



Date: October 11, 2010

From: Nancy Belton
Plan Administrator
Fresh Express Health and Welfare Plan

Subject: Waiver of Annual Limit Requirement of PHS Act Section 2711
Fresh Express Incorporated Health and Welfare Plan

Fresh Express maintains a health and welfare plan for the benefit of its hourly, collectively-bargained employees in its Salinas, California agricultural processing facility. The employees covered under the hourly benefit program are represented by the United Food & Commercial Workers International Union, Local no. 5.

The health and welfare plan in question provides benefits to (b)(4) hourly employees and their families. More than (b)(4) plan members receive medical, prescription drug, dental and vision coverage under the plan.

The plan has been self-funded through the general assets of Fresh Express since 2001. The bargained plan of benefits has been in place since January 1, 2008. The terms of the existing bargaining agreement include an annual maximum medical benefit of (b)(4) per member. The plan does not include a lifetime maximum. Fresh Express is requesting a waiver of the restriction of the (b)(4) annual limit for the plan year beginning January 1, 2011.

Compliance with the regulation would result in a significant increase to plan costs directly impacting premiums paid by employees and Fresh Express under the terms of the existing labor agreement. The increased employee premiums have the potential to decrease access to benefits due to the increased cost of coverage, relative to the modest wages of these hourly employees.

Elimination of the (b)(4) annual maximum limit is projected to increase plan costs by (b)(4) for the 2011 plan year. The projected 2011 annual plan cost without the annual limit is (b)(4) per employee – an increase of (b)(4) compared to current premium (exhibit 1). With the existing (b)(4) annual limit, the projected 2011 plan cost is (b)(4) – an increase of (b)(4) compared to current premium (exhibit 2). Cost projections are provided by our retained benefits consulting firm Jenkins Insurance Group.

This significant increase to cost will be shared with employees as stipulated in the labor agreement According to article 17 6 of that agreement:

The employee's share of the life and health and welfare insurance cost is capped at (b)(4) of the total cost per month. In the event the cost of existing insurance exceeds (b)(4) of the annual premium, the Employer and the Union agree to meet to discuss solutions including alternate health plans, lower benefits or increased employee share."

The current annual premium required of employees is (b)(4) for single or family coverage. (b)(4) of the projected 2011 cost, as stipulated by the bargaining agreement, is (b)(4) – an increase of (b)(4) or (b)(4) from the current employee premium. This significant increase to employee premiums is a direct result of the restriction on the existing (b)(4) annual maximum. Considering a general laborer covered under the plan earns (b)(4) per hour the increased premium contribution required if the current (b)(4) annual maximum is restricted is (b)(4) per hour or (b)(4) of the current hourly wage. That (b)(4) may present an affordability barrier limiting access to coverage for employees who can least afford to contribute more.

From an employer perspective the cost of benefits in 2011 without the (b)(4) maximum benefit will increase by (b)(4) or (b)(4) per employee over the existing 2010 budget. Therefore, the restriction on the annual maximum presents significant premium increases for both employees and their families and Fresh Express.

Fresh Express has thoroughly analyzed alternatives to mitigate the cost impact to employees and the company associated with the restriction of the annual maximum benefit. Those alternatives include purchasing reinsurance for the self-funded plan and an insured option provided by the United Agriculture Benefits Trust (UABT) which was granted a waiver of the restriction by HHS. However, neither option provides adequate financial relief to ensure continued affordability and access to coverage (exhibit 3).

Reinsurance proposals were solicited from twelve carriers. The most competitive proposal produced an annual cost per employee of (b)(4). This option would require an employee premium of (b)(4) per labor agreement) – a (b)(4) or (b)(4) increase over current. Fresh Express cost would increase (b)(4) or (b)(4) over current (exhibit 4).

Fresh Express also received a proposal of insured coverage through the United Agricultural Benefit Trust (exhibit 5). The trust was recently granted waiver restrictions for the array of plan it offers. The UABT plan with an HHS approved (b)(4) annual maximum produced an annual cost per employee of (b)(4). This would require an employee premium of (b)(4) (b)(4) per labor agreement) – a (b)(4) or (b)(4) increase over current. Fresh Express cost would increase (b)(4) or (b)(4) over current.

After an exhaustive analysis of the current Fresh Express Health and Welfare plan and options for compliance, it is clear that the restriction of the current (b)(4) annual maximum will:

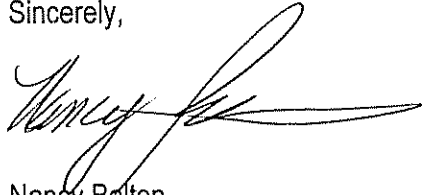
- Increase the 2011 cost of the program by \$ (b)(4)
- Increase employee premiums by (b)(4) over the 2010 amount;
- Increase Fresh Express premiums by (b)(4) over the 2010 budgeted amount,
- Increase employee premiums (b)(4) under a reinsurance option;
- Increase employee premiums (b)(4) under an insured UABT plan with an HHS approved waiver.

Clearly, the continuation of the existing Fresh Express self-funded program is the most effective option for providing affordable, quality health care to the more than (b)(4) members covered under the plan.

However, in order to ensure the future financial solvency of the plan and maintain the lowest possible employee premiums a waiver of the restriction of the (b)(4) annual maximum is needed.
(b)(4)

Fresh Express on behalf of the company, its employees and their labor organization respectfully request the Department of Health and Human Services review and approve this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy Belton", with a long horizontal flourish extending to the right.

Nancy Belton
Human Resources Business Partner and
Plan administrator for the Fresh Express Health and Welfare Plan



October 15, 2010

James Mayhew
Department of Health and Human Services
Office of Consumer Information and Insurance Oversight, Office of Oversight

Re: Waiver of Annual Limit Requirement of PHS Act Section 2711
Fresh Express Incorporated Health and Welfare Plan

Dear Mr. Mayhew,

This letter shall serve as attestation to the following facts and information in support of the Fresh Express Incorporated Health and Welfare Plan submission for waiver of the annual limit requirements of PHS Act Section 2711:

- The Fresh Express Health and Welfare Plan which includes a (b)(4) annual maximum benefit was in force prior to September 23, 2010;
- The application of restricted annual limits to the Fresh Express Health and Welfare Plan would result in a significant increase in premiums paid by both the employees covered under the plan and Fresh Express Incorporated as the plan sponsor;
- The application of restricted annual limits to the Fresh Express Health and Welfare Plan would result in a significant decrease in access to benefits for those employees currently covered under the Fresh Express Health and Welfare Plan.

Fresh Express Incorporated requests HHS, Office of Consumer Information and Insurance Oversight approve the request for waiver of the annual limit requirement for the plan year January 1, 2011 through December 31, 2011.

Respectfully submitted,

Nancy Belton
Human Resources Business Partner and
Plan Administrator for the Fresh Express Incorporated Health and Welfare Plan

Pages 5 through 47 redacted for the following reasons:

(b)(4)

From: Nancy Belton [NBelton@chiquita.com]
Sent: Monday, October 18, 2010 7:29 PM
To: HHS HealthInsurance (HHS)
Subject: Waiver

Attachments: HHS Waiver Application documents.pdf
Mr. James Mayhew
Department of Health and Human Services

Dear Mr. Mayhew:

Please accept the attached application for your consideration. The document includes the following:

- Application
- Attestation
- Cost exhibits
- Union support of Waiver
- Our Plan's SPD
- And, the last page is the page from our current Bargaining Agreement regarding Health and Welfare costs.

If I can be of further assistance, please feel free to contact me at 831-770-7625.

Thank you.

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FRESH EXP:000006

From: Nancy Belton [NBelton@chiquita.com]
Sent: Sunday, November 07, 2010 2:27 PM
To: Scelzo, Kathleen (HHS/OCIIO)
Cc: Habit, Sandra (HHS/OCIIO)
Subject: RE: Fresh Express Waiver Application

Attachments: Fresh Express Waiver Application Questions - response.doc

Kathleen,
I received both your phone message and this message including the request for completion of the attached document. Thank you for your diligence in your efforts to process our application and we welcome any opportunity to clarify or expand on it as needed. If you have further questions, please feel free to contact me at your earliest convenience.
Thank you again,
Nancy Belton

From: Scelzo, Kathleen (HHS/OCIIO) [mailto:Kathleen.Scelzo@hhs.gov]
Sent: Thursday, November 04, 2010 8:46 AM
To: Nancy Belton
Cc: Habit, Sandra (HHS/OCIIO)
Subject: Fresh Express Waiver Application
Importance: High

Nancy Belton,
I left you a message yesterday about Fresh Express' applications for Annual Limits Requirements of the PHS Act Section 2711. Attached above is the document that needs to be completed in order to finalize the application process.

Many thanks for your assistance with this document.

Kathleen M. Scelzo, RN, MSN
Rules Compliance Division
Office of Insurance Oversight
Office of Consumer Information and Insurance Oversight (OCIIO)
Department of Health and Human Services
7501 Wisconsin Avenue
Bethesda, MD
301-492-4121

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FRESH EXP:000007

From: Botwinick, Alexandra (HHS/OCIIO)
Sent: Monday, November 15, 2010 9:40 AM
To: 'NBelton@chiquita.com'
Subject: Waiver of the Annual Limits Requirements of PHS Act Section 2711

Importance: High

Attachments: Updated Jan 1 Approval Letter .pdf
Ms. Belton,

Thank you for submitting an application for a Waiver of the Annual Limits Requirements of the PHS Act Section for Fresh Express. HHS has reviewed your application and made its determination. Please see the attached letter.

Please confirm receipt of this letter by replying to this e-mail address with a copy to OCIIOoversight@hhs.gov.

Please let me know if I can be of further assistance.

Sincerely,

Alexandra Botwinick

Office of Oversight
HHS/OCIIO
alexandra.botwinick@hhs.gov

FRESH EXP:000008

From: Scelzo, Kathleen (HHS/OCIO)
Sent: Thursday, November 04, 2010 11:46 AM
To: 'Nbelton@chiquita.com'
Cc: Habit, Sandra (HHS/OCIO)
Subject: Fresh Express Waiver Application

Importance: High

Attachments: Fresh Express Waiver Application Questions.doc

Kathy Madden,

I left you a message yesterday about Fresh Express' applications for Annual Limits Requirements of the PHS Act Section 2711.

Attached above is the document that needs to be completed in order to finalize the application process.

Many thanks for your assistance with this document.

Kathleen M. Scelzo, RN, MSN
Rules Compliance Division
Office of Insurance Oversight
Office of Consumer Information and Insurance Oversight (OCIO)
Department of Health and Human Services
7501 Wisconsin Avenue
Bethesda, MD
301-492-4121

FRESH EXP:000009

November 4, 2010

Dear Applicant:

RE: Fresh Express:

Thank you for your application for the Waiver of the Annual Limits Requirements of the PHS Act Section 2711. In order to complete your application, please provide the following information about the Fresh Express Plan:

1. Provide the number of individuals covered by the plan to include dependents.
2. Annual limits of the policy.
3. (The premium amounts is the total cost to the employer and the employee)

	Premium (current level)	Premium (renewal)	Premium (if \$750,000 annual limit was applied)	% increase if the \$750,000 was implemented
EE				
EE + Child (if applicable or other appropriate tier)				
EE + Spouse (if applicable or other appropriate tier)				
Family (if applicable or other appropriate tier)				

Please provide this information by 5:00 pm, Monday November 8, 2010. We look forward to receiving your completed application. Thank you.

Sincerely,

Kathleen M. Scelzo, RN, MSN
Rules Compliance Division
Office of Insurance Oversight
Office of Consumer Information and Insurance Oversight (OCIIO)
Department of Health and Human Services
301-492-4121

November 4, 2010

Dear Applicant:

RE: Fresh Express:

Thank you for your application for the Waiver of the Annual Limits Requirements of the PHS Act Section 2711. In order to complete your application, please provide the following information about the Fresh Express Plan:

1. Provide the dependents.

(b)(4)

2. Annual limit

(b)(4)

per member annual limit

3. (The premium amounts is **ost to the employer and the employee**)

	Premium (current level)	Premium (renewal)	Premium (if \$750,000 annual limit was	% increase if the \$750,000 was implemented
EE				
EE + Child (if applicable or other appropriate tier)				
EE + Spouse (if applicable or other appropriate tier)				
Family (if applicable or other appropriate tier)				

(b)(4)

¹Total annual pla

Please provide this information by 5:00 pm, Monday November 8, 2010. We look forward to receiving your completed application. Thank you.

Sincerely,

Kathleen M. Scelzo, RN, MSN
Rules Compliance Division
Office of Insurance Oversight
Office of Consumer Information and Insurance Oversight (OCIIO)
Department of Health and Human Services
301-492-4121

From: Nancy Belton [NBelton@chiquita.com]
Sent: Monday, November 15, 2010 12:12 PM
To: Botwinick, Alexandra (HHS/OCIIO)
Cc: OCIIO Oversight
Subject: RE: Waiver of the Annual Limits Requirements of PHS Act Section 2711

[Alexandra Botwinick](#),

[Thank you for your prompt response to our application. The approval is truly good news for our employees at Fresh Express.](#)

[Nancy Belton](#)

From: Botwinick, Alexandra (HHS/OCIIO) [mailto:Alexandra.Botwinick@hhs.gov]
Sent: Monday, November 15, 2010 6:40 AM
To: Nancy Belton
Subject: Waiver of the Annual Limits Requirements of PHS Act Section 2711
Importance: High

Ms. Belton,

Thank you for submitting an application for a Waiver of the Annual Limits Requirements of the PHS Act Section for Fresh Express. HHS has reviewed your application and made its determination. Please see the attached letter.

Please confirm receipt of this letter by replying to this e-mail address with a copy to OCIIOoversight@hhs.gov.

Please let me know if I can be of further assistance.

Sincerely,

Alexandra Botwinick

Office of Oversight
HHS/OCIIO
alexandra.botwinick@hhs.gov

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FRESH EXP:000014



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Consumer Information and
Insurance Oversight
Washington, DC 20201

Date: October 2010

From: Steve Larsen, Director, Office of Oversight 

Subject: Application for Waiver of the Annual Limits Requirements of PHS Act Section 2711

Dear Waiver Applicant:

Section 2711(a)(2) of the Public Health Service Act (PHS Act), as added by the Patient Protection and Affordable Care Act (Affordable Care Act), requires the Secretary to impose restrictions on the imposition of annual limits on the dollar value of essential health benefits (as defined in section 1302(b) of the Affordable Care Act) for any participant or beneficiary in a new or existing group health plan or a new policy in the individual market for plan or policy years beginning on or after September 23, 2010 and prior to January 1, 2014. Specifically, the Secretary is granted the authority to determine what constitutes a "restricted annual limit" that can still be imposed under such plans or policies prior to January 1, 2014.

The interim final regulations published on June 28, 2010 (codified at 26 CFR § 54.9815-2719T; 29 CFR § 2590.715-2719; and 45 CFR § 147.126) established such restricted annual limits. The regulations also provided that these restricted annual limits may be waived by the Secretary of Health and Human Services (HHS) if compliance with the interim final regulations would result in a significant decrease in access to benefits or a significant increase in premiums. Pursuant to the regulation, HHS issued guidance on September 3 regarding the scope and process for applying for a waiver.

The Office of Consumer Information and Insurance Oversight, Office of Insurance Oversight received and processed your application for the plan(s) or policy(ies) year beginning January 1, 2011. We have determined that your application has met the criteria to obtain a waiver of the restricted annual limits requirements because compliance with the interim final regulations would result in a significant decrease in access to benefits for those currently covered by such plans or policies, or a significant increase in premiums paid by those covered by such plans or policies. To the extent you make any change to your benefit package after March 23, 2010, you must determine whether the change(s) will trigger loss of grandfathering status pursuant to 45 CFR § 147.140(g)(1).

An approval of your request for waiver of the restricted annual limits requirements granted under this process applies only to the annual limit(s) provided in your application for the plan or policy year beginning between September 23, 2010 and September 23, 2011. This waiver only applies to the annual limits requirements in Section 2711 of the ACA and does not apply to any other requirement of the Affordable Care Act, ERISA, the IRS Code or the PHS Act. Further, a group

health plan or health insurance issuer must reapply for any subsequent plan or policy year prior to January 1, 2014 when this waiver expires in accordance with future guidance from HHS. HHS may modify this waiver approval process memorandum and other relevant information.

If you have any questions regarding this letter, please email OCIIOOversight@hhs.gov.