



The American Arbitration Association®: A Long History of Working With Government

Background and History

The American Arbitration Association is a neutral, non-partisan not-for-profit public service organization with a long history of working with all levels of government. The cornerstones of the Association's mission are independence, neutrality, and integrity. On numerous occasions since it was established in 1926, government has called upon the AAA® for advice and assistance.

As the nation's leading authority on the use of alternative dispute resolution (ADR), the AAA has a number of roles. It has developed the highest ethical standards for arbitrators and mediators. It has over 8,000 trained and qualified neutral arbitrators and mediators. It has developed specialized rules and procedures to increase the fairness and efficiency of dispute resolution in different subject areas, such as healthcare, consumer, and employment disputes. It offers professional, independent case administration and state-of-the-art technology. It provides impartial and independent administration and oversight of nongovernmental elections. With offices throughout the United States, several international offices, and cooperative agreements with 66 organizations in 46 countries, the AAA is the leading force in the national and international ADR arenas.

These capabilities, coupled with the Association's strong history of neutrality, independence, and integrity, have often been of service to Congress and a number of federal, state, and local departments and agencies with advice, information, and alternative dispute resolution services. Every year, the Association administers thousands of cases under governmental authority, reducing the burdens on agencies and court systems throughout the country.

A Record of Success

Recognizing the AAA's independence, neutrality and its nature as a public service organization, a number of federal statutes, regulations, and orders delegate specific functions to the Association. Examples include:

- **Automobile Industry Special Binding Arbitration Program**—The AAA was designated by Congress to administer an alternative dispute resolution program to resolve disputes related to the termination of thousands of automobile dealerships resulting from the bankruptcy and reorganization of General Motors and Chrysler. Working within a statutory timeline of approximately seven months, the AAA quickly developed and implemented a national program that ultimately resolved over 1500 disputes through settlement discussions, mediation, and binding arbitration.
- **U.S. Department of Justice**—Working with AAA staff, the U.S. Department of Justice incorporated the use of AAA arbitration services in a 2010 antitrust case settlement, which was ultimately issued as a final judgment.
- **Centers for Medicare & Medicaid Services**—The AAA worked with the federal Centers for Medicare & Medicaid Services (CMS) and representatives of the states of Connecticut, Massachusetts, and New York with the design and implementation of a specialized arbitration mechanism to resolve disputes between CMS and the states related to healthcare reimbursement. This demonstration project is currently underway, with cases decided by an expert panel of neutrals under the special AAA Medicare Demonstration Project Rules.



- **Federal Communications Commission Orders**—The commissioners of the FCC have incorporated the use of AAA arbitration services in several Orders. Both mandatory and voluntary arbitration provisions have been incorporated by the FCC, in actions related to major media mergers and programming access issues.
- **United States Anti-Doping Agency Disputes**—The AAA administers a program to resolve disputes related to proceedings under the United States Anti-Doping Agency (USADA) Protocol for Olympic Movement Testing, under the AAA Olympic Sport Doping Disputes Supplementary Procedures.
- **EPA Pesticide Disputes**—For nearly three decades the Association has provided arbitrators to resolve disputes among pesticide producers under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), through a regulation issued by the Federal Mediation and Conciliation Service on behalf of the Environmental Protection Agency (EPA).
- **Olympic Disputes**—By federal statute, disputes between the U.S. Olympic Committee and representative sports organizations must be resolved through the American Arbitration Association.
- **Toxic Substances Control Act**—EPA, under regulatory authority, promulgated procedures requiring the use of arbitration administered by the AAA to resolve certain reimbursement disputes related to the TSCA.
- **Federal Land Valuation Disputes**—By statute, the AAA will provide independent arbitrators to resolve land value appraisal disputes between the U.S. Department of Interior and private citizens.

Similarly, hundreds of state and local statutes and regulations call for the use of AAA's neutral alternative dispute resolution services. Major examples include:

- **Hurricanes Katrina/Rita Disaster Recovery Claims Programs**—The AAA was selected by the state governments of Louisiana and Mississippi to provide mediation and arbitration programs to assist in quickly, fairly, and efficiently resolving claims disputes arising from these major natural disasters.
- **State Automobile Insurance Programs**—The AAA currently assists state governments in New York, and Minnesota, in resolving tens of thousands of disputes arising from No-Fault automobile insurance claims.
- **North Carolina Disaster Mediation Program**—The AAA has been designated by the North Carolina Department of Insurance to administer a statewide disaster mediation program. This program is mandatory for insurers, but participation is voluntary for policy holders.

Often, when the federal government mandates the use of the American Arbitration Association and its rules, it is to resolve disputes between private parties. The federal government has an interest in the impartial and efficient resolution of these disputes, and therefore specifies the use of the Association through statute, regulation, or contract. Every year, new legislation is introduced to provide for the use of the AAA and its various rules and standards to resolve disputes fairly and quickly.



Additional Program Details and Authority

AAA Automobile Industry Special Binding Arbitration Program

Background: The AAA was designated by Congress to administer an alternative dispute resolution program to resolve disputes related to the termination of thousands of automobile dealerships resulting from the bankruptcy and reorganization of General Motors and Chrysler. Working within a statutory timeline of approximately seven months, the AAA quickly developed and implemented a program to implement the intent of Congress in a fair, user-friendly, efficient, and cost-effective manner. Of 2789 eligible dealerships, over half (1575) filed for arbitration through this program. The AAA worked closely with key Congressional decision-makers and staff before enactment and during program development and implementation, and provided periodic briefings and updates on the status of the program, as well as potential issues. Ultimately, all these disputes were resolved by the statutory deadline, at no direct cost to the federal government. For additional detail and statistical data, please download a copy of *A Report to Congress on the Automobile Industry Special Binding Arbitration Program*, published by the Association in November, 2010 and available on the AAA website.

Authority: Consolidated Appropriations Act of 2010, Pub. L. No. 111-117, §747 (and related legislative history).

AAA Medicare Arbitration Demonstration Project

Background: The American Arbitration Association worked with the federal Centers for Medicare & Medicaid Services (CMS) and representatives of the states of Connecticut, Massachusetts, and New York to design and implement a system to resolve certain disputes related to federal reimbursement for home health care expenses incurred by state programs. This multi-year demonstration project incorporates customized rules (the *AAA Medicare Demonstration Project Rules*) developed with the parties, a special panel of expert neutrals with background in relevant substantive issues, and streamlined administration provided by the AAA's professional case management staff.

Authority: CMS statutory authority to conduct Medicare demonstration projects: 42 USC 1395 (b)1. Supplemented by MOUs between CMS and the states of Connecticut, Massachusetts, and New York (entitled Arbitration of Disputed Cases in Home Health Agency Third Party Liability Demonstration), 2007.

Federal Communications Commission/AAA Special Communications Arbitration Panel

Background: The American Arbitration Association was designated by the FCC to resolve certain disputes arising from a major media merger (the purchase by News Corporation of a controlling interest in Hughes Electronics Corporation, which owns the direct satellite broadcaster DirecTV). In the Order approving the merger, the FCC required the arbitration of certain disputes that could arise over a six-year period under the AAA's expedited Commercial Rules, with some modifications. The AAA assembled a panel, in coordination with the FCC, of highly-qualified neutrals with experience in media programming contract dispute resolution and knowledge of retransmission consent disputes and regional sports network programming contract disputes. The AAA also administers these cases on a national level.

Authority: Federal Communications Commission Memorandum Opinion and Order 11-4 of 1/118/2011 (Comcast-GE-NBC Universal), Memorandum Opinion and Order 08-66 of 2/25/2008 (NewsCorp—DirecTV-Liberty Media), Memorandum Opinion and Order 06-105 of 7/13/2006 ("Adelphia Order"), and Memorandum Opinion and Order 03-330 of 12/9/2003 (GM-Hughes-NewsCorp).



FIFRA Environmental Protection Agency Pesticide Disputes

Background: The American Arbitration Association, through an arrangement and regulation issued by the Federal Mediation and Conciliation Service, provides arbitrators to resolve disputes among pesticide producers under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Association also administers these cases under the specialized *FIFRA Arbitration Rules* which govern these proceedings. The constitutionality of this process was upheld by the United States Supreme Court in *Thomas v. Union Carbide Agricultural Products Co.* [105 S. Ct. 3325 (1985)].

Authority: Code of Federal Regulations, 29 CFR 1440(b), which reads "...For the purpose of compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (hereinafter "the Act"), the roster of arbitrators maintained by the Federal Mediation and Conciliation Service shall be the roster of commercial arbitrators maintained by the American Arbitration Association. Under this Act, arbitrators will be appointed from that roster. The fees of the American Arbitration Association shall apply, and the procedure and rules of the Federal Mediation and Conciliation Service, applicable to arbitration proceedings under the Act, shall be the FIFRA arbitration rules of the American Arbitration Association, which are hereby made a part of this regulation."

United States Olympic Committee Disputes

Background: The AAA is designated to resolve disputes arising from United States Olympic Committee (USOC) decisions. Also, to be recognized by the USOC, amateur sports organizations must require the use of arbitration under the American Arbitration Association. The Association also provides specialized arbitrators to resolve disputes arising at the various Olympic events throughout the world.

Authority: Federal statute, 36 USC 391(b)(3), which reads in part "...agrees to submit, upon demand of the Corporation, to binding arbitration conducted in accordance with the commercial rules of the American Arbitration Association in any controversy involving its recognition as a national governing body, as provided for in section 395 of this title, or involving the opportunity of any amateur athlete, coach, trainer, manager, administrator or official to participate in amateur athletic competition, as provided for in the Corporation's constitution and bylaws..." Also, federal statute 36 USC 395(c)(1), which reads in part "...The right to review by any party aggrieved by a determination of the Corporation under the requirements of this section or section 391(c) of this title shall be to any regional office of the American Arbitration Association. Such demand for arbitration shall be submitted within 30 days of the determination of the Corporation. Upon receipt of such a demand for arbitration, the Association shall serve notice on the parties to the arbitration and on the Corporation, and shall immediately proceed with arbitration according to the commercial rules of the Association in effect at the time of the filing of the demand..."

Federal Reserve System

Background: Since 1970, the AAA has been the designated provider to the Federal Reserve System's Labor Relations Panel of several services, including providing neutrals to serve as investigators and hearing officers.

Authority: Code of Federal Regulations, 12 CFR 269b, which reads in part "...the panel may refer the matter, accompanied by a general or particularized request, to the National Center for Dispute Settlement of the American Arbitration Association (hereinafter referred to as the Center) to make an investigation and to determine whether the charging party has established a prima facie case."



Department of Interior

Background: Disputes between the Department of Interior and private land owners arising from land valuation claims are to be resolved by arbitrators provided by the AAA and in accordance with AAA rules.

Authority: Statutory authority, 43 USC 1716(d)(2), which reads in part "... (2) If within one hundred and eighty days after the submission of an appraisal or appraisals for review and approval by the Secretary concerned, the Secretary concerned and the other party or parties involved cannot agree to accept the findings of an appraisal or appraisals, the appraisal or appraisals shall be submitted to an arbitrator appointed by the Secretary from a list of arbitrators submitted to him by the American Arbitration Association for arbitration to be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association."

Environmental Protection Agency—Emissions Disputes

Background: The AAA is authorized by regulation to help resolve certain disputes between part manufacturers and vehicle manufacturers that arise from warranty claims. These cases are to be arbitrated and administered by the AAA under the AAA's Commercial Arbitration Rules.

Authority: Code of Federal Regulations, 40 CFR 85.2117(b)(3), which reads "... (3) Arbitration shall be carried out pursuant to the Arbitration Rules contained in appendix II of this subpart which are based on Commercial Arbitration Rules published by the American Arbitration Association, revised and in effect September 1, 1988."

Environmental Protection Agency—Toxic Substances Control Act Reimbursement Disputes

Background: The AAA is authorized by EPA regulation to help resolve certain disputes that may arise related to reimbursement for costs incurred under section 4(a) of the TSCA. These cases are to be arbitrated and administered by the AAA under specialized procedures.

Authority: Federal regulatory authority, 40 CFR 790-792

Minnesota No-Fault Insurance Disputes

Background: The American Arbitration Association has been administering the Minnesota No-Fault arbitration system since 1975 and averages approximately 5,000 cases per year.

Authority: Minnesota's No-Fault arbitration system was established under the Minnesota No-Fault Automobile Insurance Act, Section 65B.525, with oversight by the state Supreme Court.

New York No-Fault and SUM Insurance Disputes

Background: For some 35 years, the AAA has been designated by the New York State Insurance Department as the program administrator for resolution of disputed No-Fault and Uninsured Motorist and SUM (Supplementary Uninsured Motorist) claims. These programs provide for specialized rules, specific qualifications for a roster of permanent arbitrators,



extensive case statistic and financial reporting to the New York State Insurance Department and dedicated Conciliators and Case Managers. AAA has administered an average of nearly 64,000 No-Fault and some 3,000 UM/SUM cases in New York per year in the last ten years. The No-Fault program includes a unique staff conciliation phase which currently results in settlement of approximately half of all filed cases in only some 45 days from filing.

Authority: New York State Insurance Law Section 5106; New York State Insurance Department Regulation No. 68 (11 NYCRR 65), Subpart 65-4.

Florida Residential Mortgage Foreclosure Mediation Program

Background: In 2010, the AAA was chosen by Judicial Circuit Courts in Florida's 8th, 17th, and 18th Circuits as the official mediation administrator for the Residential Mortgage Foreclosure Mediation (RMFM) program. The RMFM program stipulates that all lawsuits involving a residential mortgage foreclosure of an owner-occupied homestead residence will be referred to the AAA. Once the homeowner has been notified, and if they agree to participate in the program, they will first undergo mortgage foreclosure counseling. The homeowner and the lender will then begin the mediation process with the objective of reaching an early and mutually agreeable settlement of their dispute.

Authority: Pursuant to Administrative Order AOSC09-54 (12/28/09) of the Florida Supreme Court.

West Virginia Department of Environmental Protection

Background: The AAA began in 2003 to administer a unique set of cases in West Virginia that were part of an arbitration program created by the state legislature to resolve damage disputes between blasting/coal companies and property owners. The program came about as part of surface mining blasting rules established by legislation in 1999, which calls for a two-step process to deal with blasting claims. Under the program, a dispute will first be submitted to the West Virginia Office of Explosives & Blasting, a division of the West Virginia Department of Environmental Protection, for investigation, evidence gathering, and determination by an impartial claims administrator. If one of the parties is not satisfied with the decision, they can move to the second step—arbitration under the auspices of the AAA.

Authority: West Virginia Legislative Rule 199-1-6, Arbitration for Blasting Damage Claims.

New York Worker's Compensation Health Insurer's Match Program (HIMP)

Background: In 1993 the New York Worker's Compensation Board issued a regulation which provided for arbitration of eligible disputed requests for reimbursement by health insurers or health benefits plans from workers compensation carriers for benefits paid for a qualified claimant's treatment. The AAA has since then administered the arbitration provisions of the regulation.

Authority: Subpart 325-6 of Title XII of the official compilation of codes of rules and regulations of the state of New York.



Completed/Previous Government Programs and Clients

Florida Department of Insurance—Hurricane Andrew Issues

In the wake of Hurricane Andrew, the American Arbitration Association worked with the Florida Department of Insurance (DOI) to implement an alternative dispute resolution program to help resolve disputes between homeowners and insurance carriers through mediation in a quick and cost-efficient manner. The program was implemented by regulation: *Emergency Rule 4-166.030 Alternative Procedures for Resolution of Disputed Claims Arising from Hurricane Andrew*. The Florida Insurance Commissioner subsequently appointed the American Arbitration Association to administer the program, which was widely regarded as a great success.

Internal Revenue Service—Section 351 Dispute Arbitration Panel

In 2003, the AAA assembled a panel of highly-qualified neutrals with expertise in IRS regulations and contingent liability tax shelter issues for a special program to resolve Section 351 disputes. Working with the IRS Office of the Chief Counsel, the AAA developed this list to provide external, independent arbitrators for a voluntary multi-track ADR mechanism to resolve these disputes. Regulatory authority granted under IRS Revenue Procedure 2002-67, Section 1.04, which read "...The Arbitration Procedure is intended to require each party to realistically assess the merits of the case and achieve a resolution in the event of irreconcilable differences before a neutral expert who must choose between the divergent settlement proposals without modification. Maximum flexibility, within the stated range of concession, is provided for the negotiations. This resolution should provide strong incentives to resolve disputes with quick, competent review and certainty of repose at a reduced cost for both parties."

Library of Congress—Copyright Arbitration Royalty Panels

The American Arbitration Association provided the Library of Congress with qualified expert arbitrators to serve on Copyright Arbitration Royalty Panels (CARP). The statute, 17 USC 1010(b), specified that the panels be assembled from a list "...of available arbitrators obtained from the American Arbitration Association or such similar organization as the Librarian of Congress shall select..." These ad hoc panels resolved disputes related to rate adjustments and distribution of royalties. Panels of three outside arbitrators decided these cases, which were held in the Library of Congress. The AAA nominated a select number of highly qualified arbitrators with experience in copyright issues. In 2004, Congress made statutory changes to create a permanent panel within the Library of Congress to resolve these disputes, superseding this program.

New Jersey No-Fault Insurance Disputes

For over 20 years, the AAA administered the New Jersey No-Fault Program. The caseload included specialized procedures, specific qualifications and training requirements for the arbitrators, detailed case statistics reporting and dedicated case administrators. The AAA administered more than 70,000 No-Fault automobile accident arbitrations over the first 15 years of the program, and was selected by the New Jersey Department of Banking and Insurance in the late 90's to administer a successor program under the state's new Automobile Insurance Cost Reduction Act. The AAA revamped its procedures to meet the requirements of the new act, including a complete revision of its rules and change of its panel of neutrals from practitioner-neutrals to a roster of full-time arbitrators.