



## Summary of Changes Construction Industry Arbitration Rules

Effective March 1, 2024, the American Arbitration Association® (AAA®) released its revised *Construction Industry Arbitration Rules and Mediation Procedures (Rules)*.

Spearheaded by the AAA's National Construction Dispute Resolution Committee, with extensive input gathered during nationwide roundtable discussions with advocates, in-house counsel, arbitrators, and other industry professionals, these updates exemplify a proactive approach to enhancing arbitration processes, aligning them with evolving industry demands.

These revised Rules reflect AAA's commitment to advancing arbitration and mediation efficiency within the construction industry.

### Embracing Current and Emerging Technologies

The Rules have been revised to remove references to outdated technology and to embrace current and emerging technologies, without the need for further Rules changes.

The requirement for filing parties to include fax numbers has been removed from the Rules. Additionally, filing parties are now required to provide email addresses for all respondent parties, including any parties sought to be joined.

### Regular Track Procedures

**R-2. AAA and Delegation of Duties:** A new subsection (b) has been added to this Rule confirming that the parties and their representatives shall abide by the AAA's Standards of Conduct.

**R-7. Consolidation and Joinder:** This Rule has been revised to better reflect the AAA's administrative process and the expectations of the parties and arbitrator. The changes are as follows:

- Requests for consolidation and joinder must now be filed before the Merits Arbitrator appointment is confirmed. The "90 days after filing" option has been removed.
- The Rule now specifies that if an R-7 Arbitrator is required, the AAA will make an administrative appointment.

#### Consolidation 7(a):

- Parties shall now have 14 days, increased from 10 days, to reply to consolidation requests.



Joinder 7(b):

- A party requesting leave to file a joinder request after the Merits Arbitrator has been confirmed will now need to establish not only good cause, as was required under the prior version of this Rule, but also prejudice if the request is not permitted.
- Any party's failure to reply within the required time frame shall be deemed a waiver of any objections.
- The Rule now specifies that a copy of any joinder request must be provided to all parties.

**R-14. Arbitrator Appointment from National Construction Panel:** AAA shall now have the authority to limit the parties' strikes.

**R-15. Direct Appointment by a Party:** This Rule has been revised to specify that party appointed arbitrators must be on the AAA's National Roster of Arbitrators, unless the parties agree otherwise or the AAA determines that members of the AAA Roster don't meet the requested expertise required by the parties' ADR provision.

**R-16. Appointment of Chairperson by Party-Appointed Arbitrators or Parties:** This Rule now specifies that the Panel Chair must be appointed from the AAA National Construction Panel, unless the parties agree otherwise.

**R-23. Preliminary Management Hearing:** The amended Rule specifies that preliminary hearings may be held via videoconference in addition to by telephone and in person.

**R-29. Official Record of Proceedings:** This Rule has been changed to allow all transcription options, and not just "stenographic" records.

**R-34. Dispositive Motions:** With an eye toward reducing the cost of arbitration and improving the efficiency of the process, the AAA has amended this Rule to add a requirement for arbitrators to consider the cost of a dispositive motion in determining whether to grant leave for a party to file such a motion.

**R-39. Emergency Measures of Protection:** This Rule has been amended to specify the AAA will appoint the Emergency Arbitrator as soon as practicable but no later than three business days instead of one. It further now allows the Emergency Arbitrator the same time frame to set a schedule to address the request for emergency relief. The amendment also clarifies that a request for emergency relief may be filed regardless of any condition precedent to arbitration that may exist in the parties' contract.

**R-44. Serving of Notice:** The amended Rule permits the AAA, the arbitrator, and the parties to use "alternative methods of communication or other platforms" to exchange communications or other notice during the course of the arbitration.

**R-45. Confidentiality:** This new Rule makes explicit the requirement for the AAA and the arbitrator to keep all matters confidential. The Rule also grants arbitrators the specific authority to issue confidentiality orders.



**R-48. Form of Award:** Formerly Rule R-47, the amended Rule confirms that arbitrator signatures on the Award can be electronic or digital.

**R-52. Modification of Awards:** Previously Rule R-51, this Rule has been amended to grant arbitrators the authority to “clarify” their awards in addition to addressing clerical, typographical, technical, or computational errors. The Rule still provides that the merits of the award may not be reconsidered and now specifies that any modification or clarification requests are to be made through the AAA, rather than to the arbitrator directly.

**R-59. Deposits:** Formerly Rule R-58, a newly added section (b) specifies that, if a party joined under Rule R-7 fails to make deposits required under these Rules, the party that sought their joinder shall be responsible for covering those costs, subject to later reapportionment in the award.

**R-60. Sanctions:** This Rule has been amended to grant the arbitrator the authority to impose sanctions on their own initiative, so long as the party against whom sanctions are to be imposed is provided an opportunity to be heard before any such order issues.

## Fast Track Procedures

**F-1. Fast Track Applicability:** The Fast Track Procedures now apply to any case where no disclosed claim or counterclaim exceeds \$150,000, increased from \$100,000.

**F-8. Exchange of Information and Discovery:** Procedures F-8 and F-9 have been combined into a single Rule. The new Procedure specifies that motions are not permitted except for good cause shown. The combined Procedure retains the requirement that discovery is to be provided only in extraordinary circumstances and adds that a case may be removed from the Fast Track if discovery is permitted.

**F-13. Form of Award.** This new Procedure specifies the form of award for Fast Track cases, providing that, if the parties request a reasoned award, an abbreviated opinion, or findings of facts and conclusion of law, the case will be removed from the Fast Track and the arbitrator may charge their regular rates.

**Numbering:** Many of the Fast Track Procedures have been re-numbered, starting with Procedure F-10, which is now F-9.

## Procedures For Large, Complex Construction Disputes

**L-3. Arbitrators:** The threshold for the appointment of a three-arbitrator panel has been increased from \$1 million to \$3 million.