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File Corruption in July 2019 Request for Applications for Alternative Treatment Centers (ATCs)

Background: On or about July 1, 2019, the Department of Health released a Request for Applications (RFA) for up to twenty-four new Alternative Treatment Centers, with up to 5 being cultivation permit endorsements, up to 15 being dispensary endorsements, and up to 4 being vertically integrated permits (cultivation, manufacturing and dispensing).

Applications were due by the following dates/times:

Dispensary Applications: 8/21/2019 at 3 PM EST

Cultivation and Vertically Integrated Applications: 8/22/2019 at 3 PM EST

The application was made up of four different components:

Application Cover Sheet – affidavits, waivers and releases to be signed on behalf of the applicant.

Application Part A – A fillable form, created by the Department, containing all the mandatory information to be submitted as part of the application.

Personal History Disclosure – A fillable form, created by the Department, to be completed by applicants and attached to the Part A form, or printed and submitted with the application.

Application Part B – A single .pdf for each endorsement to be created by the Applicant that contained responses for every scored criterion and measure. Cultivation and Dispensary applications only required one Part B, while Vertically Integrated Applications required 3 Part Bs (Cultivation, Manufacturing, Dispensing).

The RFA provided for two methods of submission, electronic and hard copy, though encouraged electronic submission as it would reduce administrative burden in processing the applications for review.

If submitting electronically, applicants were instructed to utilize an online submission form easily accessible on the Department's website.

If submitting via paper/hard copy, applicants were instructed to deliver one full copy of their application prior to the relevant deadline(s).

Every applicant regardless of submission method had to deliver the application cover sheet and checks to the Department prior to the deadlines.

The Department had a dedicated email address for questions and issues related to the RFA (mmpquestions@doh.nj.gov) that was being constantly monitored by at least one staff member prior to the deadlines, and up to three staff members on both submission days. Additionally, the Division of Medicinal Marijuana customer service unit was available from 8 AM – 5 PM on weekdays during the submission period and on both submission deadlines to receive calls and route them in order to receive appropriate answers.

The Department received 196 timely application submissions.

Following application submission, applications were processed and copied to the Department's secure cloud server where they could be stored and reviewed, and the Department began conducting a completeness review to ensure each application was responsive to every mandatory requirement.

During the completeness review, the Department found several applications that contained one or files that were inaccessible to reviewers and that made reviewing them impossible. In total, 15 applications were affected by corrupted/inaccessible files, though 6 also submitted paper copies of required documents. Of the inaccessible files, one application included .zip files which according to Adobe's own FAQs, are unopenable if used as an attachment to a .pdf, and the others had files that were unreadable due to file corruption.

Additionally, on or about August 27, 2019, an applicant ([REDACTED]) sent a memo to the Department claiming that their files attached to the Part A form had become corrupted prior to submission and that because of that file corruption, they failed to submit on time. [REDACTED] claimed they discovered the corruption close to noon on 8/22 (three hours prior to the deadline) but didn't contact the Department until 5 days later, on 8/27.

Immediately, the Department's Office of Health Information Technology (HIT) conducted a review of the submission system for the RFA, the forms themselves, and the corrupted files to determine whether or not they could be fixed, and whether or not the file corruption was caused by the submission process itself.

Based on this review, the Department determined the following:

- 1) File corruption occurred prior to submission by the applicants.

- 2) The electronic submission process did not cause the file corruption, and was functioning properly throughout the open application window.
- 3) Even if applicants experienced an error with Form Part A it was most likely related to the use of certain software, or a software error, and not the form itself. For example, one applicant used .zip files when .zip files are blacklisted and unopenable as attachments by Adobe software due to potential security threats (see: <https://www.adobe.com/devnet-docs/acrobatetk/tools/AppSec/attachments.html>).
- 4) Because the file corruption happened prior to submission, had applicants checked their work, they would have noticed the corruption and could have utilized several methods to contact the Department and arrange for timely submission prior to the deadlines.
- 5) The corrupted/inaccessible files were not recoverable.

Based on those determinations, and the fact that the vast majority of applicants submitted successfully and did not experience any technical issues, the Department disqualified nine applicants with corrupted or otherwise inaccessible mandatory files as they were inaccessible and therefore unreviewable. Six applicants with corrupted files were moved forward to scoring because they submitted paper copies of the required documents.

The Forms: There were three forms associated with the RFA, two of which were fillable and one which was meant to be printed and signed by hand. Both the Part A form and the Personal History Disclosure form were originally created using Adobe Acrobat Pro for the July 2018 RFA. It's worth noting that there were no problems with file corruption in 2018.

There were only six notable changes made to the forms for the July 2019 RFA:

1. Question 5 on Part A was updated to reflect the 2019 opportunity, and functionality was added to allow applicants to easily copy the text contents of the new 5a to the new 5b if they were identical.
2. Question 13 on Part A was updated to reflect the 2019 opportunity, and the layout was edited.
3. The Department instituted a 150 mb size limit to Part A.
4. Part A was updated to work with older versions of Adobe Reader ("reader-enabling").
5. Part B was no longer included as a form. Instead applicants were instructed to create a single .pdf to be submitted as Part B.

Otherwise the forms, including Part A, were the same as the forms from 2018. Importantly, the attachment function was the same attachment function – the default attachment function – used in 2018.

Following the edits to the form, the updated Part A form was tested to ensure its functionality. The only issue found during testing was related to file size – when loaded

with excessively large attachments (in excess of 500 mega-bytes), the form took considerable time to save. The form showed no issues saving at or below the 150 mb file size limit.

After testing, the form was reader-enabled to allow functionality with previous versions of Adobe Reader and uploaded to the RFA website. The forms were uploaded on or about July 15, 2019.

During the week July 29, 2019, the Department received several emails to mmpquestions@doh.nj.gov stating that the “Add Page” function on the Part A form was not working. The Department immediately reviewed the Part A form and found that the “reader-enabling” had inadvertently disabled the add page function in the form.

The Department immediately corrected the form, re-enabling the ability to add pages, and re-tested the form to ensure it’s functionality. Again, the form proved to be totally functional except that at excessive file sizes (above 500 mbs) it took considerable time to save. All other features tested to be functional, and saving was quick when at or below the 150 mb file size limit.

On August 2, 2019, the Department uploaded the fixed Part A form, and posted a notice prominently on the RFA website that directed applicants to download the new form.

From August 2 to the submission deadlines, the Department received no further correspondence nor any questions in regard to legitimate technical errors with the Part A form itself (some emails were received related to user error with the form).

Online Submission: For the July 2019 RFA, the Department utilized the same online submission software as utilized in the July 2018 RFA. The application – called NoviSurvey – allows for both the collection of structured data and the upload of large files.

The Department chose to use the same application in 2019 because it was employed successfully and without issue in the 2018 RFA. In 2018 Applicants experienced longer upload times closer to the deadlines, but the application was operational successfully accepting uploads all the way until the deadline.

In 2019, the Department updated the NoviSurvey forms to accommodate the changes to the RFA and created three different submission portals – one for cultivation, one for vertically integrated, and one for dispensaries – whereas in 2018 there was only one portal.

Again, in 2019, the NoviSurvey application successfully accepted uploads throughout the application window(s) and experienced no outages, though upload times became longer as more applicants tried to submit all at once closer to the deadlines.

Importantly, the Department advised in both RFAs:

“Any application received after the deadline shall not be reviewed by the Department. The Department encourages all applicants to submit their applications as early as possible.”

Paper Submission: In addition to online submission, applicants were given the option to submit in hard copy/paper format. The Department made sure that paper submission was as simple as online submission – applicants were instructed to submit only one paper copy, whereas in 2018 they were required to submit 10 paper copies.

Although the Department encouraged online submission, paper submission was an option for any applicant that experienced issues with the electronic submission method.

Several applicants submitted both electronically and via paper.

Post-Submission Review: After the Department discovered the applications with corrupted files, the Department’s Office of Health Information Technology undertook a review of the affected applications, the Part A form, and the online submission system.

This review included:

- Attempts to open all the corrupt/inaccessible files, and determine what may have happened to corrupt them.
- Coordination with Adobe Support to try and open the files, and determine what may have happened to make them inaccessible.
- Attempts to recreate the file corruption.
- Review of online submission data and application for any evidence of problems or outages.
- Review of communications to the RFA email address for evidence of technical issues with the Part A form.
- Review of full pool of applications for any other issues.

The results of the review were that:

- The files were totally inaccessible and unable to be opened.
- The Department was unable to recreate the problem.
- There was no evidence of problems with the online submission application, no evidence of outages with the online submission application, and the NoviSurvey application itself was incapable of causing the type of corruption seen in the files (if NoviSurvey caused the corruption all of the files would be corrupted/inaccessible, not only the Part A attachments).
- Because the Part A form only used the default attachment function of Adobe, if applicants experienced problems it was end-user caused or software related.
- According to Adobe Support, following review of an inaccessible file and the form: “There could be many reasons for [file corruption] and most common is the involvement of 3rd party PDF APIs.”

The Office of Health Information Technology's final determination regarding the inaccessible files was:

“Since [the Part A form] was successfully completed by the majority of the vendors, the issue cannot be pointed to the form itself and it was caused by the end user who attached the documents or the sender that send [sic] the attachments to the submitter to attach to the form. If there was an issue with the form, it would have been for 100% of the users and would have been widespread. We also only used the default attachment behavior of Adobe to add the attachments, so the issue would have been with the Adobe software, not with the form.” (October 24th email)

In reviewing the full pool of applications and communications regarding the RFA, the Department also considered the August 27th memo from ██████████, which stated it discovered file corruption prior to submission, and a flash drive submitted by one of the applicants that contained the Part A application with corrupted files attached. Both pieces of evidence supported that the file corruption issue took place prior to online submission and was not caused by the NoviSurvey submission portal. The files on the flash drive never went through the online portal – they were hand delivered to the Department -- but were nonetheless corrupt and unreadable. Furthermore, ██████████ asserted by their own admission that the file corruption happened prior to submission. Finally, the submission of .zip files by one of the applicants disqualified for inaccessible files supported the likelihood that the inaccessibility of files was caused by user error – the applicant attached a file type that is unopenable when attached to a .pdf form.

Determination: Based on the post-submission review, the Department determined that the 9 applications that had corrupted or otherwise inaccessible files and had no corresponding paper files for Part A should be disqualified for being non-responsive because:

1. The Department was unable to access mandatory requirements related the ATC application, and therefore was unable to assess them for responsiveness;
2. There was no evidence of problems with the online submission portal, no evidence of outages, and the system itself was determined to be incapable of causing the type of file corruption present in the Part A files;
3. The file corruption occurred prior to submission;
4. The file corruption was determined by the Office of HIT to be caused by the end-user (whether knowingly or not);
5. The applicants affected by the file corruption had both the opportunity to submit in paper and/or to contact the Department prior to the deadline to troubleshoot any technical issues;
6. The Department received no communication from the affected applicants prior to the submission deadline(s); and

7. Both the Part A form and the submission portal were tested and found reliable prior to the submission deadlines.

Furthermore, applicants were instructed of the following in the RFA posted on July 1, 2019:

“Applicants must download the free program, “Adobe Acrobat Reader,” to properly fill out the Part A form and attach the necessary documents. The program can be downloaded via Adobe’s website at <https://get.adobe.com/reader/>.

Applicants should e-mail all written questions or requests for clarification regarding this announcement or the application process to: mmpquestions@doh.nj.gov, with “RFA Question” in the subject line. The Department shall accept questions regarding the RFA up until July 26, 2019. After July 26, 2019, the Department shall only accept and respond to technical questions regarding the application form and submission process.

The deadlines for receipt of application materials, which include the full application, checks and cover sheet, filed in response to this announcement are absolute. Only complete and timely received applications shall be reviewed. Applications received after the deadlines shall NOT be accepted.

Any application received after the deadline shall not be reviewed by the Department. The Department encourages all applicants to submit their applications as early as possible.”

The Department made clear what software should be used to achieve successful results with the Part A form, provided a mechanism for applicants to submit technical questions and issues prior to the deadline, and made clear that deadlines were absolute.

Conclusion: The disqualification of the nine applications with corrupted/inaccessible Part A files was reasonable, fair, and consistent with the requirements and specifications of the RFA.

Because the submission forms were functioning properly, the vast majority of applicants did not have issues with file corruption, and because all applicants were given several easy avenues to submit their applications, the disqualifications are consistent and reasonable. To have allowed the affected applicants to re-submit after the deadline would have given them more time and potentially given them an unfair advantage over the applicants that submitted everything successfully.

Therefore, the Department issued all nine applicants Final Agency Decision letters on November 18, 2019 formally disqualifying them from the July 2019 RFA for being unresponsive to one or more mandatory requirements.