



The Weekly National News Bulletin for ASA Members Only

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OSHA Revises Hexavalent Chromium Notice Requirements

Beginning June 15, 2010, the U.S. Occupational Safety and Health Administration is [requiring](#) construction employers to notify their employees of the results of **all** hexavalent chromium [Cr(VI)] exposure tests within five days of receiving them. The standard currently requires notification only if the concentration of airborne Cr(VI) exceeds the permissible exposure limit. Following each test, employers must “individually notify each affected employee in writing of the results of that determination or post the results in an appropriate location accessible to all affected employees.” The standard requires that employers on jobs that use products containing Cr(VI), such as stainless steel welding rods and paints such as those used for traffic signage, conduct an initial test of Cr(VI) levels for each shift. Employers must test again every six months if initial exposure is above the action level of 2.5 micrograms per cubic meter of air, and every three months if the initial reading is above the PEL of 5 micrograms per cubic meter. *For more information, contact ASA at (703) 684-3450, Ext. 1333, or GovernmentRelations@asa-hq.com.*

Revised AIA A312

- NEW ASA/FASA PODCAST OFFERS GOOD ADVICE: LIMIT BACKCHARGES AS PART OF COST-CUTTING
- FASA CD-ROM HELPS YOU BID AND WIN STIMULUS PROJECTS
- UPS FREIGHT OFFERS DEEP DISCOUNTS TO ASA MEMBERS

Payment Bond Form Removes Sureties Responsibility for Timely Dispute Claims

On March 25, the American Institute of Architects (AIA) announced that new editions of its A312 *Performance Bond and Payment Bond* and A310 *Bid Bond* would be published in June. The A310 was last revised in 1984, and the A312, in 1984. AIA's commentary on the old and new forms, available online, contains the text of the updated bond forms. Of particular note to subcontractors, section 7.1 of the A312 (2010) *Payment Bond* provides sureties with 15 more days to respond to, and identify disputed parts of, claims — 60 instead of 45 days. Furthermore, section 7.3 of the revised payment bond form greatly reduces the potential consequences for sureties that fail to dispute claims by the claim response deadline. Failure to timely dispute claims "shall not be deemed to constitute a waiver of defenses" for a surety or contractor, the bond form now says. AIA's commentary notes that this change was made because "some recent court decisions have held that a surety's failure to strictly comply with its reply obligations... would result in a waiver of the contractor's and surety's defenses under the bond." The revised payment bond form does, however, allow claimants to recover reasonable attorney fees and "recover any sums found to be due and owing to the Claimant." "This change relieving sureties of their obligation to meet claim response deadlines is unfathomable given the many subcontractors that have completely lost bond claims because they missed a claim deadline by a single day," said ASA Executive Vice President E. Colette Nelson. *Read AIA's commentary online at www.aia.org/bondcommentary.*

ASA's Nelson to Speak at

4th Annual *ENR*-CURT Construction Business Forum

ASA Executive Vice President E. Colette Nelson will join other construction industry association executives on a panel at the 4th Annual *ENR*-CURT Business Forum. According to the forum's agenda, the panel will "feature some of the most influential association executives in the industry, discuss how the economy and government policy impacted construction in the past year and what's ahead for the industry." Other highlights of the forum will include keynote addresses from senior government officials, and a mid-year update on the construction economy from McGraw-Hill Construction Vice President of Economic Affairs Robert Murray. The forum is scheduled for June 15-16 in Arlington, Va. ASA members attending this forum will receive a \$100 discount off the standard rate of \$395. *Read the agenda and register for the forum [online](#).*

New Rule Requires Federal Contractors to Notify Employees of Rights to Organize

Beginning June 21, 2010, subcontractors at all tiers on federal projects must post notices informing their employees of their rights under the National Labor Relations Act. Qualifying contractors must include a clause in their contracts requiring the display of posters detailing employees' rights to organize; form, join, or assist any union; bargain collectively through representatives of their own choice; act together for other mutual aid or protection; or choose not to engage in any of these protected concerted activities. The new

U.S. Department of Labor [requirement](#) implements Executive Order 13496, which President Obama issued on Jan. 30, 2009. Download a model poster [online](#). For more information, contact ASA at (703) 684-3450, Ext. 1333, or GovernmentRelations@asa-hq.com.

New ASA/FASA Podcast Offers Good Advice: Limit Backcharges as Part of Cost-Cutting

Are you providing general contractors with too much freedom to assess backcharges that you could have prevented for a fraction of the cost? Learn about the telltale signs that you're setting yourself up to pay excessive backcharges in ASA/FASA's new podcast, "Guarding Against Frivolous Backcharges" (Item #POD021). In this 18-minute audio podcast, Eric Travers of the Columbus-based law firm of Kegler, Brown, Hill and Ritter, describes: the legal and contractual basis for assessing backcharges; how the ConsensusDOCS and other industry form contracts treat backcharges; and strategies to minimize and protect against frivolous backcharges. Two of the main errors leading to frivolous backcharges, Travers explains, are failing to negotiate (1) the right to advance notice of claimed deficiencies before backcharges are incurred, and (2) the right to prompt billing of backcharges as they are incurred so that they may be contemporaneously monitored and verified. ASA provides a model backcharge contract provision entitling subcontractors to these rights in paragraph 7 of *ASA's Addendum to Subcontract (2008)*, available exclusively to ASA members in the "[Contracts and Project Management](#)" resources on ASA's Web site. Purchase the podcast (\$45 member price/\$65 nonmember price) [online](#) or call 1-888-374-3133. Your podcast will be immediately available for download from ASA's site under My ASA>>Renew/View My

Transactions, and will come with an ASA white paper exploring the topic of backcharges in detail, as well as a learning assessment you can take to earn a Certificate of Achievement

FASA CD-ROM Helps You Bid and Win Stimulus Projects

Get tips on how your company can get its share of stimulus projects in the 90-minute FASA multimedia CD-ROM (Item # 8032), "Where the Projects Are: Finding and Getting Federal Projects." Presented by David Hendrick of Hendrick, Phillips, Salzman and Flatt in Atlanta, Ga., the CD-ROM explains how to find stimulus projects, and how the ASA-endorsed *ConsensusDOCS 752 Standard Subcontract Agreement for Use on Federal Government Construction Projects* can help you and your prime contractor clients quickly reach agreement on subcontract terms for federal projects. The CD-ROM also discusses the key provisions that your contract must incorporate to conform to federal requirements, including the Federal Acquisition Regulation, the federal Prompt Pay Act, FAR flow-down provisions, ethics compliance programs and E-Verify. The CD-ROM (\$65 for members/\$95 for nonmembers) contains an audio-visual recording, a media player, and comes with installation instructions. *Click [here](#) to order this item, or call 1-888-374-3133.*

UPS Freight Offers Deep Discounts to ASA Members

If you're looking to cut costs, ASA Bronze Sponsor [UPS Freight](#) — the heavy freight arm of UPS — can help. Through the ASAdvantage Program, UPS Freight offers ASA member discounts of 70 percent on “Less Than Truck Load” freight shipments from 150 lbs. to 20,000 lbs. throughout the United States, Canada and Mexico, including offshore shipping to Alaska, Hawaii, Guam and Puerto Rico. This savings program applies to enrolled members' pre-paid and drop-shipped shipments to customers, and to “collect” shipments received by enrolled members. When arranging a “collect” shipment or drop-shipping a shipment, members should write "SHIP UPS Freight" on their purchase orders or request UPS Freight by letter or phone. UPS Freight provides a money-back guarantee that shipments will be on-time. Use the special [enrollment form](#) for ASA members to get started with the program.