



# The 2022 AAA® Commercial Arbitration Rules and Mediation Procedures Significant Amendments

Effective September 1, 2022

***“These Rules of procedure have been prepared and adopted by the American Arbitration Association to assist the parties in obtaining an orderly, economical, and expeditious procedure for the determination of their dispute.”***

These goals, as articulated in the forward of the 1950 *Commercial Arbitration Rules*, remain as relevant to the AAA in 2022 as they were 72 years ago. This latest iteration of the *Commercial Arbitration Rules and Mediation Procedures* includes new and revised provisions to help the parties achieve these goals.

With a focus on process improvements, the arbitration Rules are updated in some key areas, including technology, speed, economy, security, and privacy. Several of the revised Rules reflect various advances in technology that have the potential to benefit the arbitration process through streamlined or cost-savings procedures. In addition, a number of updates reinforce the arbitrator’s authority to control discovery and motion practice as needed.

Updates to the new *Commercial Arbitration Rules* include:

- Providing greater arbitrator discretion to determine the method of hearing;
- Specifying procedures for consolidation and joinder requests;
- Reinforcing the AAA’s commitment to preserving the confidentiality of the arbitration process;
- Ensuring the safety and security of user and case information by recommending discussions between the parties and the arbitrator about cybersecurity, privacy and data protection; and
- Supporting the AAA’s focus on efficiency and economy throughout the Rules and Expedited Procedures.

## Commercial Arbitration Rules: New Rules and Significant Updates

### 1. Expedited and Large, Complex Case Tracks – Rule R-1(b) and (c)

Rule R-1(b) increases the upper limit for the application of the Expedited Procedures from \$75,000 to \$100,000. Similarly, under revised Rule R-1(c), the *Large, Complex Case Procedures* now apply to cases where any claim is at least \$1 million, increased from \$500,000.

### 2. Administrative Review Council – Rule R-2(d)

Rule R-2 identifies the Administrative Review Council (Council) as the decision-making authority for certain administrative issues for cases administered pursuant to the *Large, Complex Case Procedures*. The Council’s authority is limited to determining challenges to the appointment or continuing service of an arbitrator, the locale of the proceedings, and



whether the filing requirements contained in the Commercial Arbitration Rules were met by the initiating party. In conjunction with the Council's *Review Standards* and *Overview and Guidelines*, available on the AAA's website, this rule outlines the authority of the Council to resolve these administrative issues for cases under the *Large, Complex Case Procedures*.

### 3. Consolidation and Joinder – New Rule R-8

New Rule R-8 explicitly allows a party to file a request to consolidate two or more existing arbitrations into a single proceeding or to request the joinder of additional parties to an ongoing arbitration. Rule R-8(a)(iii) gives the AAA the authority to appoint a consolidation arbitrator for the limited purpose of determining the consolidation request. This rule also includes guidance to the arbitrator in deciding the consolidation or joinder request and, if granted, allows the arbitrator to make decisions about any previously appointed arbitrators or arbitrator selection.

### 4. Use of Video, Audio, or Other Electronic Means – Rules R-22 (former Rule R-21), R-25 (former Rule R-24), R-33 (former Rule R-32) and Expedited Procedure E-7

The revisions to Rules R-22, R-25, R-33 and Expedited Procedure E-7 reflect the opportunity presented by advancements in meeting technology to make the arbitration process more effective and efficient. Rule R-22 includes the use of video conference as a method for conducting the preliminary hearing, and Rule R-25 and Expedited Procedure E-7 similarly include video, audio, or other electronic means as a method of hearing, when appropriate. While the AAA has interpreted the previous Rules to allow the arbitrator to order the use of technology to facilitate hearing attendance, the new Rules specifically provide for this authority.

Consistent with the provisions of Rules R-22 and R-25, Rule R-33(c) specifically authorizes the arbitrator to allow some or all testimony or evidence to be presented through a means other than in-person presentation, including video, audio, or other electronic means.

### 5. Dispositive Motions – Rule R-34 (former Rule R-33)

Rule R-34 now requires the arbitrator to consider the time and cost associated with the briefing of a dispositive motion when deciding a party's request to file such a motion. The arbitrator also may assess fees, expenses, and compensation as part of a decision on a dispositive motion.

In addition, Expedited Procedure E-5 now prohibits any motion practice, absent good cause shown and arbitrator permission.

### 6. Emergency Measures of Protection – Rule R-39 (former Rule R-38)

As part of the AAA's ongoing efforts to manage cases as economically as possible, cases administered pursuant to the Expedited Procedures are now excluded from this Rule. In addition, new Rule R-39(i) allows the emergency arbitrator to consider whether the request for emergency relief was made in good faith when deciding cost allocation.



## 7. Confidentiality – New Rule R-45

Codifying the existing obligations of AAA staff and arbitrators, new Rule R-45(a) states that the AAA and the arbitrator will keep confidential all matters relating to an arbitration or an award. In addition, expanding on the arbitrator's authority under what is now Rule R-24 to issue orders preserving the confidentiality of documents, Rule R-45(b) explicitly authorizes the arbitrator to issue any confidentiality orders necessary for the case.

## 8. Form of Award – Rule R-48 (former Rule R-46)

Rule R-48(a) is updated to allow an arbitrator to electronically sign an award, unless applicable law requires otherwise.

## 9. Modification of Award – Rule R-52 (former Rule R-50)

As reasoned awards are requested on more cases, Rule R-52 is updated to allow an arbitrator, upon a party's request, to interpret the award, in addition to modifying an award for clerical, typographical, or computational errors.

## 10. Checklist (Cybersecurity, Privacy, and Data Protection) – new Preliminary Hearing Procedure P-2(vi)

As part of the AAA-ICDR's commitment to ensuring the security and privacy of user and case information, the P-2 Checklist is updated to recommend that the arbitrator and parties discuss cybersecurity, privacy, and data protection during every preliminary hearing. This is in addition to the AAA-ICDR's *Best Practices Guide for Maintaining Cybersecurity and Privacy* that is included with every case initiation. The AAA-ICDR also provides a *Cybersecurity Checklist* as a reference tool for our users.

## 11. Checklist (Third-Party Funding) – new Preliminary Hearing Procedure P-2(xii)

To ensure an arbitrator's disclosure statement is as complete as possible, the P-2 Checklist also includes as a potential topic for preliminary hearings the existence and identity of sources of third-party funding.

## 12. Discovery, Motions, and Conduct of Proceedings – Expedited Procedure E-5

Expedited Procedure E-5 is updated to include, as E-5(b) and E-5(c), a prohibition on discovery, other than the exhibit exchange under E-5(a), and on motions, absent the arbitrator's determination of good cause shown. These new subparagraphs reinforce the AAA's commitment to speed and economy in the arbitration process, especially in cases with smaller claim amounts.

## 13. Number of Arbitrators – Large, Complex Case Procedures L-2

In addition to Rule R-1(c)'s increase of the threshold for the Large, Complex Case Procedures' application to \$1 million, Procedure L-2(a) raises the minimum claim/counterclaim amount for a panel of three arbitrators to at least \$3 million from \$1 million.



## Other Changes

### 1. Standards of Conduct for Parties and Representatives – Rule R-2(c)

Rule R-2(c) incorporates the AAA-ICDR's *Standards of Conduct for Parties and Representatives*.

### 2. Filing Requirements – Rule R-4

This Rule was reorganized to more clearly differentiate between filing requirements and the filing process. It also now includes, as Rule R-4(b)(vi), an explicit provision that AAA has the authority to determine whether filing requirements have been met.

### 3. Fixing of Locale – Rule R-12 (former Rule R-11)

New Rule R-12 now emphasizes that the locale provision in an arbitration clause governs unless the parties agree to, or the arbitrator determines applicable law requires, a different locale. New Rule R-12(c) deals with arbitration agreements that have multiple locale options.

### 4. Appointment from National Roster – Rule R-13 (former Rule R-12)

Rule R-13(b) now permits the AAA, at its discretion, to limit the number of strikes the parties may use on a Rule R-13(a) list of arbitrators. This addition will help avoid situations where no arbitrator can be appointed because the parties struck all of the potential arbitrators on a list.

### 5. Number of Arbitrators – Rule R-17 (former Rule R-16)

This Rule addresses both party agreement and arbitration clauses as they pertain to number of arbitrators.

### 6. Official Record of Proceedings – Rule R-29 (former Rule R-28)

The updates to this Rule reflect technological advances in hearing transcription and allow for any form of transcribed record or other recording to be requested by a party.

### 7. Closing of Hearing – Rule R-40 (former Rule R-39)

To allow arbitrators time to determine if additional submissions are needed, this Rule extends the deadline to close the hearing to no more than seven days after the receipt of post-hearing submissions.

### 8. Remedies for Non-Payment – Rule R-59(a) (former Rule R-57(a))

This Rule clarifies optional measures a party may request the arbitrator order to address a party's non-payment of administrative fees or arbitrator compensation or expense deposits.