

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF FINANCIAL SOLVENCY

Joint Insurance Funds for Local Governmental Units Providing Property and Liability Coverages
Refund; interyear fund transfers

Proposed Amendments: N.J.A.C. 11:15-2.21

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and
Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 40A:10-36 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2006-397

Submit written comments by February 2, 2007 to:

Robert J. Melillo, Chief
Legislative and Regulatory Affairs
Department of Banking and Insurance
20 West State Street
P.O. Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
E-mail: legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

N.J.A.C. 11:15-2 sets forth the requirements for the formation and operation of a joint insurance fund (JIF) formed by local governmental units providing property and liability coverages pursuant to N.J.S.A. 40A:10-36 et seq. N.J.A.C. 11:15-2.21 sets forth the requirements for JIFs to refund monies to their members from a claims or loss retention fund account. N.J.A.C. 11:15-21(c) provides that an environmental impairment liability JIF may seek approval to make an initial refund payment from any trust account remaining from any year which has been completed for at least 120 months, in the case of any liability or legal or defense

services coverages, or at least 12 months, in the case of environmental or risk management services coverages and may seek approval to make subsequent refund payments from any trust account from any year which has been completed for at least 132 months, in the case of liability or legal or defense services coverages, or at least 24 months, in the case of environmental or risk management services coverage. There has been some confusion regarding the point in time from which these timeframes are to commence, that is, whether the minimum time before which a refund may be sought runs from the beginning of the policy period or fund year, or from the conclusion of the fund year. The intent of the Department of Banking and Insurance (Department) in adopting the rule was that the timeframes be calculated from the conclusion of the fund year. This is consistent with the time frames set forth in Exhibit E in the Appendix to N.J.A.C. 11:15, which provides timeframes with respect to refunds involving liability, workers' compensation, and property coverages.

In order to clarify and conform these rules and procedures, the Department is proposing to amend N.J.A.C. 11:15-2.21(c) to provide that the timeframes for making initial and subsequent refunds run from the conclusion of the applicable fund year.

In accordance with N.J.S.A. 40A:10-36 et seq., the Department has consulted with the Department of Community Affairs regarding these proposed amendments.

A 60-day comment period has been provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments will clarify the rule governing refunds for JIFs providing environmental impairment liability coverages by having it explicitly reflect the standards

applicable to other coverages as to the timeframe before which approval to make a refund may be sought. This, in turn, will help avoid confusion about the application of these rules, thereby benefiting JIFs providing environmental impairment liability coverages as well as the Department.

Economic Impact

JIFs providing environmental impairment liability coverages, to the extent they have not done so before, will be required to wait an additional 12 months before seeking a refund from a claim or a loss retention trust account. This will have an indirect economic impact on members of the JIF who otherwise might have received a refund of monies 12 months earlier based upon an interpretation of the current rule text that was not consistent with the intent of the rule. However, the Department notes that there is only one JIF currently providing environmental impairment liability coverage, and that, given the nature of the potential liabilities related to these coverages, it is reasonable and appropriate to apply the same standards with respect to refunds from that JIF as are applied to JIFs providing liability, workers' compensation and property coverages. As noted in the Summary above, this was the Department's original intent. Moreover, delaying refunds for an additional 12 months will help avoid the potential that refunds made prematurely would need to be partially or fully recouped from the JIF's members through a special or supplemental assessment upon its members, in the event that such refund renders the loss retention and trust account insufficient to pay valid claims for the applicable fund year.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs should be generated or lost as a result of the proposed amendments.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposal, together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The proposed amendments will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on “small businesses,” as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As noted in the Summary above, the proposed amendments apply to joint insurance funds comprised of local governmental units.

Smart Growth Impact

The proposed amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**;))

11:15-2.21 Refund; interyear fund transfers

(a) – (b) (No change.)

(c) An environmental impairment liability fund may seek approval pursuant to (b) above to make an initial refund payment from any trust account remaining from any year which has been completed for at least 120 months **from the conclusion of the fund year**, in the case of any liability or legal or defense services coverages, or at least 12 months **from the conclusion of the fund year**, in the case of environmental or risk management services coverage; and may seek approval to make subsequent refund payments from a trust account remaining from any year which has been completed for at least 132 months **from the conclusion of the fund year**, in the case of any liability or legal or defense services coverages, or at least 24 months **from the conclusion of the fund year**, in the case of any environmental risk management services coverage.

(d) – (h) (No change.)

JC06-19/INOREGS