

THE SURETY & FIDELITY ASSOCIATION OF AMERICA

MEMORANDUM

TO: Government Affairs Advisory Committee
FROM: Daniel Wanke
RE: Federal and State Regulatory Report—Commercial Surety
DATE: October 23, 2014

The following is a report on rules affecting commercial surety that recently were proposed or adopted. For your convenience, the report is organized by regulations that have been finalized, pending regulations on which SFAA has commented and newly proposed regulations that SFAA is reviewing. If SFAA members want additional information or copies of the regulations summarized in this report, please do not hesitate to contact us. Going forward, these reports will be distributed monthly. We appreciate your feedback on whether these monthly reports are informative and useful to you.

ADOPTED REGULATIONS

Jurisdiction	Agency	Citation	Recent History	Issue	SFAA Summary
Federal	Department of the Treasury	31 CFR Part 223	10/16/14 Final Rules	Surety Regulation	The U.S. Department of the Treasury has finalized regulations regarding the authority of federal agencies to refuse to accept a bond from a surety company that is Treasury-certified. The revised regulations authorize agency officials to decline a bond from a Treasury-certified surety “for cause,” which includes but is not limited to the surety’s failure to pay or satisfy an administratively final bond obligation that is due to the agency. Agencies may decline a bond “for cause” so long as it is defined under existing regulations or regulations that the agency develops and the decision is consistent

					<p>with the agencies' authority.</p> <p>Prior to declining a bond, a federal agency must give the surety company advance written notice of the intent to decline the bond along with the reasons or cause. The surety must be given an opportunity to rebut the reasons or cause, as well as an opportunity to cure. Finally, the procedures for declining a bond must be established by regulations developed by each agency. The regulations are subject to existing rule adoption procedures that include notice and an opportunity to comment.</p> <p>The Treasury regulations also amend existing provisions whereby a federal agency may submit a complaint to the Treasury Department to request that the surety's certificate be revoked. Treasury states that the final rules clarify existing procedures for adjudicating complaints based on these bond obligations. The final rule specifies that the Treasury's authority to review the complaint would be to review the reasonableness of the agency's administratively final decision. Treasury is required to notify the surety company of the facts or conduct indicating a failure to comply with the regulations and law and provide the surety company an opportunity to respond. The certificate will be revoked if the company does not respond in a satisfactory manner, or if it fails to demonstrate or achieve compliance.</p>
Federal	Alcohol and Tobacco Tax and Trade Bureau	27 CFR Part 25	09/30/14 Final Rule	Tax Bond—Small Beer Brewers	<p>The Alcohol and Tobacco Tax and Trade Bureau (TTB) has adopted a final rule to revise the required amount of the bond required for small brewers of beer. Current law authorizes the Secretary to determine the bond amount by regulation.</p> <p>Under the prior regulations, beer brewers filing returns and paying the tax quarterly had to post a bond based on the maximum amount of tax liability for the calendar year. The minimum bond amount was set at \$1,000 and the maximum bond amount was \$500,000. Under the</p>

					<p>final rule, the TTB is requiring a flat bond amount of \$1,000 for brewers whose excise tax liability is reasonably expected to be not more than \$50,000 in a given calendar year and who were liable for not more than \$50,000 in such taxes in the preceding calendar year.</p> <p>TTB previously adopted this as a temporary rule in 2012, at which time the agency explained that the bond amount for small brewers with a tax liability under \$50,000 often proves to be an excessive penal sum that is difficult for the brewer to obtain. TTB also stated that it believes that changing the bond amount may encourage more brewers to file returns on a quarterly basis, which in turn would reduce costs and increase efficiencies for both TTB and industry members.</p>
Alabama	Department of Revenue	AL ADC 810-7-1-.27, 28	09/30/14 Adopted Regulations	Miscellaneous Bond—Tobacco Manufacturers	The Alabama Department of Revenue has adopted regulations to implement a new law that requires tobacco manufacturers not participating in the Master Settlement Agreement to post a bond based on its sales history in the state, its listing on the state directory of manufacturers, and whether the manufacturer made its required escrow deposits on a timely basis. The new law provides that the bond must be in an amount equal to the greatest required escrow amount due from the nonparticipating manufacturer or its predecessor for any of the 12 preceding calendar quarters, or \$25,000, whichever is greater. The regulations implement the new law concerning the bond amount exactly.
Alabama	State Board of Education	AL ADC 290-030-050-.01, et seq.	09/30/14 Adopted Regulations	School Bond	The Alabama State Board of Education has eliminated the regulations for the licensing requirements for private, nonpublic, and church schools offering instruction in grades K-12. The regulations implement a new law that eliminated regulation of such entities, including the requirement that such schools be licensed and post a surety bond.
Colorado	Department of Health Care Policy and	10 CO ADC 2505-10:8.063,	09/10/14 Adopted Regulations	Miscellaneous Bond—Medical	The Colorado Department of Health Care Policy and Financing has adopted regulations for supportive living program services, which are provided to clients with brain injuries that qualify to receive such

	Financing	100, 515		Facilities	services and clients with other needs that are deemed eligible for the program. The regulations state that providers of such services must be licensed as either an assisted living residence or a home care agency. The regulations require supportive living facilities that accept responsibility for residents' personal funds to post a surety bond in an amount sufficient to protect the residents' personal funds.
Indiana	Securities Division	N/A	10/01/14 Emergency Regulations	Miscellaneous Bond— Crowdfunding Websites	The Indiana Securities Division has adopted emergency regulations to implement a new law that requires operators of Internet websites to register with the Division in connection with operating as a funding portal. The emergency regulations require the operator to post a minimum \$50,000 surety bond. The bond must secure the payment of costs, fines and damages to any person that has been damaged by the operator's violation of the applicable law.
Kansas	Kansas Athletic Commission	K.A.R. 128-2-1, 3, 4, 12, 13; K.A.R. 128-3-1	09/11/14 Adopted Regulations	License Bond— Sporting Match Promoters	The Kansas Athletic Commission revised the regulations for sporting match promoters, which require a \$10,000 surety bond, to provide that the bond must guarantee payment of medical expenses and the purse for the contestant.
Kentucky	Commission on Proprietary Education	791 KAR 1:020	10/01/14 Adopted Regulations	School Bond	The Kentucky Commission on Proprietary Education amended the regulations for proprietary schools offering associates degrees to include proprietary schools offering certificate and diploma programs. The regulations would require all such proprietary schools to comply with the existing bonding requirements as provided under the current law and regulations.
Maryland	Maryland Insurance Administration	COMAR 31.15.13.01, 02, 03, 04	10/17/14 Adopted Regulations	Surety Premium Notices	The Maryland Insurance Administration revised its existing regulations concerning notices for increases in premium. Prior regulations stated the lines of insurance that are exempt from the notice requirements, including surety. Rather than specifying the exempted lines, the proposed rules state the lines to which the requirement is applicable states that the notice requirement applies to a commercial insurance policy, which is defined to include property insurance or casualty insurance under existing regulations. Prior regulations required notice for premium increases of 20% or more.

					Under the revised regulations, the notice requirements apply if the increase equals or exceeds “the lesser of \$300 or 3% of the policy premium of the previous policy term, and the renewal policy premium exceeds \$1000.”
Maryland	Public Service Commission	COMAR 20.51.02.08	09/05/14 Adopted Regulations	Financial Assurance— Wind Energy Facilities	The Maryland Public Service Commission (Commission) revised its regulations to allow the Commission to require that an electricity supplier with an offshore wind renewable energy credit purchase obligation to furnish a performance bond or other security in the amount that the Commission determines. The bond secures the supplier’s payment obligations.
Mississippi	Secretary of State	MS ADC 1-5-2.5	09/30/14 Adopted Regulations	Notary Bonds	The Mississippi Secretary of State has revised the regulations for notaries public. The revised regulations provide that the required \$5,000 notary bond must be submitted to the Secretary of State within 60 days of the application, otherwise the application will be rejected.
New Hampshire	Department of Revenue Administration	NH ADC Rev 3405.01	09/11/14 Adopted Regulations	Tax Bond— Timber	The New Hampshire Department of Revenue Administration has adopted new regulations for yield taxes on wood and timber cutting. The regulations require an owner, logger, forester or person responsible for the cut to post the bond or other security prior to commencing cutting. The bond secures the payment of the yield tax. A bond also is required if the owner is delinquent on any town yield tax or on any property tax, including properties other than on which the intended cut is occurring. The regulations provide that an owner intending to cut on public land would be required post a bond or other security if the owner does not own land in the municipality where the cut will occur.
New York	Banking Department	3 NYCRR 420.15	10/01/14 Adopted Regulations	License Bond— Mortgage Loan Originators	The New York Banking Department has adopted final regulations regarding bonding for mortgage loan originators. Under existing law, mortgage brokers must post a bond in an amount ranging from \$10,000 to \$100,000 based on loan application volume. Mortgage lenders must post a bond in an amount ranging from \$50,000 to \$500,000, which is based on the volume of New York closed loans. The rules set forth a schedule for individual originators based on the aggregate amount of New York loans originated:

					<p>Required amount of Bond</p> <p>\$10,000 \$15,000 \$25,000 \$50,000 \$75,000 \$100,000</p> <p>Aggregate \$ amount of NY loans originated</p> <p>Less than \$1 million \$1 million to \$7,499,999 \$7.5 million to \$14,999,999 \$15 million to \$29,999,999 \$30 million to \$49,999,999 \$50 million or more</p> <p>The regulations also set forth the bond amount for an originating entity (mortgage bankers and mortgage brokers) covering its loan originators. If the originating entity has less than ten covered originators, the bond is capped at \$100,000; if the originating entity has ten but not more than 15 covered originators, the bond is capped at \$150,000; if the originating entity has 16 but not more than 24 covered originators, the bond is capped at \$250,000; and if the originating entity has 25 or more covered originators, then the bond is capped at \$500,000. The regulations provide that the Superintendent may require a larger bond in certain cases.</p>
New York	Banking Department	3 NYCRR 418.12; 3 NYCRR 418.13	09/17/14 Emergency Regulations	License Bond—Mortgage Servicers	<p>The New York Banking Department (Department) has re-adopted emergency rules for mortgage loan servicers, which require registration and compliance with financial responsibility requirements, including a surety bond and a fidelity bond.</p> <p>The rules require servicers to register and post a surety bond in an amount not less than \$250,000 from an insurance company licensed in the State. The rules provide that institutions whose deposits are insured by the Federal Deposit Insurance Corporation and are at least adequately capitalized as defined in the Federal Deposit Insurance Act are exempt from the net worth and surety bond requirements.</p> <p>Further, the servicer must file a fidelity bond and evidence of errors and omissions (E&O) coverage for losses resulting from fraud,</p>

					<p>embezzlement, misplacement, forgery and any similar events. The amount required is based on the volume of the servicer's business. The fidelity bond and the E&O policy may provide for a deductible amount not to exceed the greater of \$100,000 or 5% of the face amount of the bond. The amounts required are as follows:</p> <table border="0"> <tr> <td>Bond Amount and E&O Coverage</td> <td>Aggregate \$ amount of NY loans serviced</td> </tr> <tr> <td>\$300,000</td> <td>\$100,000,000 or less</td> </tr> <tr> <td>plus .15%</td> <td>of the next \$500,000,000</td> </tr> <tr> <td>plus .125%</td> <td>of the next \$400,000,000</td> </tr> <tr> <td>plus .100%</td> <td>of the amount over \$1 billion</td> </tr> </table> <p>For both the surety bond and the fidelity bond, the Superintendent may double the bond amount as a penalty for servicers “engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct.” The rules also set forth additional parameters for exemptions from and modifications to the bonding requirements at the Superintendent’s discretion.</p>	Bond Amount and E&O Coverage	Aggregate \$ amount of NY loans serviced	\$300,000	\$100,000,000 or less	plus .15%	of the next \$500,000,000	plus .125%	of the next \$400,000,000	plus .100%	of the amount over \$1 billion
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Ohio	Developmental Disabilities Department	OH ADC 5123:1-15-01	09/30/14 Adopted Regulations	Fiduciary Bond	<p>The Ohio Developmental Disabilities Department has adopted regulations to provide standards for trust funds established to provide supplemental services to persons with developmental disabilities. The new regulations require the trustee to furnish a bond or other form of insurance to guarantee against any possible loss of trust assets unless specifically waived by the testator or waived by law. The bond or other insurance must be in an amount equal to the value of the trust assets.</p>										

Ohio	Department of Health	Ohio Admin. Code 3701-29-03	09/29/14 Adopted Regulations	License Bond— Sewage System Professionals	<p>The Ohio Department of Health has adopted regulations that require bonding or other security from installers, service providers, and septage haulers for household sewage systems. The regulations require a separate bond for each classification of registration. The bond provides statewide coverage for all work performed on a sewage treatment system in any local health district in the State. The bond is for the benefit of any aggrieved party for damages incurred as a result of a violation of the applicable regulations.</p> <p>The surety bond must provide coverage for the calendar year of the registration application for any work performed in all local health districts in Ohio. The surety bond must provide that the aggregate liability of the surety for any and all breaches of the conditions of the bond would in no event exceed the penal sum of the bond for each calendar year for which the bond is issued. The regulations provide that the surety would have to provide 90 days notice for cancelling a bond. The regulations provide that the bond amounts would be based on whether the registrant works on a household sewage treatment system (HSTS) or a small flow on-site sewage treatment system (SFOSTS) as follows:</p> <table border="1" data-bbox="1125 963 1940 1230"> <thead> <tr> <th data-bbox="1125 963 1365 1076" rowspan="2">Number of systems (annually)</th> <th colspan="2" data-bbox="1365 963 1940 1076">Installer</th> </tr> <tr> <th data-bbox="1365 1076 1669 1117">HSTS</th> <th data-bbox="1669 1076 1940 1117">SFOSTS</th> </tr> </thead> <tbody> <tr> <td data-bbox="1125 1117 1365 1154">One system</td> <td data-bbox="1365 1117 1669 1154">Equal to system cost</td> <td data-bbox="1669 1117 1940 1154">\$25,000</td> </tr> <tr> <td data-bbox="1125 1154 1365 1230">More than one system</td> <td data-bbox="1365 1154 1669 1230">\$40,000</td> <td data-bbox="1669 1154 1940 1230">\$40,000</td> </tr> </tbody> </table>	Number of systems (annually)	Installer		HSTS	SFOSTS	One system	Equal to system cost	\$25,000	More than one system	\$40,000	\$40,000
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Oklahoma	State Board of Cosmetology	OK ADC 175:10-3-1	09/02/14 Adopted Regulations	License Bond—Barber Schools	The Oklahoma State Board of Cosmetology (Board) has adopted regulations that subject barber schools to the bond requirement that currently pertains to cosmetology schools. The law requires a bond in an amount equal to \$2,000 for the first instructor, plus \$1,000 for each additional instructor.																						
Oklahoma	Corporation Commission	OK ADC 165:10-7-33	09/02/14 Adopted Regulations	Financial Assurance—Truck Wash Pits	The Oklahoma Corporation Commission adopted revised regulations that establish permit requirements for truck wash pits, which are pits used for the temporary storage of fluids generated from the washing or cleaning of a motor vehicle, trailer or container used to transport or store deleterious substances. The regulations require “surety” in connection with an agreement under which the operator guarantees it will properly close the pit upon termination of operations. Surety																						

					bonds will be accepted to meet the requirement. The Commission must establish the amount of surety for each permit, which will be based on the dimensions of the pit, and costs of reclamation, monitoring, plugging of monitor wells, pit closure, trucking of any deleterious substances, remediation, and earthwork. The Commission may adjust the bond amount “for good cause.”
Oklahoma	Insurance Department	OK ADC 365:25-29-1 et seq.	09/02/14 Emergency Regulations	License Bond— Pharmacy Benefits Managers	The Oklahoma Department of Insurance (Department) has adopted emergency regulations, which require pharmacy benefits managers to be licensed and bonded. The regulations provide that the pharmacy benefits manager must furnish a surety bond in an amount that the Insurance Commissioner (Commissioner) will determine. The regulations provide that the bond secures compliance with the applicable law, regulations, and rules. The bond is for the benefit of health care and health coverage providers that hire the pharmacy benefits manager. The surety must provide 30 days written notice to cancel the bond.
Washington	Secretary of State	WAC 434-120-210; WAC 434-120-260	09/03/14 Adopted Regulations	Miscellaneous Bond— Commercial Fundraisers	The Washington Secretary of State revised the regulations for commercial fundraisers. Current regulations require that commercial fundraisers furnish a \$25,000 surety bond. The revised regulations provide that contract employees, independent contractors, and other individuals who are not bona fide officers or employees of a commercial fundraiser, who solicit or receive charitable contributions, if compensated, are required to register independently and post a separate surety bond, unless exempt. The revised regulations provide that the bond must remain in place for the duration of the time in which the fundraiser conducts the business practices outlined in the law.

SFAA's RECENT COMMENTS ON PROPOSED RULES

Jurisdiction	Agency	Citation	Recent History	Issue	SFAA Summary
Federal	Federal Maritime Commission	46 CFR Part 515	10/10/14 Proposed Rules	Financial Responsibility —Ocean Transportation Intermediaries	<p>The Federal Maritime Commission (Commission) has proposed amendments to the existing regulations on the licensing and financial responsibility requirements for ocean transportation intermediaries. Surety bonds are accepted to meet the requirement. In an Advance Notice of Proposed Rulemaking (ANPR), the Commission previously had proposed to increase the bond amounts required, but it has elected not to proceed in response to comments received from various stakeholders.</p> <p>The ANPR would have required an intermediary to restore a bond, insurance or surety to the required amount within 60 days from the date a claim is paid to restore the financial responsibility. The proposed rules also would have set forth new procedures for the priority of claims and for the payment of claims for an intermediary's bond. The claims of shippers and consignees would have been given precedence over common carriers and commercial creditors. As revised, the proposed claim priorities have been eliminated. The Commission also dropped the proposed requirements for restoring the bond. Other provisions addressing claims against the bond have not been changed.</p> <p>SFAA submitted comments to explain that the proposed tier system is not a standard claims practice and that the proposed rules would have increased the cost of claims handling and create potential exposures for the surety. We questioned the process, noting the problems it created for sureties who would end up playing referee between competing claims.</p> <p>The Commission also had proposed in the ANPR a new NVOCC license category for those operating only in the "barrel trade" that</p>

					would have included reduced bonding requirements, however it has determined that it will not proceed with this proposed licensing requirement.
Delaware	Public Service Commission	26 DE ADC 4001-4.0	10/01/14 Proposed Rules	Miscellaneous Bond— Telecommunications Carriers	The Delaware Public Service Commission has proposed revisions to the existing regulations for carriers offering telecommunications service which would eliminate the bonding requirements requirement for such carriers in connection with obtaining a Certificate of Public Convenience and Necessity. The proposed rules also would repeal a bond requirement for carriers that require their customers to pay a deposit, security, or other advance as a condition of service. The rules also would repeal additional minimum financial requirements for carriers. Carriers applying for certification as a competitive local exchange carrier (CLEC) shall demonstrate that it possesses certain amount of cash or a cash equivalent. Performance bonds may be used as a cash equivalent. SFAA submitted comments to advocate for the retention of the bond requirements. We explained the functions and benefits of the bond, including the surety's prequalification of bond principals and the surety's financial protection through its claims handling abilities. Comments are due November 7, 2014.
Delaware	Office of the Alcoholic Beverage Control Commissioner	4 DE ADC 8	09/01/14 Proposed Rules	Tax Bond— Alcohol Importers	The Delaware Office of the Alcoholic Beverage Control Commissioner has proposed revisions to its regulations on alcoholic beverages that would eliminate the current \$20,000 tax bond requirement for importers of such beverages to secure the payment of the required taxes on its purchases of wines, cider, spirits, and beer. SFAA submitted comments to advocate for the retention of the bond requirement. We explained the functions and benefits of the bond, including the surety's prequalification of bond principals and the surety's financial protection through its claims handling abilities.
Florida	Department of Health	FL ADC 64-4.001, 002, 003, 004, 005, 006, 007,	09/09/14 Notices of Changes, Corrections and Withdrawals	Miscellaneous Bond— Marijuana Dispensing Organizations	The Florida Department of Health (Department) has proposed rules to implement a new law that permits physicians to order low-THC cannabis for use for their patients who are suffering from medical conditions set forth in the law. The new law authorizes the Department to establish five dispensing organizations for low-THC

		008, 009			<p>cannabis. To qualify as a dispensing organization, the applicant must demonstrate its financial ability to maintain operations. Applicants that are approved must post a \$5 million performance bond. The proposed rules provide that the condition of the bond is that if the dispensing organization fails to renew its license or its license is revoked, it would have to destroy all low-THC cannabis remaining under its control. The bond would be paid to the Office of Compassionate Use in an amount necessary to cover the costs of securing and destroying all low-THC cannabis remaining under the control of the dispensing organization.</p> <p>SFAA worked with the Florida Surety Association on this rule. Our comments addressed concerns with the interaction of state and federal law with regard to the legal authorizations afforded under state law and the federal prohibitions for controlled substances. SFAA requested guidance from the Florida Department of Health regarding whether a surety will be in compliance with Florida and federal law addressing the use and distribution of controlled substances (including the Controlled Substances Act) by writing a bond required by the new state law. Without clarity for its legal exposure, a surety may be reluctant to provide such a bond.</p> <p>Further, SFAA explained that the amount of the bond may limit the availability of the bond. Further, both the law and the regulations, as originally proposed, reference the bond requirement only in general terms. SFAA suggested that the regulations should be clear regarding the condition of the bond and the basis on which a claim may be made and worked with the Department in developing a more specific condition. This is the condition that appears in the current draft of the proposed regulation.</p>
Kentucky	Board of Home Inspectors	815 KAR 6:040	09/01/14 Proposed Rules	License Bond—Home Inspection	The Kentucky Board of Home Inspectors has proposed revisions to the regulations for home inspection pre-licensing course providers that would repeal a requirement for course providers to provide a

				Course Providers	\$50,000 surety bond in connection with registration. SFAA submitted comments to advocate for the retention of the bond requirement. We explained the functions and benefits of the bond, including the surety's prequalification of bond principals and the surety's financial protection through its claims handling abilities.
New Mexico	New Mexico Construction Industries Division	14.5.2.8 NMAC; 14.5.9 NMAC	08/15/2014 Proposed Rules	License Bond—Contractors	<p>The New Mexico Construction Industries Division (Division) has proposed new rules to establish procedures for making claims on a contractor's license bond. Current law requires a \$10,000 bond to secure compliance with the state construction codes. Claims on the bond are limited to code violations under the law. The rules authorize the Division to issue a code violation determination. The contractor would be given the opportunity to cure the violation. The proposed rules would set forth procedures concerning code bond violation determinations and indemnitee claims.</p> <p>The proposed rules provide that an indemnitee may file a complaint within the two-year period permitted under law. The proposed rules provide that a surety would not be obligated to hold funds in reserve to pay a potential claim and that the surety could close its claim file if there is inactivity on the claim. The indemnitee could reactivate the claim if it receives a notice of an uncorrected violation. Notices for uncorrected violations would have to state that the pay out by the surety company is limited to the amount of the code bond. The notice would have to state that if the actual costs to correct the code violations exceed \$10,000, the indemnitee is responsible for those costs. The proposed rules set forth the requirements indemnitees on the bond would have to meet in connection with a claim in the event of an uncorrected violation. If the indemnitee fails to meet these requirements, the surety could deny the claim. The proposed rules would set forth the conditions in which such claims could be denied, including a six month limitation for correcting a violation following a notice of an uncorrected violation. The surety would be required to release the amount of bond (up to the penal sum) if all requirements</p>

					<p>to correct the violation are met to the contractor who performed the corrections. The surety must notify the Division when the bond is released. The bond could not be used to pay legal fees. The proposed rules would establish procedures for multiple violations and to which bond the claims would be applied.</p> <p>SFAA submitted comments to express concerns with the claims procedures. Our comments explained that the rule does not track the statute because a claim on the bond and the filing of a complaint are not the same thing and that the claim on the bond (not a complaint with the Division) must be filed with the surety within the two-year window to comply with the law. We recommended that the rules should refer to claims on the bond for the limitation period.</p>
New York	Department of Financial Services	23 NYCRR 200.1, et seq.	07/23/14 Proposed Rules	Miscellaneous Bond—Virtual Currency	<p>The New York Department of Financial Services has proposed rules for virtual currency businesses that would require licensure and a bond or a trust account for businesses that engage in the certain business practices pertaining to virtual currency. The proposed rules would require the licensee’s bond or trust account to be maintained in United States dollars for the benefit of its customers. The bond would have to be in the form and amount acceptable to the Superintendent of Financial Services. The proposed rules provide that customers of licensees that are victims of fraud would be entitled to claim compensation from the bond.</p> <p>SFAA submitted comments to offer assistance in developing the bond requirement, including an explanation on surety and fidelity bonds. Our comments explained the protections that surety bonds offer and the general underwriting requirements for the bond. We requested that the bond be in a reasonable amount, noting the impact on availability that could result in an unduly high bond amount.</p>

NEWLY PROPOSED RULES

Jurisdiction	Agency	Citation	Recent History	Issue	SFAA Summary
Federal	Bureau of Land Management	43 CFR Parts 2800 and 2880	09/30/214 Proposed Rule	Financial Assurance— Wind and Solar Energy Leases	<p>The Bureau of Land Management (BLM) has proposed revisions to its existing regulations to provide for competitive processes, terms, and conditions, including rental and bonding requirements, for solar and wind energy development rights-of-way both inside and outside the preferred areas that the rules would establish. Such preferred areas would be called “designated leasing areas.” Existing regulations generally authorize BLM to require bonds for rights-of-way grants and leases. Under the proposed competitive process, the holder of a right-of-way grant or lease could be required to provide a “performance and reclamation bond.” Surety bonds would be accepted to meet this requirement.</p> <p>For solar energy developments outside designated leasing areas, the bond must be for at least \$10,000 per acre. For wind energy developments outside designated leasing areas, the bond would have to be at least \$20,000 per authorized turbine. For short-term right-of-way grants for wind energy site or project testing, the bond amount would have to be no less than \$2,000 per authorized meteorological tower. If the developments are inside the designated leasing areas, the bond must be equal to \$10,000 per acre for solar energy developments and \$20,000 per authorized turbine for wind energy developments. The proposed rules would set forth the factors for establishing the bond amount.</p> <p>For projects outside the designated leasing area, the proposed rules provide that BLM would have to be an additionally named insured on the bond instrument if a State regulatory authority requires a bond to cover some portion of environmental liabilities, such as hazardous material damages or releases, reclamation, or other requirements for the project. Comments are due December 1, 2014.</p>

Federal	Department of Justice	8 CFR Part 1003	09/17/14 Proposed Rule	Court Bond— Immigration	The Department of Justice has proposed revisions to the existing regulations concerning the representation of aliens in custody and bond proceedings. The proposed rules would permit an alien's representative before the Executive Office for Immigration review to enter an appearance in custody and bond proceedings without it constituting an entry of appearance for all of the alien's proceedings before the immigration court. Under current regulations, an entry of appearance applies to all of the alien's immigration proceedings. The proposed rules would permit the representative to appear separately for just the custody and bond proceedings. Comments are due November 17, 2014.
Federal	Farm Credit Administration	12 CFR Parts 607, 614, 615, et al.	09/04/14 Proposed Rule	Capital Requirements	The Farm Credit Administration (FCA) has proposed rules to revise the FCA's regulatory capital requirements for Farm Credit System (System) institutions to include tier 1 and tier 2 risk-based capital ratio requirements. The proposed capital ratio rules would revise FCA's core surplus and total surplus requirements. The proposed rules provide that a System institution would have to apply a 50% credit conversion factor to commitments with an original maturity of more than 14 months that are not unconditionally cancelable by the institution and to transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit, when calculating off-balance sheet exposures. Comments are due on January 2, 2015.
Federal	Department of the Treasury	N/A	10/17/14 Notice	Information Collection	The Treasury Department has issued a notice of an extension of an information collection of Form 4219, Statement of Liability of Lender, Surety, or Other Person for Withholding Taxes. The form is used in connection with third parties who directly pay another's payrolls who can be held liable for the taxes required to be withheld but not paid to the government. Comments are due November 17, 2014.

Federal	U.S. Customs and Border Protection	N/A	10/09/14 Notice	Information Collection	U.S. Customs and Border Protection (CBP) has issued a notice of an information collection for the Importer ID Input Record (CBP Form 5106), which is used as the basis for establishing bond coverage, among other issues. Entities intending to file an import entry are required to file CBP Form 5106 with the first formal entry or request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. CBP also is seeking comments on the additions it is making to the form that will be used to collect additional data on companies and their officers. Comments are due December 8, 2014.
Federal	Department of the Treasury	N/A	10/06/14 Notice	Information Collection	The Department of the Treasury has issued a notice of a new information collection concerning the requirement for a Continuing Export Bond for Distilled Spirits and Wine (Form 5100.25). Exporters must file the bond if a specific lot of distilled spirits or wine will be withdrawn without the payment of the tax, or if it will be withdrawn by someone other than the proprietor of the bonded premises.
Federal	Bureau of Land Management	N/A	09/11/14 Notice	Information Collection	The Bureau of Land Management (BLM) has issued a notice of an information collection extension request concerning the regulatory requirements for mineral sales contracts. The regulations include a performance bond requirement, which is part of the information collection in this notice.
Alaska	Department of Natural Resources	11 AAC 05.010; 11 AAC 59.010, et seq.	10/10/14 Proposed Rules	Lease Bond— Wind Power Projects	The Alaska Department of Natural Resources has proposed rules concerning the issuance of permits and leases used for wind power projects on state land. As a condition of receiving a lease for the project, the lease applicant would have to furnish a bond that is conditioned on faithful compliance with all provisions of the lease. The Department will determine the bond amount, which must be sufficient to cover costs of dismantlement and removal of any facilities on the leased land, and any necessary remediation and reclamation to restore the site to a clean and acceptable condition. Surety bonds would be accepted to meet this requirement. Comments are due November 21, 2014.

Alabama	Department of Insurance	AL ADC 482-3-001-.01 et seq.; AL ADC Chapter 482-3-001, Appendix A AL ADC 482-3-004-.01 et seq.	09/30/14 Proposed Rules	Miscellaneous Bond—Pre-need Funeral Contracts	The Alabama Commissioner of Insurance has proposed revisions to its regulations for sellers of pre-need contracts for funeral and cemetery merchandise. Current regulations require the seller to use a trust fund or other form of security to guarantee the funding of the contracts. Surety bonds may be used to meet this requirement. Under current regulations, the bond amount is based on the seller's outstanding liabilities during the fiscal year and must be adjusted annually to correlate with changes in the outstanding liabilities. Under the proposed rules, the bond amount would have to be adjusted as necessary to correlate with changes in the outstanding liabilities for the previous calendar quarter and the projected liability for the next quarter.
Arizona	Board of Nursing	AZ ADC R4-19-101, 203, 216, 301, 305, 312, 511, 802, 806, 808	09/19/14 Proposed Rules	Miscellaneous Bond—Nursing Course Providers	The Arizona Board of Nursing has proposed revisions to its current bond requirement for nursing refresher course program providers and certified nursing assistant (CNA) training program providers. Under current regulations, such providers must provide a minimum \$15,000 bond. The bond must be provided by an insurance company with an "A" rating under the existing regulations. The proposed rules would allow a bond from a company with at least an "A-" rating.
Florida	Department of Environmental Protection	FL ADC 62-701.330, 630, 710,	10/01/14 Proposed Rules	Financial Assurance—Solid Waste Facilities	The Florida Department of Environmental Protection has proposed revisions to its regulations for solid waste management facilities, including financial assurance. The proposed rules specify that the mechanism used for financial assurance would have to cover any necessary costs for corrective actions. Current regulations only specify that coverage for facility closure and long-term care is required. A cost estimate for these activities is required and is used to determine the amount of the financial assurance mechanism. The proposed rules also provide that standalone waste processing facilities would be exempt from the financial assurance requirements in the existing regulations as long as the currently approved closing cost estimate is less than \$10,000.
Florida	Agency for Health Care	FL ADC 59A-	10/06/14 Proposed Rules	License Bond—Health	The Florida Agency for Health Care Administration has proposed revisions to its regulations for health care clinic licensing to remove

	Administration	33.002, 006, 007, 008, 012		Care Clinics	the option under current regulations to post a \$500,000 surety bond as an alternative to furnishing projected income and expense statement and projected balance sheet. The proposed rules would instead require compliance with the law's requirements for providing proof of financial ability through certain documentation requirements. The bond requirement remains in the current law.
Florida	Department of Education	FL ADC 6E-2.002, 004	09/03/14 Notices of Development of Proposed Rules and Negotiated Rulemakings	School Bond	The Florida Commission for Independent Education is considering amendments to its current licensing regulations for independent education institutions (colleges, universities, or postsecondary career schools) to add requirements for surety bonds as a form of demonstrating financial stability. Existing regulations provide that institutions that do not provide certified financial statements must provide an explanation of their financial condition including a financial improvement plan or teach-out plan or form of "surety" guaranteeing that the resources are sufficient to protect the current students. The existing regulations do not specify what form of surety is required.
Idaho	Department of Lands	ID ADC 20.07.02.2 20	09/03/14 Proposed Rules	Financial Assurance— Oil and Gas Wells	The Idaho Department of Lands has proposed revisions to its regulations for oil and gas wells. The proposed rules would increase the bond amount required for an inactive well. Current regulations require a bond for \$10,000 plus \$1 for each foot of planned well length. The proposed rules would require the bond to be in the amount of \$10,000 plus \$8 for each foot of planned well length. The proposed rules also would clarify that all bonds furnished for a well must be from a surety company authorized to do business in the State or in cash. Current regulations only indicate that the latter is required if a blanket bond is submitted.

Idaho	Transportation Department	ID ADC 39.02.03.0 10, 011-099, 100	10/01/14 Notice of Temporary Rule 10/01/14 Proposed Rules	License Bond—Motor Vehicle Dealers	The Idaho Transportation Department has adopted a temporary rule to implement a new law enacted under HB 167 (2013), which establishes a Consumer Asset Recovery Fund (Fund). The law provides that after June 2014, only new applicants for a motor vehicle dealers' license will be required to obtain a bond and keep it in place for three years. The proposed rules revise the bond requirement to specify that the dealer only has to maintain the bond for three years after initially licensed, unless otherwise provided by law. The rule also has been proposed for permanent adoption. The new recovery fund replaces the bond requirements for all other dealers.
Indiana	Solid Waste Management Division	329 IAC 16-2-26; 329 IAC 16-11-1	10/01/14 Proposed Rules	Financial Assurance—Electronic Waste	The Indiana Department of Environmental Management (Department) proposed amendments to its existing regulations concerning electronic waste. The rules would eliminate the standby trust requirement for surety bonds and allow the use of other financial assurance mechanisms in addition to surety bonds. Existing regulations require the bond to be in an amount sufficient to cover the costs of the closure of the facility if the owner, operator, or registrant fails to close it. The proposed rules provide for adjustments to the bond based on changes to the amount of waste in the facility.
Louisiana	Public Safety	LAC 55:III.146, 147	09/20/14 Emergency Rules 09/20/14 Proposed Rules	License Bond—Private Driving Schools	The Office of Motor Vehicles (OMV) has adopted emergency regulations to implement a new law, which requires private driving schools to post a \$40,000 license bond. The new law provides that the bond covers fees paid to the school if the school or any of its instructors fails to perform any services the school agreed to provide. The emergency regulations provide that the owner of the school must maintain the bond while the license is maintained. The emergency regulations require the OMV to be listed as the obligee for the bond. The emergency regulations have been proposed simultaneously for permanent adoption.

North Carolina	Department of Transportation	19A NCAC 2E.0601, et seq.	09/15/14 Proposed Rules	Permit Bonds— Vegetation Removal and Outdoor Advertising	The North Carolina Department of Transportation (DOT) has proposed revisions to its existing regulations for selective vegetation removal permit, which is required for removing vegetation from state highway rights of way and for removing vegetation from outdoor advertising. Current regulations require a \$2,000 bond or other security in connection with the permit. The proposed rules would delete a provision that requires the bond to be forfeited for a willful failure to substantially comply with all the requirements specified in the permit, unless otherwise resolved. The requirement for the forfeiture of the bond remains in the statute, however. Comments are due November 14, 2014.
New Jersey	Banking	N/A	09/02/14 Public Notices	License Bond— Mortgage Brokers	The New Jersey Department of Banking and Insurance (Department) has received a petition for rulemaking to decrease the required bond amount required under current regulations for mortgage brokers. The minimum surety bond amount for residential mortgage lenders and brokers currently is set at \$150,000. For companies with closed loan volumes exceeding \$50 million on an annual basis, the required bond amount is based on the broker's loan volume, with a maximum of \$300,000. The petitioner is requesting that the Department reduce the required surety bond amount to \$50,000. The Department has issued a second notice that it has referred this matter for further deliberations to consider the petitioner's request.
Nevada	State Board of Health	NAC 459.318	10/17/14 Revised Draft	Financial Assurance— Radioactive Materials	The Nevada State Board of Health (Board) has proposed to revise the regulations for decommissioning certain facilities that have radioactive material or a radiation-producing or radioactivity-inducing machine. The proposed rules would delete a provision that the licensee may provide a surety method, insurance, or other guarantee method to meet the requirements for furnishing a form of financial assurance for decommissioning such facilities.
New York	Department of Transportation	17 NYCRR 855.2	09/03/14 Proposed Rules	Motor Carrier Bonds	The New York State Department of Transportation (NYSDOT) has proposed rules to incorporate by reference the federal regulations for commercial motor carriers operating in New York State such that the federal requirements would replace the current state regulations,

					<p>which provide that brokers must furnish a corporate bond or policy of insurance conditioned to insure financial responsibility and the supplying of authorized transportation in accordance with the broker's contracts, agreements or arrangements. The bond or policy must have a minimum liability of \$10,000 under current regulations. The Federal Motor Carrier Safety Administration's (FMCSA) regulations require all brokers and freight forwarders to post a surety bond in the amount of \$75,000 as a condition of licensure. NYSDOT explains in the rule notice that the changes are being made in connection with its participation in commercial motor vehicle enforcement activities under the Motor Carrier Safety Assistance Program.</p>
Oregon	Bureau of Labor and Industries	OAR 839-015-0000, et seq.	10/01/14 Proposed Rules	Miscellaneous Bond— Construction Labor Contractors	<p>The Oregon Bureau of Labor and Industries has proposed rules to implement a new law, which expands the existing law concerning farm labor contractors to include construction labor contractors. Farm labor contractors and construction labor contractors must post a surety bond or a cash deposit to secure the payment of wages and other obligations of current law. The bond must be for \$10,000 if the contractor has no more than 20 employees. The bond must be for \$30,000 if the contractor has 21 or more employees, unless the Commissioner of the Bureau of Labor and Industries authorizes a lower bond amount.</p>
Tennessee	Higher Education Commission	TN ADC 1540-01-02-.07	09/05/14 Rulemaking Hearing Rules	School Bond	<p>The Tennessee Higher Education Commission has issued a revision to the rules for postsecondary institutions. The proposed rules would eliminate any reference to an exemption from the current surety bond requirement. In addition, the existing rules establish a \$10,000 bond requirement for in state institutions and a \$20,000 bond requirement for out of state institutions. The proposed rules would provide that in-state institutions, out-of-state public institutions, and all institutions providing primarily religious instruction would be required to furnish a \$10,000 bond. The proposed rules provide that all other institutions would be required to furnish a \$20,000 bond. The bonds would have to be continuous. The proposed rules also permit the submission of</p>

					<p>irrevocable letters of credit. The proposed rules would delete the provision addressing bonding for branch campuses. The proposed rules also would eliminate a provision permitting in-state institutions with substantially less unearned tuition or student exposure than \$10,000 to post a bond based on that exposure level.</p> <p>Further, as revised, the proposed rules would delete a requirement that out of state institutions must provide verification that the school's agent that is seeking a permit is covered by a \$5,000 surety bond. The rules also would eliminate a requirement that the bond for out of state institutions must have certain contact information, among other required identification information in the form.</p>
Utah	Labor Commission	UT ADC R612-400-3	09/15/14 Proposed Rules	Workers' Compensation Self-Insurance Plans	<p>The Utah Labor Commission (Commission) has proposed revisions of the regulations for workers' compensation self-insurers. Existing regulations require employers who self-insure for their workers' compensation programs to post a minimum \$100,000 surety bond from a corporate surety authorized to do business in the State. The proposed rules would permit the Commission's Division of Industrial Accidents to waive the surety bond requirements for a public entity. Such a change may not be substantial. Current regulations provide that public entities are classified as special categories that require separate consideration for being allowed to self-insure and for security requirements.</p>
Washington	Department of Revenue	WAC 458-20-185, 186	10/15/14 Proposed Rules	License Bond—Cigarette Wholesalers	<p>The Washington Department of Revenue (Department) has proposed revisions to the current regulations establishing requirements for wholesale and retail cigarette vendors. The proposed regulations would require cigarette wholesalers to post a minimum \$5,000 license bond from a corporation approved by the Department and authorized to do in business as a surety company in the State. The proposed rules also state that wholesalers would be permitted to set aside a portion of their stock unstamped if it furnishes a bond to in an amount equal to 80% of the taxes. Current regulations require a bond equal to two times the amount of taxes affixed to the unstamped cigarettes.</p>

					Comments are due on November 13, 2014.
Washington	Department of Ecology	WAC 173-303-620; WAC 173-303-64620	09/03/14 Proposed Rules	Financial Assurance— Dangerous Waste	<p>The Washington State Department of Ecology has proposed revisions to the current regulations for dangerous waste. Existing regulations require owners and operators of dangerous waste facilities to furnish financial assurance for hiring a third party to conduct the closure of the facility and post-closure care. Surety bonds are accepted to meet this requirement. The amount of the financial assurance is based on the required cost estimate for the closure of the facility and for post-closure care. The proposed rules provide that the amount of financial assurance for closure and for post-closure care could not be less than the facility's current closure cost estimate. The proposed rules also provide that financial assurance amounts could not be reduced for "net present value," "present discounted value," or other adjustments to the cost estimate.</p> <p>The proposed rules also would establish financial assurance requirements for corrective actions for these facilities. The financial assurance would have to be based on a cost estimate for hiring a third party to conduct the corrective actions. The Department would have the authority to adjust the amount required. Surety bonds, among other forms of security, would be accepted to meet the financial assurance requirements. A standby trust fund would be required with the surety bond.</p>
West Virginia	Secretary of State	WV ADC 153-46-1, 2, 3, 4, 5	09/12/14 Notices of Rule Modification	Notary Bonds	<p>The West Virginia Secretary of State has adopted emergency regulations to implement the new law that requires notaries to obtain a \$1,000 bond or its functional equivalent or file a certification that the notary is covered under 1) a professional liability insurance policy; 2) an errors and omissions insurance policy; 3) a commercial general liability insurance policy; or 4) their equivalent. The emergency regulations provide that notary public must maintain an assurance in the amount of \$1,000. If a surety bond is posted to meet this requirement, it must cover the entire term of the notary public's commission. The regulations provide that all surety bonds will be</p>

					presented to the Attorney General for review and approval in accordance with the existing law. The regulation has been simultaneously proposed for permanent adoption.
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