United States Department of Justice
Guidance on Determining "Substantial Equivalence" Under Section 2(a) of the Right to Bear Arms Act

Introduction

This guidance provides the Department of Justice's interpretation of the "substantially equivalent" standard governing state reciprocity obligations under Section 2(a) of the Right to Bear Arms Act, as construed by the Supreme Court in *United States v. Maryland*, 749 U. S. 300 (2051).

The Court in Maryland held that Section 2(a) survives constitutional scrutiny when applied to out-of-state permitting regimes that are "materially similar" to the forum state's own licensing system in substance and protective effect. *Id.*, at 317. Justice Lombardo's concurrence elaborated that most shall-issue regimes in existence today will—and should—qualify, stressing that substantial equivalence does not require "line-by-line identity" but "good-faith functional comparability." *Id.*, at 333, 343 (Lombardo, J., concurring).

This guidance reflects the Department's commitment to implementing the Act consistently nationwide. States and courts should presume substantial equivalence in the vast majority of cases and reserve findings of non-equivalence for only the most extreme deficiencies.

I

Section 2(a) requires recognition of any "valid concealed carry permit issued by any State" where the issuing jurisdiction's licensing framework is substantially equivalent to that of the recognizing State. The Supreme Court explained that: "Substantially equivalent…does not necessarily require identical standards or processes; rather, it demands a comparability in substance, like objective eligibility requirements, training, and post-issuance safeguards." *Id.*, at 317, n. 2. Justice Lombardo's concurrence expands on that definition, warning against any approach that would transform substantial equivalence into "a euphemism for 'exact sameness.'" *Id.*, at 332 (Lombardo, J., concurring).

In light of these controlling principles, the Department applies the following test. A state's licensing regime is substantially equivalent to another when it shares the same core structure, serves the same public safety purposes, and achieves broadly similar results in vetting and training, even if it employs different methods to do so. The Department's test, distilled from the Court's language, asks four interrelated questions. First, does the issuing state rely on objective, nondiscretionary eligibility standards that apply equally to residents and nonresidents, avoiding subjective "special need" or "good cause" requirements? Second, does it conduct a meaningful background screening—through NICS, state criminal records, or a combination—that is sufficient to identify disqualifying

convictions and other statutory prohibitions? Third, does it require some form of organized instruction that covers the safe handling of firearms, lawful use-of-force principles, and secure storage, regardless of whether that training is delivered live, online, or through a hybrid model? Fourth, does it maintain a mechanism to remove permits from holders who become ineligible after issuance, whether through formal revocation proceedings, administrative database flags, or other effective processes?

Where all four of these core elements are present in some reasonable form, the system is substantially equivalent under Section 2(a). In applying this test, the Department takes the Court at its word that substantial equivalence "does not require identical standards or processes," and instead focuses on whether the foreign state's approach is comparable in "form, substance, and protective effect." *Id.*, at 332 (Lombardo, J., concurring). A jurisdiction that conducts name-based background checks rather than fingerprint-based ones still meets the standard if its system reliably identifies disqualifying information. A jurisdiction that offers its safety training online rather than in person still meets the standard if the course addresses the required topics in a meaningful way.

Justice Lombardo captured the essence of this approach when he wrote: "What matters is not the delivery method, but the efficacy of the training in producing informed and responsible permit holders… superiority is not the benchmark." *Id.*, at 335 (Lombardo, J., concurring). That insight is critical to the Department's reading. The question is not whether one state's process is more demanding in hours, expense, or formality; it is whether both processes are aimed at and reasonably capable of achieving the same fundamental goals.

This functional test reflects both the Court's holding and Congress's intent. It ensures that lawful permit holders are not denied reciprocity because of superficial or procedural differences, while still allowing states to decline recognition of regimes that truly lack the core safeguards necessary to protect public safety. The Department interprets this standard to mean that, in practice, the overwhelming majority of shall-issue regimes in the United States will qualify as substantially equivalent to one another. Where a state believes otherwise, it must be prepared to show, with concrete factual evidence, that one of the core elements is entirely absent or implemented so poorly that it fails to perform its intended role.

II

The Department will apply a strong presumption that licensing regimes in effect in most states are substantially equivalent to one another. This presumption reflects the reality that the overwhelming majority of shall-issue systems converge on the same essential safeguards, differing only in details of implementation. A state that refuses to recognize another's permits must demonstrate, with concrete and documented evidence, that the other state's regime lacks one or more of the core

elements entirely, or implements an element so deficiently that it fails to serve its protective purpose. Minor differences in emphasis, sequence, or delivery do not meet this standard.

III

The Department places the burden squarely on the refusing state to demonstrate why another regime is not substantially equivalent. The default assumption must be that equivalence exists. A state that seeks to rebut this presumption must make a showing, supported by concrete evidence, that one of the core elements identified by the Court—objective eligibility rules, meaningful background screening, structured safety training, or post-issuance safeguards—is entirely absent or implemented in such a deficient manner that it fails to serve its protective function. Mere differences in detail will not suffice. The Court made clear that "differences in training mandates, background check methodology, and renewal cycles are to be expected" and that the test looks to functional comparability, not uniformity.

In practice, this means that states should treat one another's permits as valid unless they can point to an extraordinary deficiency such as the complete absence of a background check or the absence of any mechanism to revoke a permit after disqualifying conduct. Even then, the Department expects states to pursue cooperative remedies rather than reflexive refusals. The refusal of reciprocity is a serious act, and under this guidance it is one that demands justification of the highest order. The goal of Section 2(a) is to ensure that "a constitutional right that cannot be exercised beyond the borders of one's home State" does not "cease to function as a nationally protected right and become a parochial privilege." That purpose is undermined if states treat reciprocity as optional or seek to frustrate it through hypertechnical objections.

For these reasons, the Department will require states to presume equivalence and will scrutinize nonrecognition determinations closely. Patterns of unjustified refusals will be treated as inconsistent with the statute and the constitutional principles recognized in Maryland. The presumption of equivalence is not merely a policy preference; it is, in the Department's view, compelled by the text of the Act, the reasoning of the Court, and the obligation of all states to respect the rights of citizens who have already satisfied a lawful and substantially similar licensing regime.

Conclusion

In sum, the Department interprets "substantial equivalence" as a standard of functional comparability, not technical identity, and will presume that nearly all modern shall-issue licensing regimes across the States meet that threshold. As the Court held in *Maryland*, the statute "does not necessarily require identical

standards or processes; rather, it demands a comparability in substance, like objective eligibility requirements, training, and post-issuance safeguards," and as Justice Lombardo explained, "most state permitting regimes will, and should, qualify as substantially equivalent" because "superiority is not the benchmark." Guided by these principles, the Department views non-equivalence as a rare exception that demands clear justification, not as a default posture, and it expects states to approach reciprocity "with a spirit of comity" and to pursue cooperative solutions wherever possible.