

# DEPARTMENT OF PUBLIC SAFETY

## State Vehicle Use

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Findings and Recommendations  
For the Period July 1, 2014 through June 30, 2015

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Report No. 15-MAO-8S-A



OFFICE OF THE  
UTAH STATE AUDITOR

# **DEPARTMENT OF PUBLIC SAFETY**

## **State Vehicle Use**

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**AUDIT LEADERSHIP:**

John Dougall, State Auditor  
Van Christensen, CPA, CFE, Audit Director  
Julie Wrigley, CPA, CFE, Audit Supervisor



OFFICE OF THE  
UTAH STATE AUDITOR

**REPORT NO. 5-MAO-8S-A**

March 22, 2016

Col. Keith D. Squires, Commissioner  
Department of Public Safety  
4501 South 2700 West  
P.O. Box 141775  
SLC, Utah 84114-1775

Dear Colonel Squires:

We have performed a limited inquiry and analysis of the use of vehicles that are assigned to employees at the Department of Public Safety (DPS) and whether that use is in compliance with certain applicable State statutes, administrative rules, and DPS policies. The time period reviewed was July 1, 2014 through June 30, 2015. We performed the following procedures at DPS:

1. We reviewed various statutes, administrative rules, and the policies set by DPS governing state vehicle use and determined whether DPS is in compliance with certain of those regulations.
2. We analyzed vehicle use for a sample of employees who are allowed commute and take home privileges using data we collected and through interviews of employees.
3. We inquired about policies and procedures over "community cars" at DPS.

Our procedures were more limited than would be necessary to express an audit opinion on compliance or on the effectiveness of DPS's internal control or any part thereof. Accordingly, we do not express such opinions. Alternatively, we have identified the procedures we performed and the findings resulting from those procedures. Had we performed additional procedures or had we made an audit of the effectiveness of DPS's internal control, other matters might have come to our attention that would have been reported to you.

Our findings resulting from the above procedures are included in the attached findings and recommendations section of this report.

By its nature, this report focuses on exceptions, weaknesses, and problems. This focus should not be understood to mean there are not also various strengths and accomplishments. We appreciate the courtesy and assistance extended to us by the personnel of DPS during the course of the engagement, and we look forward to a continuing professional relationship.

If you have any questions regarding this report, please contact Van Christensen, Audit Director, (vchristensen@utah.gov or 801-538-1394) or Julie Wrigley, Audit Supervisor (801-538-1340 or jwrigley@utah.gov).

*Office of the Utah State Auditor*

Office of the Utah State Auditor

cc: Joseph Brown, Administrative Services Director, Department of Public Safety  
John Reidhead, Chief Financial Officer, DAS – State Division of Finance  
Jeff Mottishaw, Director, DAS – Division of Fleet Operations

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1. **LEGISLATIVE AUTHORIZATION FOR PERSONAL USE OF VEHICLES IS NOT CURRENTLY DOCUMENTED**

Utah Administrative Rule 27-3-5 indicates that personal use of state vehicles is not allowed without the authorization of the Legislature. We found no legislative authorization in either the current *Utah Code* or Administrative Rules for the Department of Public Safety's (DPS's) policy which allows most sworn officers to use its vehicles for personal use when off-duty. However, in 1999, the Legislature specified in House Bill 1, that "*it is the intent of the Legislature that the Division of Fleet in consultation with the Department of Public Safety develop policies and procedures related to personal use of the Highway Patrol vehicles by troopers. These policies and procedures should include provisions that allow for commute and other personal use of the vehicles.*" While it is clear that, in 1999, the Legislature intended to authorize personal use of the DPS vehicles, the authorization was not codified in law or rule and, therefore, it is not clear whether that authorization persists.

**Recommendation:**

**We recommend that DPS take the steps necessary to determine whether personal use of department vehicles is authorized by the Legislature and then take the necessary action to ensure that that authorization is codified in law or rule.**

**DPS's Response:**

*Senate Bill 183, recently passed in the 2016 General Session, indicates the following: "provides that the Commissioner of Public Safety may authorize the off-duty use of emergency vehicles." This statutory amendment to the Public Safety Code satisfies the recommendation of the auditor's office.*

2. **POSSIBLE IMPROPER EXCLUSION OF BENEFITS FROM INCOME**

DPS assigns a vehicle to most sworn officers and allows those officers to use the vehicles not only for commuting but also for other personal use. DPS maintains that both the commute and other personal use are exempt from fringe benefit income tax reporting in accordance with Administrative Code R27-3-8(1) which references *IRS Publication 15-B*. However, DPS may need to modify its policy to more closely conform to IRS guidance. The portion of *IRS Publication 15-B* referenced in the Administrative Code, is based upon *26 Code of Federal Regulations (CFR) Part 1* which provides additional clarifying guidance on when it is appropriate to exclude vehicle use from gross income as a fringe benefit. The pertinent criteria for exempting non-job related use of a vehicle from fringe benefit reporting as described in *26 CFR Part 1* is listed below for DPS's consideration.

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**Clearly marked public safety vehicles – 26 CFR Part 1 §1.274-5(k)(3) requires the following:**

- Agency policy must **require** the vehicle be used for commuting,
- Must be used by a police officer, fire fighter, or public safety officer,
- When not on a regular shift, the officer is on call at all times, and
- When using the vehicle for personal use, the officer must be legally authorized to respond to an incident or emergency.

DPS policy states that "...vehicles **may** be stored at home and used off-duty." We recognize that the use of the word "may" rather than "require" is likely to allow for a circumstance when commute use of the vehicle is not necessary to increase effectiveness. However, if the policy was modified to indicate that a supervisor or other authorized individual may "**require**" a vehicle to be used for commuting purposes to increase effectiveness and, in certain instances, the supervisor requires the vehicle to be used for commute purposes, it may more closely comply with IRS requirements.

DPS policy 202.2.5 indicates that a vehicle **may** be assigned to an individual when the "assignment will increase effectiveness." It further states that the officer "...**may** be subject to call on a 24-hour-a-day basis." We recognize that stating that the officer "**is on call**" could require additional compensation; however, if the policy stated that the officer "**is subject** to call on a 24-hour-a-day basis" the policy may more closely comply with IRS requirements.

DPS policy 202.2.4 regarding "Off-Duty Personal Use of Vehicles" and state laws regarding a public safety officer's legal authority and obligation to respond to an incident or emergency appear consistent with IRS requirements.

**Unmarked public safety vehicles – 26 CFR Part 1 §1.274-5(k)(6) requires the following:**

- Must be used by a law enforcement officer,
- "Personal use must be authorized," and
- "...must be incident to law-enforcement functions, such as being able to report directly from home to a stakeout or surveillance site, or to an emergency situation."

As noted in Finding No. 1, personal use of state vehicles is not allowed without the authorization of the Legislature. Obtaining clear authorization from the Legislature would allow for DPS to more closely comply with IRS requirements.

DPS policy 202.2.4 indicates that the purpose of granting personal use of vehicles is to maximize police presence and make emergency assistance more readily available. This policy appears to address the criteria in the third bullet point above.

If the vehicle, the employee, or the use of the vehicle do not meet the criteria listed above, the commute and any other personal use over a *de minimis* amount is subject to fringe benefit

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reporting. The IRS defines *de minimis* use as “considering its value and the frequency with which it is provided, is so small as to make accounting for it unreasonable or impractical.” Because *de minimis* is a subjective determination, DPS should evaluate its concept of *de minimis* use and instruct its employees accordingly. For any vehicle use that does not conform to the criteria outlined above, DPS should perform periodic checks to determine whether the use is considered *de minimis* or needs to be reported to the IRS as taxable fringe benefits.

Improperly exempting commute benefits and personal use of vehicles as fringe benefit income results in noncompliance with IRS rules and in the State underreporting the income of the employees using the vehicles.

**Recommendation:**

**We recommend that DPS re-evaluate its policies on commute and other personal use of department vehicles to ensure compliance with IRS rules. We also recommend that DPS evaluate its concept of *de minimis* personal use and instruct employees accordingly. For any vehicle use that does not conform to the criteria noted in IRS Publication 15-B, we recommend that DPS perform periodic checks to determine whether the use is considered *de minimis* and, if not, report the employee’s use of the vehicle to the IRS as taxable fringe benefits.**

DPS’s Response:

*The DPS has reviewed the requirements of UAC R27-3-8 (1), IRS Publication 15-B, and 26 CFR Part 1. DPS is confident the requirements of 26 CFR Part 1, for tax exemption, have been met, specifically:*

- *Sworn personnel begin work the moment they leave their residence, and likewise are subject to respond to emergency calls, requests for service, and take action on criminal or traffic law violations.*
- *Only vehicles equipped and / or marked specifically as emergency vehicles, driven by sworn officers or fire personnel, are authorized as take home vehicles with off duty use.*
- *Only sworn officers, fire or other designated emergency response personnel, within DPS, are authorized the use of take home vehicles. Sworn officers are subject to emergency call-out 24/7, by department policy. Emergency call-out of sworn personnel occurs frequently within DPS and is essential to mission critical operations. Violations of this policy can result in revocation of take-home or off duty use of a department vehicle.*
- *DPS sworn officers are required, by department policy, to respond to emergencies and / or other law enforcement matters while operating a DPS emergency vehicle. This*

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*includes any off duty use of said vehicle. Violations of this policy can result in revocation of take-home or off duty use of a department vehicle.*

*The markings, use, and status of vehicles operated by non-sworn staff will be regularly evaluated to identify those that do not conform to IRS guidelines. Any non-compliance factors will be addressed or the employee's use will be reported to the IRS as a taxable fringe benefit. In addition, DPS is in the process of modifying its policy as per the audit's recommendations to more closely conform to IRS guidelines.*

3. **IMPROPER EXCLUSION OF COMMUTE AND PERSONAL VEHICLE USE FROM GROSS COMPENSATION**

As noted in finding No. 2 above, under certain circumstances, DPS may exclude an employee's commute and personal use of a state-owned vehicle from the employee's taxable income. However, the benefit still appears to meet the definition of "Gross Compensation" found in *Utah Code* 63G-2, which outlines provisions for the Government Records Access and Management Act or GRAMA.

*Utah Code* 63G-2-103(12) defines gross compensation as "...every form of remuneration payable for a given period to an individual ... including ... payments in kind, and any similar benefit received from the individual's employer." The commute and personal use of a state-owned vehicle appears to meet the definition of gross compensation noted above. As such, DPS should determine the value of its employees' commute and personal use of state-owned vehicles and work with the State Division of Finance to publicly disclose the value of this compensation.

The failure to determine and publicly disclose this information appears to be an oversight as DPS focused only on whether the benefit is taxable. Excluding this information from gross compensation impairs transparency.

**Recommendation:**

**We recommend that DPS determine the value of its employees' commute and personal use of state-owned vehicles and work with the Division of Finance to publicly disclose the value of this compensation.**

**DPS's Response:**

*DPS will work with the Division of Finance to implement a procedure to report this compensation.*

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4. **FAILURE TO ADEQUATELY JUSTIFY VEHICLE COMMUTE AND TAKE HOME PRIVILEGES**

DPS grants commute and take home privileges to employees under one of four categories found in Administrative Rule R27-3-7. However, 11 of 28 employees tested did not satisfy the applicable requirements for their assigned category as follows:

**“Virtual Office”** – Based upon our interviews and review of vehicle use, 6 of 20 employees did not appear to meet the requirements for the Virtual Office privilege found in Administrative Rule R27-3-7(b). This designation requires the agency to clearly demonstrate that the “employee is required to work at home or out of a vehicle, a minimum of 80 percent of the time and the assigned vehicle is required to perform critical duties in a manner that is clearly in the best interest of the state.”

**24-Hour “On-call”** – Five of 8 employees granted the 24-Hour “On-call” designation found in Administrative Rule R27-3-7(a) did not qualify because they do not respond to emergencies. This designation requires the agency to clearly demonstrate that “the nature of a potential emergency is such that an increase in response time, if a commute or take home privilege is not authorized, could endanger a human life or cause significant property damage.” The rule also requires each driver “to keep a complete list of all call-outs for renewal of the take home privilege the following year.”

These errors occurred because DPS either misclassified the employees’ privileges or did not regularly review the justification for commute and take home privileges as employee assignments changed due to promotions or other events. Allowing DPS vehicles to be used for an employee’s commute when the justification does not meet required criteria, may represent an improper use of public funds.

**Recommendation:**

**We recommend that DPS regularly review commute and take home privileges to ensure they are classified accurately and provided only when allowed by Administrative Rule R27-3-7. If the privilege cannot be justified according to the required criteria, the privilege should be withdrawn.**

**DPS’s Response:**

*In December 2015, DPS evaluated all of the department’s vehicles to ensure that they were classified correctly to one of the four categories found in Administrative Rule R27-3-7. This evaluation process will be conducted on an annual basis. Any vehicles identified as not being justified by a specific category will be reassessed and appropriate action taken.*

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5. **NONCOMPLIANCE WITH AND INADEQUATE ENFORCEMENT OF VEHICLE MILEAGE TRACKING POLICIES**

We tested the mileage tracking of 22 employees with take home vehicle privileges to determine compliance with State Administrative Rules and DPS policies. We noted the following instances of noncompliance:

- Four of the 22 employees reviewed did not sufficiently track their off-duty mileage. Three employees kept only estimates of their mileage and one employee kept no record of off-duty mileage. Per section 202.2.4 (m) of the Public Safety Policy Manual, “Sworn officers shall maintain a log of all off-duty vehicle use.”  
  
DPS has created a spreadsheet for employees to record their off-duty mileage in a centralized location. However, they do not enforce the use of the spreadsheet. As a result, the personal mileage data was not readily available for our examination and, in one case, was not available at all because the specific employee had terminated.
- Six of the 22 employees reviewed did not maintain a daily trip log noting the first and last trip of the day, as required by State Administrative Rule 27-3-7(2). DPS believes the purpose of this rule is to track commute use and that officers with take home privileges are exempt from this requirement under Utah Administrative Rule R27-3-8(1). Tracking this information provides management with the ability to provide some level of oversight of vehicle use.

The lack of adequate mileage records represents noncompliance with State Administrative Rules and DPS policies and hinders the ability of management to track how vehicles are being used.

**Recommendation:**

**We recommend that DPS implement and enforce procedures to ensure that employees comply with State Administrative Rules and DPS policies by accurately recording personal mileage and daily trip logs.**

**DPS’s Response:**

*On January 1st, 2016 DPS implemented an accountability measure into the existing tracking program designed to accurately record off duty miles. This measure has an alert mechanism that creates a report of employees who have not logged their off duty miles. DPS is monitoring this report on a monthly basis and ensuring compliance.*

*The Division of Fleet Operations is currently revising UAC R27-3-7, which includes the trip log requirement. Proposed amendments will exempt operators of emergency vehicles from providing a “first and last trip of the day”, as this is not a quantifiable number given our non-*

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*commute status. This requirement is currently satisfied to the best of our ability through the beginning and ending shift mileage recorded by our RMS system for sworn personnel. Despite the proposed UAC change, DPS will continue to track shift mileages in adherence to DPS policy in an effort to maintain accurate internal tracking and agency transparency.*