COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-216218 November 30, 1984

The Honorable John D. Dingell
Chairman, Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

Your letter of August 7, 1984, requested our analysis of the legal authority for issuing and enforcing regulations requiring universal seat belt use by motorists traveling on federally-managed lands, particularly lands controlled by the Department of Defense (DOD) and the National Park Service. For the reasons indicated below, it is our opinion that such regulations are generally authorized.

The basic authority of the Federal Government to control activities on Federal land is contained in the Constitution. Article IV, section 3, clause 2, the Property Clause, confers upon the Congress the authority to make all "needful" rules "respecting" the public lands. This grant of authority is generally conceded to be the functional equivalent of the police power exercised by the states. Camfield v. United States, 167 U.S. 518, 525 (1897).

The constitutional power includes the authority to control all aspects of the use of public lands, not just the disposition of those lands or rules necessary to protect the lands themselves from damage. In Kleppe v. New Mexico, 426 U.S. 529 (1976), the Supreme Court upheld the Congress' authority to protect wild burros on public lands. Despite a conflicting state law which held that free-roaming animals were subject to seizure and auction sale by the state, the Court enforced the wild burro law. It found that the Property Clause and the Supremacy Clause conferred on the Congress basically unlimited power to manage the utilization of public lands and to regulate the behavior of the private parties who gain access to public lands.

The Congress has delegated this broad authority, as it applies to the national parks, to the Secretary of the Interior. The relevant statute reads in pertinent part:

> "The Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and

> reservations under the jurisdiction of the National Park Service, and any violation of the rules and regulations authorized by this section * * * shall be punished by a fine of not more than $500 * * *." 16 U.S.C. § 3 (1982).

This delegation doubtless encompasses the authority to require seat belt use by park motorists and to punish non-use with a fine, just as it authorized other regulations to promote the safety of park visitors. For example, in United States v. Brown, the Court upheld regulations prohibiting hunting or the possession of a loaded firearm in a national park. 552 F.2d 817 (8th Cir. 1977), cert. denied, 431 U.S. 949 (1977).

Although the authority to mandate seat belt use is clear when the United States exercises sole and exclusive jurisdiction over land, there is some question about the extent of that authority when jurisdiction is shared with a state. The issue is important because some Federal lands are traversed by state-built and maintained roads (see, e.g., 16 U.S.C. § 110 (1982) and 55 Comp. Gen. 1437 (1976)), and in others, such as Forest Service and BLM lands, Federal and state jurisdiction is concurrent.

In Colorado v. Toll, 268 U.S. 228 (1925), the State of Colorado sought an injunction to halt enforcement of a Rocky Mountain National Park regulation denying access to commercial operators transporting paying passengers. The lower court summarily denied the injunction. The Supreme Court reversed, holding that Colorado had a cognizable claim if the Federal statute creating the park did not assert jurisdiction over state roads in the park and if the state had not ceded jurisdiction to the Federal Government. The Supreme Court in Kleppe interpreted Colorado v. Toll as follows:

> "* * * [T]he case stands for the proposition that where Congress does not purport to override state power over public lands under the Property Clause and where there has been no cession, a federal official lacks power to regulate contrary to state law." 426 U.S. 544, n.12.

A mandatory seat belt use regulation clearly would not contravene existing state law. With the exception of New York, which has mandated use of seat belts, the states have not yet legislated on this aspect of automobile safety. Therefore, even where exclusive Federal jurisdiction is lacking, the Federal Government may require the use of seat belts on Federal land because no state law is thereby derogated. The situation alluded to in Colorado v. Toll could arise only if a state legislature passed a law banning seat belt use, which seems

unlikely. If, on the other hand, a state were to adopt a mandatory use law, a regulation requiring seat belts in the national parks within that state would be in accord with state law, not in conflict with it.

Safety of park visitors is a legitimate concern of the Secretary of the Interior. The authority to manage the national parks has already been used to set speed limits and make other safety regulations for roads in the national parks. See 36 C.F.R. Part 4 (1983). We see no legal reason why the Secretary could not, in his discretion, add a seat belt use regulation to traffic safety rules already in existence.

Exactly the same constitutional analysis explained above would also apply to DOD. Land acquisition for military use must be specifically authorized by law (10 U.S.C. § 2676(a) (1982)), and most often secures exclusive jurisdiction. Where exclusive jurisdiction exists, Camfield, cited above, leaves no doubt as to the United States' authority to exercise full legislative powers relating to land use, including the police power. We think the analysis concerning non-derogation of state law also applies equally to DOD held in proprietary jurisdiction.

Unlike the case of the National Parks, however, there is no comparable explicit statutory delegation to the Secretary of Defense of comprehensive authority to regulate land use and to impose fines for violations of its rules and regulations. Nevertheless, we would be inclined to infer such authority to the extent that exclusive jurisdiction over the land is vested in the DOD. The lack of an explicit statutory basis for the issuance of land use regulations should not be interpreted to impair the validity of existing DOD Instruction 6055.4 or the proposed revision of that Instruction agreed to by Secretary Weinberger on September 19, 1984.

Unless we hear otherwise from your office, this opinion will become available for public distribution 30 days from today.

Sincerely yours,

for Milton J. Socolar
Comptroller General
of the United States