

# PUBLICATION

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## AAA Amends its Construction Industry Arbitration Rules

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For the first time in almost a decade, the American Arbitration Association has amended its Construction Industry Arbitration Rules for a more streamlined and efficient process as a result of feedback from construction advocates, arbitrators, and other construction industry professionals. The new rules include substantive and technical changes that will impact how the AAA will arbitrate a variety of construction disputes. In light of these amendments, parties will need to conduct thorough preliminary investigations as to all parties that may be necessary to resolve a dispute, evaluate the costs associated with potential dispositive motions, and understand the need for discovery to effectively present their claims or defenses. Construction industry professionals should consider these recent changes at the early stages of a project when deciding on dispute resolution provisions in their construction contracts.

Below highlights the key changes in the new rules, which went into effect on March 1, 2024.

**Regular Track Procedures:** The Regular Track Procedures apply to most construction disputes arbitrated by the AAA, and the AAA presumes that the parties wish to arbitrate under the Regular Track.

### R-2. AAA and Delegation of Duties

A new subsection requires the parties and their representatives to conduct themselves in accordance with the AAA's Standards of Conduct for Parties and Representatives and suggests that the failure to do so may result in the AAA declining to administer a future case involving those parties or representatives.

### R-7. Consolidation or Joinder

Generally, consolidation or joinder requests must now be made prior to the confirmation of a Merits Arbitrator. For requests made after such confirmation to be considered, the requesting party must show not only good cause but also prejudice if the request is denied. The amendment specifies that the AAA will administratively appoint an arbitrator for the limited purpose of deciding consolidation or joinder if the parties cannot agree on those issues.

**Consolidation:** The parties now have fourteen days, instead of ten, to reply to requests for consolidation by another party.

**Joinder:** A party requesting joinder of additional parties must now provide the email addresses of those parties and their representatives and a copy of the arbitration agreement with the party sought to be joined. The amendment requires that objections to the requested joinder be made within fourteen days after the AAA receives the joinder request. Otherwise, the objections are waived.

### R-14. Arbitrator Appointment from National Construction Panel

The amendment grants the AAA discretion to limit the number of the parties' strikes of the arbitrators proposed from the National Construction Panel.

#### **R-15. Direct Appointment by a Party**

This amendment specifies that all party-appointed arbitrators must be on the AAA's National Roster of Arbitrators, unless the parties agree or the AAA determines otherwise.

#### **R-16. Appointment of Chairperson by Party-Appointed Arbitrators or Parties**

R-16 now requires that the Panel Chair must be appointed from the AAA National Construction Panel unless the parties agree otherwise.

#### **R-23. Preliminary Management Hearing**

The Preliminary Management Hearing may now be conducted by video conference, in addition to in-person or by telephone as previously authorized.

#### **R-29. Official Record of Proceedings**

The official record of the arbitration may now be a transcribed record, not just a stenographic record.

#### **R-34. Dispositive Motions**

Arbitrators must now consider the time and cost associated with the briefing of a dispositive motion in deciding whether to allow a party to file such a motion.

#### **R-39. Emergency Measures of Protection**

A party may now request an emergency arbitration, regardless of whether the applicable contract contains a condition precedent to arbitration. The amendment allows the AAA to appoint an emergency arbitrator within three days of its receipt of the emergency application, and the emergency arbitrator has three days to establish a schedule to consider the application.

#### **R-44. Serving of Notice**

The amendment allows the AAA, the arbitrator, and the parties to use "alternative methods of communication or other platforms" to communicate and provide notice throughout the arbitration.

#### **R-45. Confidentiality**

This new rule requires the AAA and the arbitrator to keep confidential all matters relating to the arbitration and the award. This rule also permits the arbitrator to issue confidentiality orders upon the agreement of the parties or the request of any party.

#### **R-48. Form of Award**

The amendment specifies that arbitrators' signatures on the award may be electronic or digital.

#### **R-52. Modification of Award**

This amendment grants arbitrators the additional authority to clarify the award but confirms that the arbitrator cannot redetermine the merits of the award in making these clarifications. The amendment requires that the parties request these measures through the AAA, not the arbitrator.

### **R-59. Deposits**

The amendment requires that, if a party joined under R-7 fails to make the required deposits, the party that sought their joinder must cover those costs.

### **R-61. Sanctions**

The arbitrator may now order sanctions against a party without the request of an opposing party.

**Fast Track Procedures:** The Fast Track Procedures provide a more streamlined system for cases involving fewer parties and claims seeking less monetary damages compared to other cases.

### **F-1. Fast Track Applicability**

The Fast Track Procedures will now apply to all two-party cases in which no claim or counterclaim exceeds \$150,000, increased from \$100,000 under the prior rules.

### **F-8. Exchange of Information and Discovery**

The amendment specifies that motions are not permitted in Fast Track cases absent good cause. The new procedure retains the general prohibition against discovery but states that a case may be removed from the Fast Track if discovery is permitted.

### **F-13. Form of Award**

This new procedure states that awards issued in Fast Track cases will be standard awards. Requesting an award other than a standard award will result in the Regular Track Procedures applying, as well as the arbitrator's standard rate.

**Procedures for Large, Complex Construction Disputes:** Procedures for Large, Complex Construction Disputes apply to all cases in which a claim or counterclaim of \$1 million.

### **L-3. Arbitrators**

The amendment states that, if the parties cannot agree on the number of arbitrators to hear their dispute, a panel of three arbitrators will determine all disputes in which a claim or counterclaim exceeds \$3 million, up from \$1 million.

Construction industry professionals should evaluate a variety of factors when deciding how a potential dispute will be resolved. The above amendments will influence whether the AAA is the appropriate forum to arbitrate a particular case and will affect how parties prosecute or defend claims arbitrated in that forum. Because construction contracts usually dictate how a dispute will be resolved, developers, contractors, and other industry professionals should work closely with legal counsel at the outset of a project to ensure that their agreements consider the above amendments and that their arbitration strategies account for these recent changes.

If you have questions around this topic or would like to discuss how these amendments may impact your projects, please contact [Joseph C. Kovars](#), [F. Dalton Thompson III](#), or any member of Baker Donelson's [Construction Team](#).