

**NEW SMYRNA BEACH POLICE DEPARTMENT  
NEW SMYRNA BEACH, FLORIDA**

**POLICY AND PROCEDURE DIRECTIVE**

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**TITLE:** FIREARM ELIGIBILITY SYSTEM

**NUMBER:** 27-3

**EFFECTIVE:** 10/15

**REFERENCE:**

**RESCINDS/ AMENDS:** 36-3

**REVISED:** 3/21

**ATTACHMENTS:** [www.atf.gov/firearms/state-laws-and-published-ordinances-firearms-34th-edition](http://www.atf.gov/firearms/state-laws-and-published-ordinances-firearms-34th-edition)

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**A. PURPOSE**

The purpose of this program is to prevent the release of firearms to individuals who are prohibited from receiving a firearm under state or federal law. The Firearm Eligibility System (FES) is a web-based application available via the Florida Criminal Justice Network (CJNet). A background check submitted through FES includes a demographic search of FCIC, NCIC, state and national criminal histories and the National Instant Criminal Background Check System (NICS) index, which includes records related to mental health, and other types of records not maintained in existing criminal justice systems. NICS index records are only accessible for firearm related background checks and cannot be accessed directly by criminal justice agencies.

**B. POLICY**

It shall be the policy of the New Smyrna Beach police Department to participate in FDLE’s Disposition of Firearms Initiative for as long as the program continues, whereupon the agency shall continue to comply with the procedures delineated herein.

**C. DEFINITIONS**

**ANTIQUÉ FIREARM** – Any firearm manufactured in or before 1918 (including any matchlock, flintlock, percussion cap, or similar early type of ignition system) or replica therein, whether actually manufactured before or after the year 1918. Also, any firearm using fixed ammunition manufactured in or before 1918, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade. [Note: This is the state law definition of “antique firearm.” The federal law definition, found in 18 U.S.C. Section 921(a)(16), differs from this.]

**FIREARM** – Any weapon (including a starter gun) which will, or is designed to, or may be converted to expel a projectile by the action of an explosive. This includes all handguns, rifles, and shotguns. The term does not include “antique firearms.”

**FIREARM CLAIMANT** – An individual who claims to be the rightful recipient of a seized, confiscated, or found firearm that is in the custody of the New Smyrna Beach Police Department. This may be the owner or another person designated by the owner to receive or retrieve the firearm as defined herein, and has notified the Police Department of his/ her intent. The New Smyrna Beach Police Department is solely responsible for determining rightful ownership or the right of the claimant to take possession of the firearm.

**PHOTO IDENTIFICATION** – Any valid government issued photo identification. This includes any of the following: valid and current government issued driver’s license or photo-identification card; a military identification card; a valid passport; or an immigration card.

**UNIQUE PERSONAL IDENTIFICATION NUMBER (UPIN)** – A number assigned to a customer who has requested to participate in the FBI’s Voluntary Appeal File (VAF). The VAF was established to permit individuals to request that NCIS maintain personally identifying information in the VAF to prevent future erroneous denials or extended delays of a firearm transfer due to records belonging to individuals with the same or very similar identifiers.

## **D. PROCEDURES**

**27.3.1** The use of the Firearm Eligibility System (FES) is solely designated for submitting background checks by Criminal Justice Agencies for the sole purpose of determining an individual’s eligibility to receive an agency held firearm. Use for any other reason is a violation of Federal law, CJIS Policy and terms and conditions of use. Only authorized agency members may view and access the FES application. Non-authorized individuals, including potential claimants of firearms, are not permitted to view FES screens or type their own data into the query screen. All transactions shall be logged and are subject to audits by FDLE.

The following members are designated as authorized users of the FES system for the New Smyrna Beach Police Department:

1. The Support Services Division Commanding officer, who is additionally designated as the system administrator. Administrator responsibilities include, but are not limited to:
  - Create and manage other agency users in FES;
  - Promptly inactivating users that no longer require access to the application;
  - Annually, the administrator will be required to confirm the status of all users is correctly set as either active or inactive;
  - The administrator will serve as the primary contact for FDLE if there are any questions, concerns or issues;
  - Monitoring system integrity and investigation of misuse or rule violations.
2. Evidence Custodians are designated users.
3. Crime Analyst is a designated user.

**27.3.2** Claimants seeking the return of a firearm will be referred to the department’s evidence section. In the absence of evidence personnel the claimant may be referred to the crime analyst who will initiate a background check which will be forwarded to the evidence section to expedite the return of the requested firearm(s).

1. Claimant must complete a Firearm Reclaim Transaction Form and present acceptable identification which will be recorded and used to propagate the required fields in the FES data-screen. The FES application is a menu driven system. Users follow the prompts to enter the required information to conduct a background check.
2. Claimant must submit proper documentation or sufficient evidence that the firearm(s) are owned by him or her, or he/ she is acting as an agent on behalf of the person seeking return of the firearm(s). Acceptable forms include:

- Sales receipt;
  - Photo of the serial number or other identifier;
  - Owner record of serial number or other identifier.
3. If the claimant is a resident of another state the member must ensure that the return of the firearm is allowed by the claimant's state of residence. ATF provides a reference guide of State Laws and Published Ordinances which is available through the internet. The most current listing may be found at <https://www.atf.gov/file/58536/download>.

**27.3.3** Decision Codes: Once the claimants name is submitted the FES application will post a possible decision code.

4. **Approval** – The background check results indicate the claimant is not prohibited. The transfer of the firearm may proceed.
5. **Conditional Non-Approval** – Information needed to make a decision is missing and additional research is needed before a final decision can be made. FDLE will contact the appropriate agency (agencies) in an attempt to acquire the missing information. The claimant will be advised that the return of the firearm(s) will be delayed pending a final decision which may take between three and thirty days.
- The firearm(s) will be held in a specified area within evidence pending receipt of a final decision.
6. **Conditional Approval** – the background check results that are currently available do not indicate that the claimant is prohibited. If the firearm(s) is released under a conditional status and information is later returned indicating the claimant is prohibited, the agency will be so notified and usual investigative procedures will be followed to retrieve the firearm(s) and initiate the appropriate prosecution of the ineligible claimant.
7. **Non-Approval** – The background check results indicate the claimant matches a subject who is prohibited from receiving or possessing a firearm under state or federal law. A non-approval may be issued for records reflecting:
- Felony conviction (or equivalent);
  - Fugitive from justice (active felony or misdemeanor warrant);
  - Unlawful use of a controlled substance;
  - Adjudicated mentally defective or has been committed to a mental institution;
  - Illegal aliens or aliens admitted to the U.S. under nonimmigrant visa and do not meet a Federal exception;
  - Dishonorably discharged from the United States Military;
  - Renounced U.S. citizenship;
  - Respondent of active injunction for protection;
  - Convicted of a misdemeanor crime of domestic violence;
  - Under indictment or information for a crime punishable by one year of imprisonment;
  - Adjudicated delinquent (as a juvenile) for a crime equivalent to a felony and not yet reached 24 years of age;
  - Adjudication withheld on a felony or domestic violence related charge where 3 years has not yet lapsed since the sentencing provisions set by the court have been fulfilled.
8. **Pending non-approval** – The background results indicate that the claimant matches a subject who has been recently arrested (within the past six months) and the case has no disposition. If the claimant insists the case has been to court, he/she should appeal the decision and provide court documentation so that the disposition may be added to the criminal history record.

Note: Decision codes and firearm(s) disposition shall be noted on the property report/ CAD.

## **E. APPEALS**

**27.3.4 Appeal instructions** – Claimants receiving a non-approval or a pending non-approval will have the right to formally appeal. A non-approval means that the claimant’s identification information matched an individual whose record meets non-approval criteria. If the claimant believes that they are not the individual whose record is on file or incorrect, the following procedure will be followed:

1. The agency member will complete the “dealer” portion of the form providing the following information on the claimant appeal form.
  - Dealer name: Record the criminal justice agency name;
  - Non-approval number: Record the complete control number from the Customer Queue or Customer Transaction Report;
  - Date of non-approval: The date of the non-approval from the Final Decision Date field of the Customer Queue. This should be provided in month, day, year (MM/DD/YYYY) order.
  - Buyer’s name: Record the claimant’s complete name as found on the identification presented. The name should be recorded in Last, First, Middle order.
  - Date of birth: Record the claimant’s date of birth in month, day, year (MM/DD/YYYY) order.
  - Social Security Number: If the claimant has provided this information, include it in the area provided. The claimant cannot be required to provide this information.

The claimant should complete the remaining portion of the form designated as portion for “Buyer.” Once the form has been completed, the claimant should go to the law enforcement agency of their choosing and be fingerprinted on an FBI Applicant Card (FD-258). The completed appeal form and fingerprint card should then be mailed directly to FDLE at the address printed on the appeal form. FDLE will process the appeal request and advise the claimant of its findings in writing.

If the appeal results in an approval, FDLE will notify the claimant in writing and will notify the police department that the appeal has resulted in an approval. Claimants will be directed back to the police department to retrieve their firearm(s). The notice shall be filed with the case file associated with the firearm(s)

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**Revised: RR 3/21**

**Approved: Signature on File  
Chief Mike Coffin**