ineligibility* for a second violation under Rule 10.9.1, where the sanction for the first violation was determined based on pre-2021 *Rules*, the period of *Ineligibility* which would have been assessed for that first violation had 2021 *Rules* been applicable, shall be applied.<sup>83</sup>

### 19.5 Changes to the *Prohibited List*

Changes to the *Prohibited List* and *Technical Documents* relating to substances or methods on the *Prohibited List* shall not, unless they specifically provide otherwise, be applied retroactively. As an exception, however, when a *Prohibited Substance* or a *Prohibited Method* has been removed from the *Prohibited List*, an *Athlete* or other *Person* currently serving a period of *Ineligibility* on account of the formerly *Prohibited Substance* or *Prohibited Method* may apply to DFSNZ or other *Anti-Doping Organisation* which had *Results Management* responsibility for the anti-doping rule violation to consider a reduction in the period of *Ineligibility* in light of the removal of the substance or method from the *Prohibited List*.

### 19.6 Validity

- 19.6.1 If any Rule in the *Rules* is held invalid, unenforceable or illegal for any reason, the *Rules* shall remain otherwise in full force apart from such Rule which shall be deemed deleted insofar as it is invalid, unenforceable or illegal.

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<sup>83</sup>[Comment to Rule 19.4: Other than the situation described in Rule 19.4, where a final decision finding an anti-doping rule violation has been rendered prior to the existence of the Code or under the Code in force before the 2021 Code and the period of *Ineligibility* imposed has been completely served, the 2021 Code may not be used to re-characterise the prior violation.]

19.6.2 All acts done bona fide by any *Person* in the implementation of the *Rules*, notwithstanding that it be afterwards discovered that there was some defect in the appointment, qualification or authority of such *Person* so acting, shall be as valid as if every such *Person* had been duly appointed, qualified or authorised.

## DEFINITIONS

**ADAMS:** The Anti-Doping Administration and Management System is a Web-based database management tool for data entry, storage, sharing, and reporting designed to assist stakeholders and WADA in their anti-doping operations in conjunction with data protection legislation.

*Act:* Sports Anti-Doping Act 2006

*Administration:* Providing, supplying, supervising, facilitating, or otherwise participating in the *Use* or *Attempted Use* by another *Person* of a *Prohibited Substance* or *Prohibited Method*. However, this definition shall not include the actions of bona fide medical personnel involving a *Prohibited Substance* or *Prohibited Method Used* for genuine and legal therapeutic purposes or other acceptable justification and shall not include actions involving *Prohibited Substances* which are not prohibited in *Out-of-Competition Testing* unless the circumstances as a whole demonstrate that such *Prohibited Substances* are not intended for genuine and legal therapeutic purposes or are intended to enhance sport performance.

*Adverse Analytical Finding:* A report from a WADA-accredited laboratory or other WADA-approved laboratory that, consistent with the International Standard for Laboratories establishes in a *Sample* the presence of a *Prohibited Substance* or its *Metabolites* or *Markers* or evidence of the *Use* of a *Prohibited Method*.

*Adverse Passport Finding:* A report identified as an *Adverse Passport Finding* as described in the applicable *International Standards*.

*Aggravating Circumstances:* Circumstances involving, or actions by, an *Athlete* or other *Person* which may justify the imposition of a period of *Ineligibility* greater than the standard sanction. Such circumstances and actions shall include, but are not limited to: the *Athlete* or other *Person Used* or *Possessed* multiple *Prohibited Substances* or *Prohibited Methods*, *Used* or *Possessed* a *Prohibited Substance* or *Prohibited Method* on multiple occasions or committed multiple other anti-doping rule violations; 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*; the *Athlete* or *Person* engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation; or the *Athlete* or other *Person* engaged in *Tampering* during *Results Management*. For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of *Ineligibility*.

*Anti-Doping Activities:* Anti-doping *Education* and information, test distribution planning, maintenance of a *Registered Testing Pool*, managing *Athlete Biological Passports*, conducting *Testing*, organising analysis of *Samples*, gathering of intelligence and conduct of investigations, processing of *TUE* applications, *Results Management*, monitoring and enforcing compliance with any *Consequences* imposed, and all other activities related to anti-doping to be carried out by or on behalf of an *Anti-Doping Organisation*, as set out in the *Code* and/or the *International Standards*.

*Anti-Doping Organisation:* WADA, or a *Signatory* that is responsible for adopting rules for initiating, implementing or enforcing any part of the *Doping Control* process. This includes, for example, the International Olympic Committee, the International Paralympic Committee, other *Major Event Organisations* that conduct *Testing* at their *Events*, International Federations, and *National Anti-Doping Organisations*.

*Athlete:* Any *Person* who competes in sport at the international level (as defined by each International Federation) or the national level (as defined by each *National Anti-Doping Organisation*). An *Anti-Doping Organisation* has discretion to apply anti-doping rules to an *Athlete* who is neither an *International-Level Athlete* nor a *National-Level Athlete*, and thus to bring them within the definition of “*Athlete*.” In relation to *Athletes* who are neither *International-Level* nor *National-Level Athletes*, an *Anti-Doping Organisation* may elect to: conduct limited *Testing* or no *Testing* at all; analyse *Samples* for less than the full menu of *Prohibited Substances*;

require limited or no whereabouts information; or not require advance TUEs. However, if Code Article 2.1, 2.3 or 2.5 anti-doping rule violation is committed by any *Athlete* over whom an *Anti-Doping Organisation* has elected to exercise its authority to test and who competes below the international or national level, then the *Consequences* set forth in the *Code* must be applied. For purposes of Code Article 2.8 and Article 2.9 and for purposes of anti-doping information and *Education*, any *Person* who participates in sport under the authority of any *Signatory*, government, or other sports organisation accepting the *Code* is an *Athlete*.

In making these rules DFSNZ has exercised its discretion and applies these anti-doping rules to any *Person* as set out in Rule 1.1 and thus bring such *Persons* within the definition of *Athlete* unless that *Person* proves that they are a member of any club, team, association, league, organisation or other *Person* to whom the *Rules* apply for purposes other than *Competing*.<sup>84</sup>

*Athlete Biological Passport*: The program and methods of gathering and collating data as described in the International Standard for Testing and Investigations and International Standard for Laboratories.

*Athlete Support Personnel*: Any coach, trainer, manager, agent, team staff, official, medical, para-medical personnel, parent or any other *Person* working with, treating or assisting an *Athlete* participating in or preparing for sports *Competition*.

*Attempt*: Purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation. Provided, however, there shall be no anti-doping rule violation based solely on an *Attempt* to commit a violation if the *Person* renounces the *Attempt* prior to it being discovered by a third party not involved in the *Attempt*.

*Atypical Finding*: A report from a WADA-accredited laboratory or other WADA-approved laboratory which requires further investigation as provided by the International Standard for Laboratories or related Technical Documents prior to the determination of an *Adverse Analytical Finding*.

*Atypical Passport Finding*: A report described as an *Atypical Passport Finding* as described in the applicable *International Standards*.

CAS: The Court of Arbitration for Sport.

Code: The World Anti-Doping Code.

*Competition*: A single race, match, game or singular sport contest. For example, a basketball game or the finals of the Olympic 100-metre race in athletics. For stage races and other sport contests where prizes are awarded on a daily or other interim basis the distinction between a *Competition* and an *Event* will be as provided in the rules of the applicable International Federation.

*Compete or Competing*: A *Person* competes in sport if they (a) participate in any *Competition*, *Event* or other competitive sporting activity; or (b) engage in any fitness or training activities for the purposes of participating or potentially participating in any *Competition*, *Event* or other competitive sporting activity.

*Consequences of Anti-Doping Rule Violations* (“*Consequences*”): An *Athlete’s* or other *Person’s* violation of an anti-doping rule may result in one or more of the following: (a) *Disqualification* means the *Athlete’s* results in a particular *Competition* or *Event* are invalidated, with all resulting *Consequences* including forfeiture of any

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<sup>84</sup>[*Comment to Athlete: Individuals who participate in sport may fall in one of five categories: 1) International-Level Athlete, 2) National-Level Athlete, 3) individuals who are not International- or National-Level Athletes but over whom the International Federation or National Anti-Doping Organisation has chosen to exercise authority, 4) Recreational Athlete, and 5) individuals over whom no International Federation or National Anti-Doping Organisation has, or has chosen to, exercise authority. All International- or National-Level Athletes are subject to the anti-doping rules of the Code, with the precise definitions of international and national level sport to be set forth in the anti-doping rules of the International Federations and National Anti-Doping Organisations.*]

medals, points and prizes; (b) *Ineligibility* means the *Athlete* or other *Person* is barred on account of an anti-doping rule violation for a specified period of time from participating in any *Competition* or other activity or funding as provided in Rule 10.14; (c) *Provisional Suspension* means the *Athlete* or other *Person* is barred temporarily from participating in any *Competition* or activity prior to the final decision at a hearing conducted under Rule 8; and (d) *Financial Consequences* means a financial sanction imposed for an anti-doping rule violation or to recover costs associated with an anti-doping rule violation; and (e) *Public Disclosure* means the dissemination or distribution of information to the general public or *Persons* beyond those *Persons* entitled to earlier notification in accordance with Rule 14. Teams in *Team Sports* may also be subject to *Consequences* as provided in Rule 11.

*Contaminated Product*: A product that contains a *Prohibited Substance* that is not disclosed on the product label or in information available in a reasonable Internet search.

*Decision Limit*: The value of the result for a threshold substance in a *Sample*, above which an *Adverse Analytical Finding* shall be reported, as defined in the *International Standard* for Laboratories.

*Delegated Third Party*: Any *Person* to which an *Anti-Doping Organisation* delegates any aspect of *Doping Control* or anti-doping *Education* programs including, but not limited to, third parties or other *Anti-Doping Organisations* that conduct *Sample* collection or other *Doping Control* services or anti-doping *Educational* programs for the *Anti-Doping Organisation*, or individuals serving as independent contractors who perform *Doping Control* services for the *Anti-Doping Organisation* (e.g., non-employee *Doping Control* officers or chaperones). This definition does not include CAS.

*DFSNZ*: Drug Free Sport New Zealand established under the Sports Anti-Doping Act 2006 (formerly the New Zealand Sports Drug Agency under the New Zealand Sports Drug Agency Act 1994).

*Disqualification*: See *Consequences of Anti-Doping Rule Violations* above.

*Doping Control*: All steps and processes from test distribution planning through to ultimate disposition of any appeal and the enforcement of *Consequences* including all steps and processes in between, including but not limited to, *Testing*, investigations, whereabouts, TUEs, *Sample* collection and handling, laboratory analysis, *Results Management*, and investigations or proceedings relating to violations of Rule 10.14 (Status During *Ineligibility* or *Provisional Suspension*).

*Education*: The process of learning to instil values and develop behaviours that foster and protect the spirit of sport, and to prevent intentional and unintentional doping.

*Event*: A series of individual *Competitions* conducted together under one ruling body (eg., the Olympic Games, World Championships of an International Federation, or Pan American Games).

*Event Period*: The time between the beginning and end of an *Event*, as established by the ruling body of the *Event*.

*Event Venues*: Those venues so designated by the ruling body for the *Event*.

*Fault*: *Fault* is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an *Athlete's* or other *Person's* degree of *Fault* include, for example, the *Athlete's* or other *Person's* experience, whether the *Athlete* or other *Person* is a *Protected Person*, special considerations such as impairment, the degree of risk that should have been perceived by the *Athlete* and the level of care and investigation exercised by the *Athlete* in relation to what should have been the perceived level of risk. In assessing the *Athlete's* or other *Person's* degree of *Fault*, the circumstances considered must be specific and relevant to explain the *Athlete's* or other *Person's* departure from the expected standard of behaviour. Thus, for example, the fact that an *Athlete* would lose the opportunity to earn large sums of money

during a period of *Ineligibility*, or the fact that the *Athlete* only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of *Ineligibility* under Rules 10.6.1 or 10.6.2.<sup>85</sup>

*Financial Consequences*: See *Consequences of Anti-Doping Rule Violations* above.

*In-Competition*: The period commencing at 11:59 p.m. on the day before a *Competition* in which the *Athlete* is scheduled to participate through the end of such *Competition* and the *Sample* collection process related to such *Competition*. Provided, however, WADA may approve, for a particular sport, an alternative definition if an International Federation, provides a compelling justification that a different definition is necessary for its sport; upon such approval by WADA, the alternative definition shall be followed by all *Major Event Organisations* for that particular sport.<sup>86</sup>

*Independent Observer Program*: A team of observers and/or auditors, under the supervision of WADA, who observe and provide guidance on the *Doping Control* process prior to or during certain *Events* and report on their observations as part of WADA's compliance monitoring program.

*Individual Sport*: Any sport that is not a *Team Sport*.

*Ineligibility*: See *Consequences of Anti-Doping Rule Violations* above.

*Institutional Independence*: Hearing panels on appeal shall be fully independent institutionally from the *Anti-Doping Organisation* responsible for *Results Management*. They must therefore not in any way be administered by, connected or subject to the *Anti-Doping Organisation* responsible for *Results Management*.

*International Event*: An *Event* or *Competition* where the International Olympic Committee, the International Paralympic Committee, an International Federation, a *Major Event Organisation*, or another international sport organisation is the ruling body for the *Event* or appoints the technical officials for the *Event*.

*International-Level Athlete*: *Athletes* who compete in sport at the international level, as defined by each International Federation consistent with the International Standard for Testing and Investigations.<sup>87</sup>

*International Standard*: A standard adopted by WADA in support of the *Code*. Compliance with an *International Standard* (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the *International Standard* were performed properly. *International Standards* shall include any Technical Documents issued pursuant to the *International Standard*.

*Major Event Organisations*: The continental associations of *National Olympic Committees* and other international multi-sport organisations that function as the ruling body for any continental, regional or other *International Event*.

*Marker*: A compound, group of compounds or biological variable(s) that indicates the *Use* of a *Prohibited Substance* or *Prohibited Method*.

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<sup>85</sup>[Comment: The criteria for assessing an *Athlete's* degree of *Fault* is the same under all *Articles* where *Fault* is to be considered. However, under Rule 10.6.2, no reduction of sanction is appropriate unless, when the degree of *Fault* is assessed, the conclusion is that No Significant *Fault* or *Negligence* on the part of the *Athlete* or other *Person* was involved.]

<sup>86</sup>[Comment: Having a universally accepted definition for *In-Competition* provides greater harmonisation among *Athletes* across all sports, eliminates or reduces confusion among *Athletes* about the relevant timeframe for *In-Competition Testing*, avoids inadvertent *Adverse Analytical Findings* in between *Competitions* during an *Event* and assists in preventing any potential performance enhancement benefits from substances prohibited *Out-of-Competition* being carried over to the *Competition* period.]

<sup>87</sup>[Comment: Consistent with the *International Standard for Testing and Investigations*, the *International Federation* is free to determine the criteria it will use to classify *Athletes* as *International-Level Athletes*, e.g., by ranking, by participation in particular *International Events*, by type of license, etc. However, it must publish those criteria in clear and concise form, so that *Athletes* are able to ascertain quickly and easily when they will become classified as *International-Level Athletes*. For example, if the criteria include participation in certain *International Events*, then the *International Federation* must publish a list of those *International Events*.]

*Metabolite*: Any substance produced by a biotransformation process.

*Minimum Reporting Level*: The estimated concentration of a *Prohibited Substance* or its *Metabolite(s)* or *Marker(s)* in a *Sample* below which WADA-accredited laboratories should not report that *Sample* as an *Adverse Analytical Finding*.

*Minor*: A natural *Person* who has not reached the age of eighteen years.

*National Anti-Doping Organisation*: The entity(ies) designated by each country as possessing the primary authority and responsibility to adopt and implement anti-doping rules, direct the collection of *Samples*, manage test results, and conduct *Results Management* at the national level. If this designation has not been made by the competent public authority(ies), the entity shall be the country's *National Olympic Committee* or its designee. For the purposes of the *Rules*, DFSNZ is the *National Anti-Doping Organisation* in New Zealand.

*National Event*: A sport *Event* or *Competition* involving *International-* or *National-Level Athletes* that is not an *International Event*.

*National-Level Athlete*: *Athletes* who compete in sport at the national level, as defined by each *National Anti-Doping Organisation*, consistent with the *International Standard for Testing and Investigations*. For the purposes of these *Rules*, *National-Level Athlete* is any *Athlete* who is within any of DFSNZ's *Testing Pools*.

However, if any such *Athletes* are classified by their respective International Federations as *International Level Athletes* then they will be considered to be *International Level Athletes* (and not *National Level Athletes*) for the purposes of these *Rules*.

*National Olympic Committee*: The organisation recognised by the International Olympic Committee. The term *National Olympic Committee* shall also include the National Sport Confederation in those countries where the National Sport Confederation assumes typical *National Olympic Committee* responsibilities in the anti-doping area. In New Zealand the *National Olympic Committee* is the New Zealand Olympic Committee Incorporated.

*National Sporting Organisation*: A body that represents members involved in a particular type of sporting *Event* or activity in New Zealand and, if a national organisation does not exist for a sport, includes local, regional or other sporting organisations.

*NSO Anti-Doping Tribunal*: A Tribunal established under the *Rules* by a *National Sporting Organisation* to hear and determine Violation Proceedings.

*No Fault or Negligence*: The *Athlete* or other *Person's* establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had *Used* or been administered the *Prohibited Substance* or *Prohibited Method* or otherwise violated an anti-doping rule. Except in the case of a *Protected Person* or *Recreational Athlete*, for any violation of Rule 2.1, the *Athlete* must also establish how the *Prohibited Substance* entered the *Athlete's* system.

*No Significant Fault or Negligence*: The *Athlete* or other *Person's* establishing that any *Fault* or negligence, when viewed in the totality of the circumstances and taking into account the criteria for *No Fault or Negligence*, was not significant in relationship to the anti-doping rule violation. Except in the case of a *Protected Person* or *Recreational Athlete*, for any violation of Rule 2.1, the *Athlete* must also establish how the *Prohibited Substance* entered the *Athlete's* system.

*Operational Independence*: This means that (1) board members, staff members, commission members, consultants and officials of the *Anti-Doping Organisation* with responsibility for *Results Management* or its affiliates (e.g., member federation or confederation), as well as any *Person* involved in the investigation and pre-adjudication of the matter cannot be appointed as members and/or clerks (to the extent that such clerk is involved in the deliberation process and/or drafting of any decision) of hearing panels of that *Anti-Doping*

*Organisation* with responsibility for *Results Management* and (2) hearing panels shall be in a position to conduct the hearing and decision-making process without interference from the *Anti-Doping Organisation* or any third party. The objective is to ensure that members of the hearing panel or individuals otherwise involved in the decision of the hearing panel, are not involved in the investigation of, or decisions to proceed with, the case.

*NSO: National Sporting Organisation.*

*Out-of-Competition:* Any period which is not *In-Competition*.

*Participant:* Any *Athlete* or *Athlete Support Person*.

*Person:* A natural *Person* or an organisation or other entity.

*Possession:* The actual, physical *Possession*, or the constructive *Possession* (which shall be found only if the *Person* has exclusive control or intends to exercise control over the *Prohibited Substance* or *Prohibited Method* or the premises in which a *Prohibited Substance* or *Prohibited Method* exists); provided, however, that if the *Person* does not have exclusive control over the *Prohibited Substance* or *Prohibited Method* or the premises in which a *Prohibited Substance* or *Prohibited Method* exists, constructive *Possession* shall only be found if the *Person* knew about the presence of the *Prohibited Substance* or *Prohibited Method* and intended to exercise control over it. Provided, however, there shall be no anti-doping rule violation based solely on *Possession* if, prior to receiving notification of any kind that the *Person* has committed an anti-doping rule violation, the *Person* has taken concrete action demonstrating that the *Person* never intended to have *Possession* and has renounced *Possession* by explicitly declaring it to an *Anti-Doping Organisation*. Notwithstanding anything to the contrary in this definition, the purchase (including by any electronic or other means) of a *Prohibited Substance* or *Prohibited Method* constitutes *Possession* by the *Person* who makes the purchase.<sup>88</sup>

*Prohibited List:* The *WADA List* identifying the *Prohibited Substances* and *Prohibited Methods*.

*Prohibited Method:* Any method so described on the *Prohibited List*.

*Prohibited Substance:* Any substance, or class of substances, so described on the *Prohibited List*.

*Protected Person:* An *Athlete* or other natural *Person* who at the time of the anti-doping rule violation: (i) has not reached the age of sixteen years; (ii) has not reached the age of eighteen years and is not included in any *Registered Testing Pool* and has never competed in any *International Event* in an open category; or (iii) for reasons other than age has been determined to lack legal capacity under applicable national legislation.<sup>89</sup>

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<sup>88</sup>[Comment: Under this definition, anabolic steroids found in an Athlete's car would constitute a violation unless the Athlete establishes that someone else used the car; in that event, the Anti-Doping Organisation must establish that, even though the Athlete did not have exclusive control over the car, the Athlete knew about the anabolic steroids and intended to have control over them. Similarly, in the example of anabolic steroids found in a home medicine cabinet under the joint control of an Athlete and spouse, the Anti-Doping Organisation must establish that the Athlete knew the anabolic steroids were in the cabinet and that the Athlete intended to exercise control over them. The act of purchasing a Prohibited Substance alone constitutes Possession, even where, for example, the product does not arrive, is received by someone else, or is sent to a third party address.]

<sup>89</sup>[Comment: The Code treats Protected Persons differently than other Athletes or Persons in certain circumstances based on the understanding that, below a certain age or intellectual capacity, an Athlete or other Person may not possess the mental capacity to understand and appreciate the prohibitions against conduct contained in the Code. This would include, for example, a Paralympic Athlete with a documented lack of legal capacity due to an intellectual impairment. The term "open category" is meant to exclude competition that is limited to junior or age group categories.]

*Provisional Hearing:* For purposes of Rule 7.4.3, an expedited abbreviated hearing occurring prior to a hearing under Article 8 that provides the *Athlete* with notice and an opportunity to be heard in either written or oral form.<sup>90</sup>

*Provisional Suspension:* See *Consequences of Anti-Doping Rules Violations* above.

*Publicly Disclose:* See *Consequences of Anti-Doping Rule Violations* above.

*Recreational Athlete:* Any *Athlete* who is not a *National-Level Athlete* or an *International-Level Athlete*, provided, however, that within the last five years prior to committing any *Anti-Doping Rule Violation*: (a) the *Athlete* has not been a *National-Level Athlete* or an *International-Level Athlete*; (b) the *Athlete* has not represented any country in an *International Event* in an open category; and (c) the *Athlete* has not been included within any *Registered Testing Pool* or other whereabouts information pool maintained by any International Federation or *National Anti-Doping Organisation*.<sup>91</sup>

*Registered Testing Pool:* The pool of highest priority *Athletes* established separately at the international level by International Federations and at the national level by DFSNZ or other *National Anti-Doping Organisations* who are subject to *focused In-Competition* and *Out-of-Competition Testing* as part of that International Federation's or DFSNZ or other *National Anti-Doping Organisation's* test distribution plan and therefore are required to provide whereabouts information as provided in Rule 5.5 and the *International Standard for Testing and Investigations*.

*Results Management:* The process encompassing the timeframe between notification as per Article 5 of the *International Standard for Results Management*, or in certain cases (e.g., *Atypical Finding*, *Athlete Biological Passport*, whereabouts failure), such pre-notification steps expressly provided for in Article 5 of the *International Standard for Results Management*, through the charge until the final resolution of the matter, including the end of the hearing process at first instance or on appeal (if an appeal was lodged).

*Rules:* The Sports Anti-Doping Rules (2021) made under the Sports Anti-Doping Act 2006.

*Sample or Specimen:* Any biological material collected for the purposes of *Doping Control*.<sup>92</sup>

*Signatories:* Those entities accepting the *Code* and agreeing to implement the *Code* as provided in Article 23 of the *Code*.

*Specified Method:* See Rule 4.2.2.

*Specified Substance:* See Rule 4.2.2.

*Strict Liability:* The rule which provides that under Rule 2.1 and Rule 2.2, it is not necessary that intent, *Fault*, negligence, or knowing *Use* on the *Athlete's* part be demonstrated by the *Anti-Doping Organisation* in order to establish an anti-doping rule violation.

*Substance of Abuse:* See Rule 4.2.3.

*Substantial Assistance:* For purposes of Rule 10.7.1, a *Person* providing *Substantial Assistance* must: (1) fully disclose in a signed written statement or recorded interview all information he or she possesses in relation to

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<sup>90</sup>[Comment: A *Provisional Hearing* is only a preliminary proceeding which may not involve a full review of the facts of the case. Following a *Provisional Hearing*, the *Athlete* remains entitled to a subsequent full hearing on the merits of the case. By contrast, an "expedited hearing", as that term is used in Rule 7.4.3, is a full hearing on the merits conducted on an expedited time schedule.]

<sup>91</sup>[Comment: The term "open category" is meant to exclude competition that is limited to junior or age group categories.]

<sup>92</sup>[Comment: It has sometimes been claimed that the collection of blood Samples violates the tenets of certain religious or cultural groups. It has been determined that there is no basis for any such claim.]

anti-doping rule violations, or other proceeding described in Rule 10.7.1.1, and (2) fully co-operate with the investigation and adjudication of any case or matter related to that information, including, for example, presenting testimony at a hearing if requested to do so by an *Anti-Doping Organisation* or hearing panel. Further, the information provided must be credible and must comprise an important part of any case or proceeding which is initiated or, if no case or proceeding is initiated, must have provided a sufficient basis on which a case or proceeding could have been brought.

*Sports Tribunal:* The *Sports Tribunal* of New Zealand continued under the Sports Anti-Doping Act 2006.

*Tampering:* Intentional conduct which subverts the *Doping Control* process but which would not otherwise be included in the definition of *Prohibited Methods*. *Tampering* shall include, without limitation, offering or accepting a bribe to perform or fail to perform an act, preventing the collection of a *Sample*, affecting or making impossible the analysis of a *Sample*, falsifying documents submitted to an *Anti-Doping Organisation* or *TUE* committee or hearing panel, procuring false testimony from witnesses, committing any other fraudulent act upon the *Anti-Doping Organisation* or hearing body to affect *Results Management* or the imposition of *Consequences*, and any other similar intentional interference or *Attempted* interference with any aspect of *Doping Control*.<sup>93</sup>

*Target Testing:* Selection of specific *Athletes* for *Testing* based on criteria set forth in the International Standard for Testing and Investigations.

*Team Sport:* A sport in which the substitution of players is permitted during a *Competition*.

*Technical Document:* A document adopted and published by *WADA* from time to time containing mandatory technical requirements on specific anti-doping topics as set forth in an *International Standard*.

*Testing:* The parts of the *Doping Control* process involving test distribution planning, *Sample* collection, *Sample* handling, and *Sample* transport to the laboratory.

*Therapeutic Use Exemption (TUE):* A *Therapeutic Use Exemption* allows an *Athlete* with a medical condition to Use a *Prohibited Substance* or *Prohibited Method*, but only if the conditions set out in Rule 4.4 and the *International Standard for Therapeutic Use Exemptions* are met.

*Trafficking:* Selling, giving, transporting, sending, delivering or distributing (or *Possessing* for any such purpose) a *Prohibited Substance* or *Prohibited Method* (either physically or by any electronic or other means) by an *Athlete*, *Athlete Support Person* or any other *Person* subject to the authority of an *Anti-Doping Organisation* to any third party; provided, however, this definition shall not include the actions of bona fide medical personnel involving a *Prohibited Substance Used* for genuine and legal therapeutic purposes or other acceptable justification, and shall not include actions involving *Prohibited Substances* which are not prohibited in *Out-of-Competition Testing* unless the circumstances as a whole demonstrate such *Prohibited Substances* are not intended for genuine and legal therapeutic purposes or are intended to enhance sport performance.

*TUE Committee:* The *TUE Committee* established by *DFSNZ*.

*UNESCO Convention:* The International Convention against Doping in Sport adopted by the 33rd session of the UNESCO General Conference on October 19, 2005 including any and all amendments adopted by the

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<sup>93</sup>[Comment to *Tampering:* For example, this Article would prohibit altering identification numbers on a *Doping Control* form during *Testing*, breaking the B bottle at the time of B *Sample* analysis, altering a *Sample* by the addition of a foreign substance, or intimidating or attempting to intimidate a potential witness or a witness who has provided testimony or information in the *Doping Control* process. *Tampering* includes misconduct which occurs during the *Results Management* process. See Rule 10.9.3.3. However, actions taken as part of a *Person's* legitimate defence to an anti-doping rule violation charge shall not be considered *Tampering*. Offensive conduct towards a *Doping Control* official or other *Person* involved in *Doping Control* which does not otherwise constitute *Tampering* shall be addressed in the disciplinary rules of sport organisations.]

States Parties to the Convention and the Conference of Parties to the International Convention against Doping in Sport.

*Use:* The utilisation, application, ingestion, injection or consumption by any means whatsoever of any *Prohibited Substance* or *Prohibited Method*.

*Violation Proceedings:* Proceedings in respect of an alleged breach of the anti-doping rule violations in Rule 3 of the *Rules*.

*WADA:* The World Anti-Doping Agency.

*Without Prejudice Agreement:* For purposes of Rule 10.7.1.1 and 10.8.2, a written agreement between an *Anti-Doping Organisation* and an *Athlete* or other *Person* that allows the *Athlete* or other *Person* to provide information to the *Anti-Doping Organisation* in a defined time-limited setting with the understanding that, if an agreement for *Substantial Assistance* or a case resolution agreement is not finalized, the information provided by the *Athlete* or other *Person* in this particular setting may not be used by the *Anti-Doping Organisation* against the *Athlete* or other *Person* in any *Results Management* proceeding under the *Code*, and that the information provided by the *Anti-Doping Organisation* in this particular setting may not be used by the *Athlete* or other *Person* against the *Anti-Doping Organisation* in any *Results Management* proceeding under the *Code*. Such an agreement shall not preclude the *Anti-Doping Organisation*, *Athlete* or other *Person* from using any information or evidence gathered from any source other than during the specific time-limited setting described in the agreement.