

written explanation of the Review Panel's action. A dissenting report must be prepared in accordance with the requirements for the Review Panel's written explanation.

(c) *Written explanation.* A TSOB Review Panel will explain its action in writing to the maximum extent permitted by prudent concern for the national security interests of the United States and applicable laws and regulations governing information disclosure. If necessary, the Review Panel may prepare its written explanation in both a protected format (which may contain classified information, SSI, and other protected information) and a non-protected format (which must not contain classified information, SSI, and other protected information). The Review Panel serves non-government parties with the non-protected written explanation and government parties with the protected written explanation. The Review Panel is prohibited from providing the protected written explanation to non-government parties; however, the protected written explanation, if any, is part of the final administrative record that TSA must submit to a U.S. Court of Appeals in the event that a party seeks judicial review of the Review Panel's action.

(d) *Timing.* A TSOB Review Panel endeavors to resolve an appeal and issue a written explanation of its action to the parties no later than 60 calendar days after the last of the following events:

- (1) Receipt of a timely filed appellant brief;
- (2) receipt of a timely filed appellee brief; or
- (3) Oral argument.

§ 126.29 Effect of TSOB Review Panel action.

(a) Any person substantially affected by a TSOB Review Panel's action, or the TSA Administrator when he or she decides that the Panel's action will have a significant adverse impact on carrying out 49 U.S.C. subtitle VII, part A, may obtain judicial review in an appropriate U.S. Court of Appeals in accordance with 49 U.S.C. 46110. The Administrators of the FAA and TSA must be made parties to any civil action

filed in a U.S. Court of Appeals seeking review of a TSOB Review Panel action.

(b) If judicial review is not obtained, the action of the TSOB Review Panel is final and binding on the parties for the purpose of resolving the particular decision under review.

§ 126.31 Administration of proceedings.

(a) A TSOB Review Panel has authority to govern the conduct of its proceedings and internal operations by establishing any additional rules or procedures that are not inconsistent with this part.

(b) If TSA withdraws its Determination of Security Threat at any time after a notice of appeal has been filed pursuant to § 126.13(a), the proceedings before the TSOB Review Panel are rendered moot and closed. TSA must file a notice of withdrawal of the Determination of Security Threat with the TSOB Docket Clerk within five calendar days of such withdrawal.

(c) TSOB Review Panel proceedings will generally be closed to the public. A TSOB Review Panel may, in its discretion, open its proceedings to the public. Classified information, SSI, or other protected information shall not be disclosed during administrative proceedings, in accordance with § 126.25(d).

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AUTHORITY: 6 U.S.C. 658. Subpart H also issued under 5 U.S.C. Chapters 41 and 43; 5 CFR parts 410 and 430.

SOURCE: 86 FR 47893, Aug. 26, 2021, unless otherwise noted.

Subpart A—General Provisions**§ 158.101 Purpose.**

(a) *Cybersecurity Talent Management System.* This part contains regulations establishing the Cybersecurity Talent Management System (CTMS) and the resulting DHS Cybersecurity Service (DHS-CS). CTMS is designed to recruit and retain individuals with the qualifications necessary to execute the DHS cybersecurity mission and is also designed to adapt to changes in cybersecurity work, the cybersecurity talent market, and the DHS cybersecurity mission.

(b) *DHS Cybersecurity Service.* Under this part, the Secretary or designee establishes and manages the DHS Cybersecurity Service (DHS-CS) described in subpart B of this part.

(c) *Regulations & policy.* The regulations in this part provide the policy framework for establishing and administering CTMS, and establishing and managing the DHS-CS. The Secretary or designee implements this part through CTMS policy defined in § 158.104.

§ 158.102 Scope of authority.

(a) *Authority.* This part implements the Secretary's authority in 6 U.S.C. 658 and governs talent management involving the individuals described in § 158.103.

(b) *Other laws superseded.* Unless explicitly stated otherwise in this part or explicitly provided otherwise by Congress, this part supersedes all other provisions of law and policy relating to appointment, number, classification, or compensation of employees that the Secretary deems are incompatible with the approach to talent management under this part. For compensation authorized under this part, the Department provides all such compensation under the authority in 6 U.S.C. 658, and also provides some types of such compensation in accordance with relevant provisions of other laws, including provisions in 5 U.S.C. and 5 CFR, to the extent compatible with the approach to talent management under this part.

(c) *Preservation of authority.* Nothing in this part shall be deemed or construed to limit the Secretary's authority in 6 U.S.C. 658.

§ 158.103 Coverage.

(a) *Talent management.* This part covers:

(1) Establishing and administering CTMS; and

(2) Establishing and managing the DHS-CS.

(b) *Individuals.* This part applies to any individual:

(1) Being recruited for employment under this part;

(2) Applying for employment under this part;

(3) Serving in a qualified position under this part;

(4) Managing, or participating in the management of, any DHS-CS employee under this part, including as a supervisor or any other employee of the Department who has the authority to take, direct others to take, recommend, or approve any talent management action under this part; or

(5) Serving on the Cybersecurity Talent Management Board described in § 158.302.

§ 158.104 Definitions.

As used in this part:

Additional compensation means the compensation described in § 158.603(c).

Advisory appointment means an appointment to a qualified position under subpart J of this part.

Annuitant has the same meaning as that term in 5 CFR 553.102.

Anticipated mission impact means the influence the Department anticipates an individual will have on execution of the DHS cybersecurity mission based on the individual's *CTMS qualifications* and application of those qualifications to successfully and proficiently perform *DHS-CS cybersecurity work*.

Assignment means a description of a specific subset of *DHS-CS cybersecurity work* and a specific subset of *CTMS qualifications* necessary to perform that work, the combination of which is associable with a qualified position.

Break in service means the time when an employee is no longer on the payroll of a Federal agency.

Continuing appointment means an appointment for an indefinite time period to a qualified position.

CTMS policy means the Department's decisions implementing and operationalizing the regulations in this

part, and includes directives, instructions, and operating guidance and procedures.

CTMS qualifications means *qualifications* identified under § 158.402(c).

Cybersecurity incident has the same meaning as the term “incident” in 6 U.S.C. 659.

Cybersecurity risk has the same meaning as that term in 6 U.S.C. 659.

Cybersecurity Talent Management Board or *CTMB* means the group of officials described in § 158.302.

Cybersecurity Talent Management System or *CTMS* means the approach to talent management, which encompasses the definitions, processes, systems, and programs, established under this part.

Cybersecurity talent market means the availability, in terms of supply and demand, of talent relating to cybersecurity and employment relating to cybersecurity, including at other Federal agencies such as the Department of Defense.

Cybersecurity threat has the same meaning as that term in 6 U.S.C. 1501(5).

Cybersecurity work means activity involving mental or physical effort, or both, to achieve results relating to cybersecurity.

Department or *DHS* means the Department of Homeland Security.

DHS cybersecurity mission means the cybersecurity mission described in § 158.201. As stated in that section, the DHS cybersecurity mission encompasses all responsibilities of the Department relating to cybersecurity.

DHS Cybersecurity Service or *DHS-CS* means the qualified positions designated and established under this part and the employees appointed to those positions under this part.

DHS-CS advisory appointee means a DHS-CS employee serving in an advisory appointment under this part.

DHS-CS cybersecurity work means *cybersecurity work* identified under § 158.402(b).

DHS-CS employee means an *employee* serving in a qualified position under this part.

Employee has the same meaning as that term in 5 U.S.C. 2105.

Excepted service has the same meaning as that term in 5 U.S.C. 2103.

Executive Schedule means the pay levels described in 5 U.S.C. 5311.

Former DHS-CS employee means an individual who previously served, but is not currently serving, in a qualified position.

Functions has the same meaning as that term in 6 U.S.C. 101(9).

Mission impact means a DHS-CS employee’s influence on execution of the DHS cybersecurity mission by applying the employee’s CTMS qualifications to successfully and proficiently perform DHS-CS cybersecurity work.

Mission-related requirements means characteristics of an individual’s expertise or characteristics of cybersecurity work, or both (including cybersecurity talent market-related information), that are associated with successful execution of the DHS cybersecurity mission, and that are determined by officials with appropriate decision-making authority.

Preference eligible has the same meaning as that term in 5 U.S.C. 2108.

Qualification means a quality of an individual that correlates with the successful and proficient performance of cybersecurity work, such as capability, experience and training, and education and certification. A capability is a cluster of interrelated attributes that is measurable or observable or both. Interrelated attributes include knowledge, skills, abilities, behaviors, and other characteristics.

Qualified position means *CTMS qualifications* and *DHS-CS cybersecurity work*, the combination of which is associable with an employee.

Renewable appointment means a time-limited appointment to a qualified position.

Salary means an annual rate of pay under this part and is basic pay for purposes under 5 U.S.C. and 5 CFR. The salary for a DHS-CS employee is described in § 158.603.

Secretary means the Secretary of Homeland Security.

Secretary or designee means the *Secretary* or an official or group of officials authorized to act for the Secretary in the matter concerned.

Strategic talent priorities means the priorities for CTMS and the DHS-CS set under § 158.304.

Supervisor means an *employee* of the Department who has authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, or to effectively recommend such actions. A supervisor for a DHS-CS employee may be a DHS-CS employee or may be an employee of the Department serving in a position outside the DHS-CS.

Talent management means a systematic approach to linking employees to mission and organizational goals through intentional strategies and practices for hiring, compensating, and developing employees.

Talent management action has the same meaning as the term *personnel action* in 5 U.S.C. 2302(a)(2) for applicable actions, and the terms *talent management action* and *personnel action* may be used interchangeably in this part.

Veteran has the same meaning as that term in 5 U.S.C. 2108.

Work level means a grouping of *CTMS qualifications* and *DHS-CS cybersecurity work* with sufficiently similar characteristics to warrant similar treatment in talent management under this part.

Work valuation means a methodology through which an organization defines and evaluates the value of work and the value of individuals capable of performing that work.

Subpart B—DHS Cybersecurity Service

§ 158.201 Cybersecurity mission.

Cybersecurity is a matter of homeland security and one of the core missions of the Department. Congress and the President charge the Department with responsibilities relating to cybersecurity and grant the Secretary and other officials authorities to carry out those cybersecurity responsibilities. The Department's cybersecurity mission is dynamic to keep pace with the evolving cybersecurity risks and cybersecurity threats facing the Nation and to adapt to any changes in the Department's cybersecurity responsibilities. The DHS cybersecurity mission encompasses all responsibilities of the Department relating to cybersecurity.

§ 158.202 Cybersecurity Service (DHS-CS).

The Secretary or designee establishes and manages the DHS-CS to enhance the cybersecurity of the Nation through the most effective execution of the DHS cybersecurity mission.

§ 158.203 Positions in the DHS-CS.

(a) *Qualified positions.* The Secretary or designee designates and establishes qualified positions in the excepted service as the Secretary or designee determines necessary for the most effective execution of the DHS cybersecurity mission.

(b) *Designating qualified positions.* The Secretary or designee designates qualified positions under the deployment program, described in § 158.701, as part of determining when the Department uses CTMS to recruit and retain individuals possessing CTMS qualifications.

(c) *Establishing qualified positions.* The Secretary or designee establishes a qualified position under the talent acquisition system, described in § 158.501 of this part, by the appointment of an individual to a qualified position previously designated.

§ 158.204 Employees in the DHS-CS.

(a) *DHS-CS employees.* DHS-CS employees serve in the excepted service, and the Department hires, compensates, and develops DHS-CS employees using CTMS.

(b) *Mission execution and assignments.* DHS-CS employees execute the DHS cybersecurity mission by applying their CTMS qualifications to perform the DHS-CS cybersecurity work of their assignments.

(c) *Mission impact and recognition.* Application of a DHS-CS employee's CTMS qualifications to successfully and proficiently perform DHS-CS cybersecurity work results in mission impact attributable to that employee. The Department reviews a DHS-CS employee's mission impact as described in § 158.805, which may result in recognition as described in § 158.630.

(d) *Compensation.* In alignment with the compensation strategy described in § 158.601, the Department provides compensation to a DHS-CS employee as described in § 158.603.

(e) *Recruitment and development.* The Department strategically and proactively recruits individuals as described in § 158.510 and develops DHS–CS employees under the career development program, described in § 158.803, that emphasizes continual learning.

(f) *Core values.* The Department uses the core values, described in § 158.305, to manage the DHS–CS.

§ 158.205 Assignments in the DHS–CS.

(a) *Assignments generally.* Each DHS–CS employee has one or more assignments during the employee’s service in the DHS–CS. The Department designates and staffs assignments under the deployment program, described in § 158.701.

(b) *Initial and subsequent assignments.* The Department matches an individual appointed to a qualified position with an initial assignment as described in § 158.703(c). The Department may match DHS–CS employees with one or more subsequent assignments as described in § 158.703(d).

Subpart C—Leadership

§ 158.301 Administering CTMS and Managing the DHS–CS.

(a) The Secretary or designee is responsible for administering CTMS and managing the DHS–CS, including establishing and maintaining CTMS policy.

(b) The Cybersecurity Talent Management Board (CTMB) is responsible for assisting the Secretary or designee in administering CTMS and managing the DHS–CS.

(c) The Secretary or designee, with assistance from the CTMB, administers CTMS and manages the DHS–CS based on:

- (1) Talent management principles described in § 158.303;
- (2) Strategic talent priorities described in § 158.304; and
- (3) DHS–CS core values described in § 158.305.

§ 158.302 Cybersecurity Talent Management Board (CTMB).

(a) *Purpose.* As part of assisting the Secretary or designee in administering CTMS and managing the DHS–CS, the CTMB periodically evaluates whether

CTMS is recruiting and retaining individuals with the qualifications necessary to execute the DHS cybersecurity mission.

(b) *Composition.* The CTMB comprises:

(1) Officials representing DHS organizations involved in executing the DHS cybersecurity mission; and

(2) Officials responsible for developing and administering talent management policy within the Department.

(c) *Membership.* The Secretary or designee:

(1) Appoints officials to serve as members of the CTMB;

(2) Designates the Co-Chairs of the CTMB; and

(3) Ensures CTMB membership fulfills the membership requirements in this section and includes appropriate representation, as determined by the Secretary or designee, from across the Department.

(d) *Operation.* The Secretary or designee establishes the CTMB and minimum requirements for CTMB operation.

(e) *External Assistance.* The CTMB may periodically designate an independent evaluator to conduct an evaluation of CTMS.

§ 158.303 Talent management principles.

(a) *Merit system principles.* CTMS is designed and the Secretary or designee, with assistance from the CTMB, administers CTMS based on the principles of merit and fairness embodied in the merit system principles in 5 U.S.C. 2301(b).

(b) *Prohibited personnel practices.* Any employee of the Department who has the authority to take, direct others to take, recommend, or approve any talent management action under this part must comply with 5 U.S.C. 2302(b) regarding talent management actions under this part.

(c) *Equal employment opportunity principles.* CTMS is designed and the Secretary or designee, with assistance from the CTMB, administers CTMS and manages the DHS–CS in accordance with applicable anti-discrimination laws and policies. Thus, talent management actions under this part that materially affect a term or condition of

employment must be free from discrimination.

§ 158.304 Strategic talent priorities.

The Secretary or designee, with assistance from the CTMB, administers CTMS and manages the DHS-CS based on strategic talent priorities, which the Secretary or designee sets on an ongoing basis using:

- (a) Information from strategic talent planning described in § 158.401(c);
- (b) The Department's financial and resources planning functions, including the functions described in 6 U.S.C. 342(b);
- (c) The Department's comprehensive strategic planning, including the plan described in 5 U.S.C. 306; and
- (d) Departmental priorities.

§ 158.305 DHS-CS core values.

The Secretary or designee, with assistance from the CTMB, manages the DHS-CS based on the following core values:

- (a) Expertise, including enhancing individual and collective expertise regarding cybersecurity through continual learning;
- (b) Innovation, including pursuing new ideas and methods regarding cybersecurity work and cybersecurity generally; and
- (c) Adaptability, including anticipating and adjusting to emergent and future cybersecurity risks and cybersecurity threats.

Subpart D—Strategic Talent Planning

§ 158.401 Strategic talent planning process.

(a) *Purpose.* On an ongoing basis, the Secretary or designee engages in a strategic talent planning process to ensure CTMS adapts to changes in cybersecurity work, the cybersecurity talent market, and the DHS cybersecurity mission.

(b) *Process.* The Secretary or designee establishes and administers a strategic talent planning process that comprises:

- (1) Identifying DHS-CS cybersecurity work and CTMS qualifications based on the DHS cybersecurity mission as described in § 158.402;

(2) Analyzing the cybersecurity talent market as described in § 158.403;

(3) Describing and valuing DHS-CS cybersecurity work under the work valuation system described in § 158.404; and

(4) Ensuring CTMS administration and DHS-CS management is continually informed by current, relevant information as described in paragraph (c) of this section.

(c) *Informing CTMS administration and DHS-CS management.* The Secretary or designee aggregates information generated in the processes described in paragraphs (b)(1) through (3) of this section and information from administering CTMS, and uses that aggregated information to inform all other CTMS processes, systems, and programs under this part.

§ 158.402 DHS-CS cybersecurity work and CTMS qualifications identification.

On an ongoing basis, the Secretary or designee analyzes the DHS cybersecurity mission to identify:

- (a) The functions that execute the DHS cybersecurity mission;
- (b) The cybersecurity work required to perform, manage, or supervise those functions; and
- (c) The set of qualifications, identified in accordance with applicable legal and professional guidelines, necessary to perform that work.

§ 158.403 Talent market analysis.

On an ongoing basis, the Secretary or designee conducts an analysis of the cybersecurity talent market, using generally recognized compensation principles and practices to:

- (a) Identify and monitor trends in both employment for and availability of talent related to cybersecurity, including variations in the cost of talent in local cybersecurity talent markets, defined in § 158.612(b)(1), or variations in the cost of living in those markets, or both; and
- (b) Identify leading strategies for recruiting and retaining talent related to cybersecurity.

§ 158.404 Work valuation system.

- (a) The Secretary or designee establishes and administers a person-focused

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work valuation system to facilitate systematic management of the DHS-CS and to address internal equity among DHS-CS employees. The work valuation system is designed to reflect that:

(1) The DHS cybersecurity mission is dynamic;

(2) Cybersecurity work is constantly evolving; and

(3) Individuals, through application of their qualifications, significantly influence how cybersecurity work is performed.

(b) The work valuation system is based on:

(1) CTMS qualifications; and

(2) DHS-CS cybersecurity work.

(c) The Department uses the work valuation system to establish work and career structures, such as work levels, titles, ranks, and specializations, and the Department uses these work and career structures for purposes of talent management under this part, such as:

(1) Describing and categorizing DHS-CS employees, qualified positions, and assignments;

(2) Assessing and selecting individuals for appointment to qualified positions; and

(3) Compensating DHS-CS employees under this part, including establishing and administering one or more salary structures, described in § 158.611.

(d) The Department may also use the work and career structures described in paragraph (c) of this section for budget and fiscal purposes related to administering CTMS and managing the DHS-CS.

§ 158.405 Exemption from General Schedule position classification.

The provisions of 5 U.S.C. Chapter 51 regarding classification and 5 CFR part 511 regarding classification under the General Schedule, among other similar laws, do not apply under CTMS, to the DHS-CS, or to talent management involving the individuals described in § 158.103.

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Subpart E—Acquiring Talent

TALENT ACQUISITION SYSTEM

§ 158.501 Talent acquisition system.

(a) The Secretary or designee establishes and administers a talent acquisition system, in accordance with applicable legal and professional guidelines governing the assessment and selection of individuals, to identify and hire individuals possessing CTMS qualifications.

(b) The talent acquisition system comprises the strategies, programs, and processes described in this subpart and in CTMS policy for proactively and strategically recruiting individuals, assessing qualifications of individuals, and considering and selecting individuals for employment in the DHS-CS and appointment to qualified positions.

§ 158.502 Exemption from other laws regarding appointment.

The provisions of the following laws, among other similar laws, do not apply under CTMS, to the DHS-CS, or to talent management involving the individuals described in § 158.103:

(a) The following provisions of 5 U.S.C.:

(1) Section 3320 regarding selection and appointment in the excepted service; and

(2) Chapter 51 regarding classification; and

(b) The following provisions of 5 CFR:

(1) Part 211 regarding veteran preference;

(2) Part 302 regarding employment in the excepted service (except § 302.203 regarding disqualifying factors);

(3) Part 352 regarding reemployment rights (except subpart C regarding detail and transfer of Federal employees to international organizations); and

(4) Part 511 regarding classification under the General Schedule.

SOURCING AND RECRUITING

§ 158.510 Strategic recruitment.

(a) On an ongoing basis, the Department develops and implements strategies for publicly communicating about the DHS cybersecurity mission and the DHS-CS and for proactively recruiting

individuals likely to possess CTMS qualifications.

(b) The Department develops and implements strategies described in paragraph (a) of this section based on:

(1) CTMS qualifications and DHS-CS cybersecurity work; and

(2) Strategic talent priorities.

(c) In developing and implementing strategies described in paragraph (a) of this section, the Department may collaborate with:

(1) Other Federal agencies including the Department of Defense, the Office of Personnel Management, and the Department of Veterans Affairs;

(2) Institutions of higher education, as defined in 20 U.S.C. 1001, including historically Black colleges or universities, as described in 20 U.S.C. 1061(2), and other minority-serving institutions, as described in 20 U.S.C. 1067q(a);

(3) National organizations, including veterans service organizations recognized by the Department of Veterans Affairs, and professional associations chartered by Congress under 36 U.S.C. Part B; and

(4) Other similar organizations and groups.

(d) The Department considers the availability of preference eligibles and veterans for appointment under this part, and develops and implements specific strategies to proactively recruit such individuals.

§ 158.511 Outreach and sourcing.

(a) The Department uses a variety of sources, including publicly available information, to identify individuals or groups of individuals for recruitment under this subpart.

(b) CTMS policy implementing this subpart addresses:

(1) Communication of opportunities for employment in the DHS-CS;

(2) Communication of the application processes to individuals being recruited under this part or applying for employment under this part; and

(3) Acceptance and treatment of applications for employment in the DHS-CS, including minimum application requirements established under this part.

§ 158.512 Interview expenses.

(a) An individual being considered for employment in the DHS-CS may re-

ceive payment or reimbursement for travel to and from preemployment interviews, which may include participating in the assessment program described in § 158.520.

(b) The Department pays or reimburses interview expenses, described in paragraph (a) of this section, in accordance with 5 U.S.C. 5706b and the Federal Travel Regulations at 41 CFR chapters 301 through 304.

ASSESSMENT AND HIRING

§ 158.520 Assessment.

(a) The Department determines individuals' CTMS qualifications under the assessment program described in this section. To be considered for employment in the DHS-CS, an individual must participate in the assessment program and meet applicable rating or scoring thresholds in each assessment process in which that individual participates.

(b) The Department establishes and administers an assessment program, with one or more assessment processes, based on CTMS qualifications. The assessment program is designed to efficiently and accurately determine individuals' CTMS qualifications.

(c) Each assessment process compares the qualifications of an individual to CTMS qualifications. The Department develops and administers each assessment process in accordance with applicable legal and professional guidelines governing the assessment and selection of individuals.

(d) An assessment process may use standardized instruments and procedures to measure qualifications. An assessment process may also use demonstrations of qualifications determined appropriate by the Secretary or designee, such as rewards earned from the cybersecurity competition described in Executive Order 13870, published, peer-reviewed cybersecurity research, or a cybersecurity invention or discovery granted a patent under 35 U.S.C. Part II.

(e) The Department makes available information to assist individuals in understanding the purpose of, and preparing for participation in, an assessment process.

(f) To maintain the objectivity and integrity of the assessment program, the Department maintains control over the security and release of materials relating to the assessment program, including assessment plans, validation studies, and other content. Except as otherwise required by law, the Department does not release the following:

(1) Sensitive materials relating to the design and administration of the assessment program;

(2) Names or lists of individuals applying for employment in the DHS-CS; and

(3) Results or relative ratings of individuals who participated in the assessment program.

§ 158.521 Employment eligibility requirements and employment-related criteria.

(a) *Employment eligibility requirements.* To be eligible for employment in the DHS-CS, an individual must:

(1) Meet U.S. citizenship requirements as described in governing Appropriation Acts; and

(2) Comply with Selective Service System requirements described in 5 U.S.C. 3328.

(b) *Employment-related criteria.* The Department determines criteria related to employment in the DHS-CS, reviews individuals applying for employment in the DHS-CS using such criteria, and, as part of an offer of appointment to a qualified position, provides written notice of specific, applicable employment-related criteria necessary to obtain and maintain, employment in the DHS-CS. Employment-related criteria include:

(1) Fitness standards and similar factors described in Executive orders, 5 CFR 302.203, and policies of the Department;

(2) Personnel security requirements related to fitness standards and similar factors described in paragraph (b)(1) of this section;

(3) Geographic mobility requirements; and

(4) Other criteria related to any aspect of appointment or employment, including selection, appointments, qualified positions, or assignments, or some or all of the foregoing.

(c) *Accepting and maintaining employment-related criteria.* To be appointed to a qualified position, an individual must accept and satisfy the specific, applicable employment-related criteria associated with the individual's offer of appointment concurrent with the individual's acceptance of the offer of appointment. An individual's acceptance of an appointment to a qualified position constitutes acceptance of applicable employment-related criteria for that qualified position and the individual's agreement to satisfy and maintain those criteria.

(d) *Changes to employment-related criteria.* Employment-related criteria may change, and DHS-CS employees may be required to accept and satisfy such changes to maintain employment in the DHS-CS.

(e) *Disqualification.* The Department may disqualify an individual from consideration for employment in the DHS-CS or from appointment to a qualified position for: Providing false information to the Department, engaging in dishonest conduct with the Department, unauthorized disclosure of assessment materials for purposes of giving any applicant an advantage in the assessment process, or other actions related to an individual's character or conduct that may negatively impact the integrity or efficiency of the DHS-CS.

§ 158.522 Selection and appointment.

(a) The Department selects an individual for employment in the DHS-CS based on the individual's CTMS qualifications, as determined under the assessment program described in § 158.520.

(b) Prior to finalizing the selection of an individual for employment in the DHS-CS, the Department considers the availability of preference eligibles for appointment under this part, including those recruited based on specific strategies described in § 158.510(d), who have participated in the assessment program and met applicable rating or scoring thresholds, as described in § 158.520(a). When a selection is imminent and there are both preference eligibles and non-preference eligibles undergoing final consideration, the Department regards status as a preference eligible as

a positive factor in accordance with CTMS policy.

(c) The Department appoints an individual to a qualified position under the authority in 6 U.S.C. 658 and this part, and all such appointments are in the excepted service and are one of the following types of appointment:

(1) A renewable appointment under § 158.523(a);

(2) A continuing appointment under § 158.523(b); or

(3) An advisory appointment under § 158.523(c).

(d) As part of selecting an individual for employment in the DHS-CS and appointing an individual to a qualified position under this part, the Department:

(1) Determines applicable work and career structures, including the individual's initial work level, using the work valuation system described in § 158.404;

(2) Sets the individual's initial salary using the salary system as described in § 158.620; and

(3) Matches the individual with an initial assignment as described in § 158.703(c).

(e) No qualified position may be established through the non-competitive conversion of a current Federal employee from an appointment made outside the authority of this part to an appointment made under this part.

(f) An individual who accepts an appointment to a qualified position under this part voluntarily accepts an appointment in the excepted service.

(g) A DHS-CS employee serves in the same qualified position throughout a single continuing appointment under this part and throughout multiple, consecutive renewable or continuing appointments under this part, regardless of any changes in the employee's assignments, including primary DHS organization, or changes in the employee's official worksite.

§ 158.523 Appointment types and circumstances.

(a) *Renewable appointment.* Appointment of an individual to a renewable appointment is for up to three years. The Department may renew a renewable appointment for any time period of up to three years, subject to any

limitation in CTMS policy regarding the number of renewals. Subject to any additional limitation in CTMS policy, the Department may change an unexpired renewable appointment to a continuing appointment for a DHS-CS employee receiving a salary in the standard range described in § 158.613(b). The following types of renewable appointments include special conditions:

(1) *Reemployed annuitant.* Under this part, the Department may appoint an annuitant to a qualified position and must appoint the annuitant to a renewable appointment. An annuitant appointed to a qualified position serves at the will of the Secretary.

(2) *Uncompensated service.* Under this part, the Department may appoint to a qualified position an individual to provide uncompensated service, any such service is gratuitous service, and the Department must appoint such an individual to a renewable appointment. The gratuitous nature of service must be a condition of employment of such an appointment. The Secretary or designee must approve the appointment of each individual providing uncompensated service by name, and such individual if not providing gratuitous service would otherwise be eligible to receive a salary under this part at or above the amount described in § 158.614(a)(2). An individual providing uncompensated service serves at the will of the Secretary. An individual for appointment to a qualified position to provide uncompensated service need not be assessed under this part, and the documentation associated with that individual's qualified position need not include all the information listed in § 158.706(c).

(b) *Continuing appointment.* Appointment of an individual to a continuing appointment is for an indefinite time period.

(c) *Advisory appointment.* Appointment of an individual, including a former DHS-CS employee, to an advisory appointment is governed by subpart J of this part.

(d) *Former DHS-CS employee.* Appointment under this part of a former DHS-CS employee is governed by § 158.525.

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(e) *Restoration to duty from uniformed service or compensable injury.* In accordance with 5 CFR part 353, the Department restores to duty a DHS–CS employee who is a covered person described in 5 CFR 353.103.

(f) *Current and former political appointees.* Appointment under this part of a current political appointee and a former political appointee, both as defined by OPM, may be subject to additional requirements outside of this part, including coordination with OPM.

§ 158.524 Initial service period.

(a) All individuals appointed under this part serve an initial service period that constitutes a probationary period of three years beginning on the date of appointment.

(b) Except as stated in paragraph (c) of this section, service in the DHS–CS counts toward completion of a current initial service period under paragraph (a) of this section. No other service in an appointment made outside the authority of this part may count toward completion of an initial service period under paragraph (a) of this section.

(c) Service as a DHS–CS advisory appointee, as a reemployed annuitant described in § 158.523(a)(1), or providing uncompensated service described in § 158.523(a)(2) does not count towards completion of an initial service period in a subsequent appointment to a qualified position.

(d) CTMS policy implementing this section addresses computation of each DHS–CS employee's initial service period, including accounting for working schedules other than full-time schedules described in § 158.705 and for periods of absence while in pay and nonpay statuses.

§ 158.525 Hiring of former DHS–CS employees.

(a) *Rejoining the DHS–CS.* To facilitate future service in the DHS–CS by former DHS–CS employees, the Department aims to:

(1) Maintain communication with former DHS–CS employees to understand their interest in future service in the DHS–CS;

(2) Provide opportunities for former DHS–CS employees to be considered for

appointment again to qualified positions; and

(3) Acknowledge former DHS–CS employees' enhancements to qualifications while outside the DHS–CS.

(b) *Rehiring.* Except as provided in paragraphs (c) through (e) of this section, to be appointed again to a qualified position a former DHS–CS employee must:

(1) Participate again in the assessment program described in § 158.520 for the Department to determine the former DHS–CS employee's current CTMS qualifications; and

(2) Meet employment eligibility and accept and satisfy applicable employment-related criteria as described in § 158.521.

(c) *Reassessment.* A former DHS–CS employee whose most recent appointment to a qualified position was a renewable appointment or a continuing appointment must participate again in the assessment program described in § 158.520 unless the Department determines otherwise based on factors relevant to the former DHS–CS employee, such as:

(1) Time elapsed since the former DHS–CS employee's most recent appointment to a qualified position under this part;

(2) Similarity of cybersecurity work performed by the former DHS–CS employee since that individual's most recent appointment to a qualified position under this part; or

(3) Similarity of the former DHS–CS employee's CTMS qualifications during the former employee's most recent appointment under this part to the CTMS qualifications of a newly identified assignment under the deployment program in § 158.701.

(d) *Former advisory and political appointees.* Appointment under this part of a former DHS–CS employee who previously served in an advisory appointment or other political appointment may be subject to additional requirements, including coordination with the Office of Personnel Management.

(e) *Prospective advisory appointees.* Appointment of any former DHS–CS employee to an advisory appointment is governed by subpart J of this part.

Subpart F—Compensating Talent**COMPENSATION SYSTEM****§ 158.601 Compensation strategy.**

To ensure the DHS-CS fulfills its purpose, as stated in § 158.202, the Secretary or designee aims to establish and administer a compensation system, described in § 158.602, that:

(a) Ensures the compensation for DHS-CS employees is sufficiently competitive to recruit and retain individuals possessing CTMS qualifications;

(b) Values, encourages, and recognizes, in alignment with the DHS-CS core values described in § 158.305:

(1) Exceptional CTMS qualifications and mission impact,

(2) Excellence and innovation in the performance of DHS-CS cybersecurity work, and

(3) Continual learning to adapt to evolving cybersecurity risks and cybersecurity threats; and

(c) Acknowledges the unpredictable nature of cybersecurity work and the expectation that DHS-CS employees occasionally work unusual hours and extended hours, as needed, to execute the DHS cybersecurity mission, especially in response to exigent circumstances and emergencies, including cybersecurity incidents; and

(d) Reflects an understanding of the cybersecurity talent market, including:

(1) Leading compensation practices and trends,

(2) Current cybersecurity work expectations and arrangements, and

(3) An understanding of the concepts of total compensation and total rewards.

§ 158.602 Compensation system.

(a) The Secretary or designee establishes and administers a compensation system based on:

(1) The compensation strategy in § 158.601;

(2) Information from strategic talent planning described in § 158.401(c);

(3) Generally recognized compensation principles and practices; and

(4) Strategic talent priorities.

(b) The compensation system comprises:

(1) The salary system described in § 158.610; and

(2) Additional compensation described in § 158.603.

§ 158.603 Employee compensation.

(a) *Compensation.* As compensation for service in the DHS-CS, a DHS-CS employee receives a salary as described in paragraph (b) of this section. A DHS-CS employee may also receive additional compensation as described in paragraph (c) of this section.

(b) *Salary.* Except as provided in paragraphs (b)(1) and (2) of this section, a DHS-CS employee receives a salary under the salary system described in § 158.610. The Department sets a DHS-CS employee's salary as described in § 158.620, and salary may include a local cybersecurity talent market supplement described in § 158.612. The Department adjusts a DHS-CS employee's salary as described in § 158.621.

(1) *Uncompensated service.* A DHS-CS employee providing uncompensated service described in § 158.523(a)(2) does not receive a salary under this part.

(2) *Advisory appointees.* A DHS-CS advisory appointee receives a salary as described under subpart J of this part.

(c) *Additional compensation.* In alignment with the compensation strategy in § 158.601 and subject to the requirements of this subpart F, the Department may provide the additional compensation described in paragraph (c)(1) of this section to DHS-CS employees, unless a DHS-CS employee is providing uncompensated service under § 158.523(a)(2).

(1) *Types.* Additional compensation under CTMS is:

(i) Recognition under §§ 158.632 through 158.634;

(ii) Other special payments under §§ 158.640 through 158.643; and

(iii) Other types of compensation, including leave and benefits, authorized under §§ 158.650 through 158.654 and provided in accordance with relevant provisions of other laws.

(2) *Combining types.* A DHS-CS employee, except such an employee providing uncompensated service and a DHS-CS advisory appointee, may receive any type of additional compensation described in paragraph (c)(1) of this section in combination with any

other such type subject to the requirements of this subpart F, and subject to the limit described in paragraph (c)(3) of this section.

(3) *Limit.* Additional compensation described in paragraph (c)(1) of this section is subject to, and may be limited by, the aggregate compensation limit described in § 158.604.

(4) *Advisory appointees.* A DHS–CS advisory appointee may receive additional compensation as described in subpart J of this part.

(5) *Department discretion.* Any payment or nonpayment of additional compensation under this part, or the amount of any such compensation, is under the Department's discretion, and may be reviewable only as provided for under subpart I of this part.

§ 158.604 Aggregate compensation limit.

(a) *Limiting aggregate compensation.* A DHS–CS employee may not receive additional compensation listed in paragraphs (b)(1)(i) through (iv) of this section if such receipt would cause a DHS–CS employee's aggregate compensation for a calendar year to exceed the aggregate compensation limit applicable to that employee. A DHS–CS employee's applicable aggregate compensation limit is the limit amount assigned to the subrange of a salary structure, described in § 158.611, that contains the employee's salary. The Department assigns an aggregate compensation limit to each subrange in a salary structure by assigning the amounts referenced in 5 U.S.C. 5307(d)(1) in ascending order to the subranges, such that each subrange has an aggregate compensation limit that is greater than or equal to the salary maximum of that subrange.

(b) *Aggregate compensation.* For purposes of this part—

(1) A DHS–CS employee's aggregate compensation means the total of the employee's salary, including any local cybersecurity talent market supplement, and the following types of additional compensation the employee receives under this part:

- (i) Recognition payments;
- (ii) Payments for special working conditions;

(iii) Payments for quarters allowances, overseas differentials and allowances, and remote worksite allowances, foreign currency allowances, and hostile fire pay; and

(iv) Other similar payments described in CTMS policy as being authorized under this part and provided in accordance with other relevant provisions of law.

(2) The following types of compensation a DHS–CS employee receives under this part are excluded from the employee's aggregate compensation:

- (i) Payments or reimbursements for professional development and training;
- (ii) CTMS student loan repayments;
- (iii) CTMS allowances in nonforeign areas;

(iv) Back pay because of an unjustified or unwarranted talent management action;

(v) Severance pay;

(vi) Lump-sum payments for accumulated and accrued annual leave;

(vii) Voluntary separation incentive payments;

(viii) Payments for reservist differentials; and

(ix) Monetary value of any honorary recognition, leave, or other benefits.

(c) *Forfeiture of compensation exceeding limit amount.* Except under corrective action described in paragraph (d) of this section, a DHS–CS employee may not receive any portion of a payment for the additional compensation listed in paragraphs (b)(1)(i) through (iv) of this section that would cause the employee's aggregate compensation in any calendar year to exceed the applicable limit amount for that employee described in paragraph (a) of this section and the DHS–CS employee forfeits any such portion of a payment.

(d) *Corrective actions.* The Department may make a corrective action if the Department underestimated or overestimated a DHS–CS employee's aggregate compensation in a calendar year, including if an applicable aggregate compensation limit amount changed, resulting in the employee receiving aggregate compensation in excess of the applicable limit amount for a DHS–CS employee or the Department limiting or prohibiting an employee's aggregate compensation incorrectly. Corrective actions may include the Secretary or

designee waiving a debt to the Federal Government for a DHS-CS employee under 5 U.S.C. 5584, if warranted, or making appropriate corrective payments to a DHS-CS employee.

§ 158.605 Exemption from other laws regarding compensation.

The provisions of the following laws, among other similar laws, do not apply under CTMS, to the DHS-CS, or to talent management involving the individuals described in § 158.103:

(a) The following provisions of 5 U.S.C.:

(1) Chapter 51 regarding classification,

(2) Chapter 53 regarding pay rates and systems (except section 5379 regarding student loan repayments),

(3) Chapter 55, Subchapter V regarding premium pay (except section 5550a regarding compensatory time off for religious observances),

(4) Chapter 61 regarding work schedules (except sections 6103–6104 regarding holidays),

(5) Section 4502 regarding cash awards and time-off awards,

(6) Section 4503 regarding agency awards (except regarding honorary recognition),

(7) Section 4505a regarding performance-based cash awards,

(8) Sections 4507 and 4507a regarding presidential rank awards,

(9) Section 5307 regarding limitation on certain payments,

(10) Section 5384 regarding performance awards for the Senior Executive Service,

(11) Section 5753 regarding recruitment and relocation bonuses,

(12) Section 5754 regarding retention bonuses,

(13) Section 5755 regarding supervisory differentials, and

(14) Section 5757 regarding extended assignment incentives;

(b) The provisions of 29 U.S.C. 206 and 207 regarding minimum wage payments and overtime pay under the Fair Labor Standards Act of 1938, as amended; and

(c) The following provisions of 5 CFR:

(1) Part 451 regarding awards (except regarding honorary recognition);

(2) Part 511 regarding classification under the General Schedule;

(3) Part 530 regarding pay rates and systems;

(4) Part 531 regarding pay under the General Schedule;

(5) Part 534 regarding pay under other systems;

(6) Part 536 regarding grade and pay retention;

(7) Part 550, subparts A regarding premium pay, I regarding pay for duty involving physical hardship or hazard, M regarding firefighter pay, N regarding compensatory time off for travel, and P regarding overtime pay for border patrol agents;

(8) Part 551 regarding pay administration under the Fair Labor Standards Act;

(9) Part 575 regarding recruitment, relocation, and retention incentives, supervisory differentials; and extended assignment incentives; and

(10) Part 610 regarding hours of duty (except subpart B regarding holidays).

SALARIES

§ 158.610 Salary system.

(a) Under the compensation system, described in § 158.602 of this part, the Department establishes and administers a salary system with the goals of maintaining:

(1) Sufficiently competitive salaries for DHS-CS employees as stated in § 158.601(a); and

(2) Equitable salaries among DHS-CS employees.

(b) The salary system comprises:

(1) At least one salary structure, described in § 158.611 of this part, bounded by the salary range described in § 158.613 and incorporating the salary limitations described in § 158.614;

(2) The process for providing a local cybersecurity talent market supplement described in § 158.612; and

(3) The salary administration framework described in §§ 158.620 through 158.622.

§ 158.611 Salary structure.

(a) Under the salary system, described in § 158.610, the Department establishes and administers one or more salary structures based on the strategy, information, principles and practices, and priorities listed in § 158.602(a).

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(b) A salary structure:

(1) Is bounded by the salary range described in § 158.613;

(2) Incorporates, as described in paragraph (d) of this section, the salary limitations described in § 158.614; and

(3) May incorporate other salary and cost control strategies, such as control points.

(c) A salary structure includes subranges, within the salary range described in § 158.613 that are associated with work levels established by the work valuation system, described in § 158.404. Each such subrange is associated with at least one such work level.

(d) The Department incorporates the salary limitations described in § 158.614 into a salary structure by assigning each such salary limitation to at least one subrange of the salary structure. The Department assigns such salary limitations in ascending order to the subranges such that each subrange has a salary limitation that is greater than or equal to the salary maximum of that subrange.

(e) The Department may adjust a salary structure annually, or as the Secretary or designee determines necessary, based on the strategy, information, principles and practices, and priorities listed in § 158.602(a).

§ 158.612 Local cybersecurity talent market supplement (LCTMS).

(a) *General.* The Department may provide a DHS–CS employee a LCTMS to ensure the employee receives a sufficiently competitive salary, as described in § 158.610(a). A LCTMS accounts for the difference between a salary as determined under a salary structure, described in § 158.611, and the Department’s determination as to what constitutes a sufficiently competitive salary for that local cybersecurity talent market. The Department determines whether a LCTMS is necessary, and establishes and periodically adjusts local cybersecurity talent markets and local cybersecurity talent market supplement percentages, based on the strategy, information, principles and practices, and priorities listed in § 158.602(a).

(b) *Definitions.* As used in this section:

(1) *Local cybersecurity talent market* means the cybersecurity talent market in a geographic area that the Department defines based on the talent market analysis described in § 158.403, and that may incorporate any pay locality established or modified under 5 U.S.C. 5304.

(2) *Local cybersecurity talent market supplement percentage* means a percentage the Department assigns to a local cybersecurity talent market to increase the amount of a salary provided under a salary structure.

(c) *Salary supplement.* A LCTMS is considered part of salary under this part and for purposes of applying the aggregate compensation limit described in § 158.604. A LCTMS is also basic pay for purposes under 5 U.S.C. and 5 CFR, except for purposes of determining pay under 5 U.S.C. 7511 and 7512 and 5 CFR part 752.

(d) *Eligibility and termination.* (1) The Department determines eligibility for a LCTMS under this section and CTMS policy implementing this section. A DHS–CS employee is eligible for a LCTMS if the employee’s official worksite, as determined under § 158.704, is located in a local cybersecurity talent market with an assigned local cybersecurity talent market supplement percentage for the salary structure under which the employee’s salary is provided.

(2) The Department terminates a LCTMS a DHS–CS employee receives when the employee’s official worksite, as determined under § 158.704, is no longer in a local cybersecurity talent market with an assigned local cybersecurity talent market supplement percentage, or the salary structure under which the employee’s salary is provided no longer has an assigned local cybersecurity labor market supplement, or both.

(3) A reduction in salary for a DHS–CS employee because of a change in any LCTMS for that employee is not a reduction in pay for the purposes of 5 U.S.C. 7512 and 5 CFR part 752.

(e) *Limitation.* A DHS–CS employee may not receive, and is not entitled to, any portion of a LCTMS that would cause the employee’s salary to exceed the applicable salary limitation assigned to the subrange of a salary

structure as described in § 158.611 that contains the employee's salary, but the employee may receive the portion of such a LCTMS that would not cause the employee's salary to exceed the applicable salary limitation. A DHS-CS employee may receive a LCTMS that would cause the employee's salary to be in the extended range, described in § 158.613(c), only if the Secretary or designee invokes the extended range under § 158.613(c)(2) for that employee.

§ 158.613 Salary range.

(a) *Range.* The salary range provides the boundaries of the salary system described in § 158.610. The salary range comprises a standard range and an extended range, and the standard range applies unless the Secretary or designee invokes the extended range under paragraph (c) of this section.

(b) *Standard range.* The upper limit of the standard range is equal to the amount of total annual compensation payable to the Vice President under 3 U.S.C. 104.

(c) *Extended range.* The upper limit of the extended range is 150 percent of the annual rate of basic pay for level I of the Executive Schedule (150% of EX-I). Only DHS-CS employees serving in renewable appointments may receive a salary amount in the extended range, and only if the Secretary or designee invokes the extended range for those employees as described in this paragraph (c).

(1) The Secretary or designee may invoke the extended range for a DHS-CS employee when the Secretary or designee determines, based on the compensation strategy in § 158.601, that the employee's qualifications, the employee's mission impact, and mission-related requirements warrant adjusting the employee's salary beyond the standard range. The Secretary or designee must approve the salary adjustment of each such employee by name, and to receive a salary in the extended range the employee must either already be in a renewable appointment or accept a renewable appointment. While the employee is receiving a salary in an amount in the extended range, the Department may not change that em-

ployee's appointment to a continuing appointment.

(2) The Secretary or designee may invoke the extended range for an individual selected for appointment to a qualified position when the Secretary or designee determines, based on the compensation strategy in § 158.601, that the individual's qualifications, the individual's anticipated mission impact, and mission-related requirements warrant setting the individual's salary beyond the standard range. The Secretary or designee must approve the appointment of each such individual to a qualified position by name, and the individual must be appointed to a renewable appointment only. While that individual is receiving a salary under this part in an amount in the extended range, the Department may not change that individual's appointment to a continuing appointment at any time.

(d) *Maximum.* No DHS-CS employee may receive a salary under this part in excess of 150% of EX-I.

§ 158.614 Salary limitations.

(a) The salary system, described in § 158.610, has the following limitations on maximum rates of salary that apply within the CTMS salary range described in § 158.613 of this part:

(1) The annual rate of basic pay for GS-15, step 10 under the General Schedule (excluding locality pay or any other additional pay as defined in 5 CFR chapter 1);

(2) The annual rate of basic pay for level IV of the Executive Schedule;

(3) The annual rate of basic pay for level II of the Executive Schedule;

(4) The annual rate of basic pay for level I of the Executive Schedule; and

(5) The total annual compensation payable to the Vice President under 3 U.S.C. 104.

(b) The Department may establish additional limitations on maximum rates of salary for the salary system.

(c) The salary system incorporates each limitation on maximum rates of salary described in this section into each salary structure established under § 158.611.

SALARY ADMINISTRATION

§ 158.620 Setting salaries.

(a) The Department sets the salary for an individual accepting an appointment to a qualified position as part of selection and appointment of the individual, described in §158.522. The Department sets the individual's salary within a subrange of a salary structure described in §158.611 based on consideration of:

- (1) The individual's CTMS qualifications, determined under the assessment program described in §158.520;
- (2) Applicable work and career structures, including the individual's initial work level, determined as part of selection and appointment under §158.522;
- (3) The individual's anticipated mission impact;
- (4) Mission-related requirements; and
- (5) Strategic talent priorities.

(b) In setting the salary for an individual appointed to a qualified position under this part, the Department may set the individual's salary without regard to any prior salary of the individual, including any salary or basic pay while serving in a previous appointment under this part or in another previous Federal appointment made outside the authority of this part.

(c) In setting the salary for an individual appointed to a qualified position under this part, the Department may provide a local cybersecurity talent market supplement described in §158.612.

§ 158.621 Adjusting salaries.

(a) The Department adjusts a DHS–CS employee's salary, or the salaries of a group of DHS–CS employees, by paying a recognition adjustment under §158.631, or paying a local cybersecurity talent market supplement under §158.612, or both.

(b) The Department does not provide DHS–CS employees with any automatic salary increase or any salary increase based on length of service in the DHS–CS or in any position outside the DHS–CS.

(c) If the Department adjusts a salary structure under §158.611(e) that results in an increase to the salary minimum for one or more subranges of the salary

structure, for any DHS–CS employee receiving a salary in an affected subrange at the affected salary minimum, DHS adjusts the employee's salary to reflect the adjustment to the salary structure and the new salary minimum for the affected subrange. Such a salary adjustment is not considered a recognition adjustment under §158.631.

§ 158.622 Administering salary in accordance with relevant provisions of other laws.

(a) Except as stated in paragraph (b) of this section, the Department administers salary under this part in accordance with the provisions of 5 CFR part 550 regarding pay administration generally.

(b) The following provisions of 5 CFR part 550 do not apply to administering salary under this part and do not apply under CTMS, to the DHS–CS, or to talent management involving the individuals described in §158.103 of this part:

- (1) Subpart A regarding premium pay;
- (2) Subpart I regarding pay for duty involving physical hardship or hazard;
- (3) Subpart M regarding firefighter pay;
- (4) Subpart N compensatory time-off for travel; and
- (5) Subpart P regarding overtime for board patrol agents.

(c) The Department also administers salary under this part in accordance with the provisions of the following:

- (1) 5 U.S.C. 5520, 42 U.S.C. 659 and 5 CFR parts 581 and 582, regarding garnishment;
- (2) 31 U.S.C. 3702 and 5 CFR part 178 regarding claims settlement;
- (3) 31 U.S.C. 3711 and 3716 and 31 CFR chapter IX parts 900 through 904 regarding debt collection;
- (4) 5 U.S.C. Chapter 55 Subchapter VII regarding payments to missing employees; and
- (5) Other relevant provisions of other laws specifically adopted in CTMS policy.

(d) For purposes of salary administration under this section, the Department administers salary based on consideration of a DHS–CS employee's work schedule under the work scheduling system, described in §158.705, and

may convert the employee's salary into an hourly rate, biweekly rate, or other rate.

RECOGNITION

§ 158.630 Employee recognition.

(a) *DHS-CS employees.* In alignment with the compensation strategy in § 158.601 and the performance management program described in § 158.802 of this part, the Department may provide recognition under §§ 158.631 through 158.634, on a periodic or *ad hoc* basis, to a DHS-CS employee based on the employee's mission impact. In providing such recognition, the Department may also consider mission-related requirements and strategic talent priorities.

(b) *Prospective employees.* In alignment with the compensation strategy in § 158.601, the Department may offer, and provide upon appointment, recognition payments under § 158.632(b) and recognition time-off under § 158.633(b), on a periodic or *ad hoc* basis, to an individual selected for employment in the DHS-CS based on:

(1) The individual's CTMS qualifications determined under the assessment program described in § 158.520;

(2) The individual's anticipated mission impact;

(3) Mission-related requirements; and

(4) Strategic talent priorities.

(c) *Eligibility.* The Department determines eligibility for recognition under this section, §§ 158.631 through 158.634, and CTMS policy implementing this section. The Department may defer providing recognition to a DHS-CS employee under this part if the Department is in the process of determining whether the employee's performance is unacceptable, as defined in 5 U.S.C. 4301(3), or whether the employee has engaged in misconduct. If the Department determines a DHS-CS employee's performance is unacceptable, as defined in 5 U.S.C. 4301(3), or the employee receives an unacceptable rating of record under § 158.804, or the Department determines the employee has engaged in misconduct, the employee is ineligible to receive recognition under this part.

(d) *Policy.* CTMS policy implementing this section addresses:

(1) Eligibility criteria;

(2) Requirements for documenting the reason and basis for recognition provided to a DHS-CS employee;

(3) Appropriate levels of review and approval for providing recognition;

(4) Any limitations on the total number, frequency, or amount of recognition a DHS-CS employee may receive within any specific time period;

(5) Any service agreement requirements; and

(6) Processes for evaluating the effectiveness of recognition in supporting the purpose of CTMS described in § 158.101, the purpose of the DHS-CS described in § 158.202, and the operationalization of the compensation strategy described in § 158.601.

(e) *Advisory appointees.* Recognition under this part for a DHS-CS advisory appointee is subject to additional requirements and restrictions in subpart J of this part.

§ 158.631 Recognition adjustments.

(a) Under this section and § 158.630, the Department may provide a recognition adjustment to a DHS-CS employee for the reasons and bases stated in § 158.630(a). A recognition adjustment is an adjustment to the DHS-CS employee's salary provided under a salary structure described in § 158.611. A recognition adjustment does not alter any local cybersecurity talent market supplement for that employee.

(b) No DHS-CS employee may receive a recognition adjustment that would cause the employee's salary to exceed the salary range maximum described in § 158.613(d) or the applicable salary limitation assigned to the subrange of a salary structure as described in § 158.611(d) that contains the employee's salary. A DHS-CS employee may not receive a recognition adjustment that would cause the employee's salary amount to be in the extended range, described in § 158.613(c), unless the Secretary or designee invokes the extended range for that employee under § 158.613(c)(1).

(c) A recognition adjustment under this section is not a promotion for any purpose under Title 5 U.S.C. or 5 CFR.

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(d) A recognition adjustment under this section for a DHS–CS advisory appointee is subject to additional requirements and restrictions in subpart J of this part.

§ 158.632 Recognition payments.

(a) Under this section and § 158.630, and for the reasons and bases stated in § 158.630(a), the Department may provide a recognition payment to a DHS–CS employee in an amount of up to 20 percent, or up to 50 percent with approval of the Secretary or designee, of the receiving DHS–CS employee’s salary. The Department may require a service agreement of not less than six months and not more than three years as part of providing a recognition payment to a DHS–CS employee.

(b) Under this section and § 158.630, and for the reasons and bases stated in § 158.630(b) and as part of an offer of employment in the DHS–CS, the Department may offer a recognition payment to an individual selected for employment in the DHS–CS in an amount of up to 20 percent of the receiving individual’s initial salary in the DHS–CS. The Department requires a service agreement of not less than six months and not more than three years as part of providing, upon appointment, a recognition payment to an individual selected for employment in the DHS–CS.

(c) The Department may provide a recognition payment as a lump sum payment, an installment payment, or a recurring payment.

(d) The Department may provide a recognition payment under this section to a former DHS–CS employee or to the legal heirs or estate of a former DHS–CS employee in accordance with 5 U.S.C. 4505.

(e) Acceptance of a recognition payment constitutes agreement for Federal Government use of any idea, method, device, or similar that is the basis of the payment.

(f) A recognition payment under this section is subject to and may be limited by the aggregate compensation limit described in § 158.604.

(g) A recognition payment is not salary under this part and is not basic pay for any purpose under 5 U.S.C. or 5 CFR.

(h) A recognition payment under this section is based on the following types of awards and incentives provided under 5 U.S.C.:

- (1) Cash awards under 5 U.S.C. 4502;
- (2) Agency awards under 5 U.S.C. 4503;
- (3) Performance-based cash awards under 5 U.S.C. 4505a and 5384;
- (4) Presidential rank awards under 5 U.S.C. 4507 and 4507a; and
- (5) Recruitment, relocation, and retention incentives 5 U.S.C. 5753 and 5754.

(i) A recognition payment under this section is in lieu of the types of awards and incentives provided under 5 U.S.C. listed in paragraph (h) of this section, and a DHS–CS employee is ineligible to receive any such awards or incentives.

(j) An individual selected for employment in the DHS–CS is ineligible to receive, as part of the offer of employment, any other offer of a monetary award or incentive, a payment in addition to salary, or other monetary recognition from the Department except as provided in this section and § 158.630. An individual appointed to an advisory appointment is also ineligible to receive, as part of an offer of employment in the DHS–CS, any offer of recognition under this section.

(k) A recognition payment under this section for a DHS–CS advisory appointee is subject to additional requirements and restrictions in subpart J of this part.

§ 158.633 Recognition time-off.

(a) Under this section and § 158.630, and for the reasons and bases stated in § 158.630(a), the Department may provide recognition time-off to a DHS–CS employee for use within a designated timeframe not to exceed 26 work periods, as defined in § 158.705(c). Recognition time-off is time-off from duty without charge to leave or loss of compensation.

(b) Under this section and § 158.630, and for the reasons and bases stated in § 158.630(b) and as part of an offer of employment in the DHS–CS, the Department may offer up to 40 hours of recognition time-off to an individual selected for employment in the DHS–CS for use within a designated timeframe not to exceed 26 work periods, as defined in § 158.705(b). The Department

may require a service agreement as part of providing, upon appointment, recognition time-off to an individual selected for employment in the DHS-CS.

(c) All recognition time-off provided, and the use of such time-off, must be recorded in a timekeeping system for purposes of salary administration and leave administration under this part.

(d) Recognition time-off provided under this section may not, under any circumstances, be converted to a cash payment to the receiving DHS-CS employee or any other type of time-off or leave.

(e) Recognition time-off under this section is based on time-off awards provided under the provisions of 5 U.S.C. 4502(e).

(f) Recognition time-off under this section is in lieu of the time-off awards provided under 5 U.S.C. 4502(e), and a DHS-CS employee is ineligible to receive any such awards.

(g) An individual selected for employment in the DHS-CS is ineligible to receive, as part of the offer of employment, any other offer of time-off or time-off award from the Department except as provided in this section and §§158.630 and 158.651. An individual appointed to an advisory appointment is also ineligible to receive, as part of an offer of employment in the DHS-CS, any offer of recognition under this section.

(h) A recognition time-off provided under this section to a DHS-CS advisory appointee is subject to additional requirements and restrictions in subpart J of this part.

§ 158.634 Honorary recognition.

(a) Under this section and §158.630, the Department may establish one or more honorary recognition programs to provide honorary recognition to DHS-CS employees for the reasons and bases stated in §158.630(a). The Department may incur necessary expenses for honorary recognition under an honorary recognition program established under this section.

(b) Honorary recognition under this section is based on honorary recognition provided under the provisions of 5 U.S.C. 4503, and a DHS-CS employee may be eligible to receive honorary

recognition under 5 U.S.C. 4503 and 5 CFR part 451 in addition to any honorary recognition under this section.

(c) The Department may provide honorary recognition under this section to a former DHS-CS employee or to the legal heirs or estate of a former DHS-CS employee in accordance with 5 U.S.C. 4505.

(d) Honorary recognition under this section for a DHS-CS advisory appointee is subject to additional requirements in subpart J of this part.

OTHER SPECIAL PAYMENTS

§ 158.640 Professional development and training.

(a) In alignment with the compensation strategy described in §158.601 and the career development program described in §158.803, the Department may provide professional development and training opportunities, payments, and reimbursements for DHS-CS employees.

(b) CTMS policy implementing this section addresses:

- (1) Eligibility criteria;
- (2) Requirements for documenting the reason and basis for professional development and training opportunities, payments, and reimbursements provided to a DHS-CS employee;
- (3) Appropriate levels of review and approval for providing professional development and training opportunities, payments, and reimbursements;
- (4) Any limitations on the total number or frequency of professional development and training opportunities, and any limitations on the total number, frequency, or amount of professional development and training payments and reimbursements a DHS-CS employee may receive, within any specific time period;
- (5) Any service agreement requirements;
- (6) Requirements for communicating to DHS-CS employees and their supervisors about professional development and training opportunities; and
- (7) Processes for evaluating the effectiveness of the professional development and training in supporting the purpose of CTMS described in §158.101, the purpose of the DHS-CS described in §158.202, and the operationalization of

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the compensation strategy described in § 158.601.

(c) Any payment or reimbursement under this section is excluded from the aggregate compensation limit described in § 158.604.

(d) Any payment or reimbursement under this section is not salary under this part and is not basic pay for any purpose under 5 U.S.C. or 5 CFR.

(e) Professional development and training under this section is based on the following training and professional development opportunities, payments, and reimbursements provided under 5 U.S.C.:

(1) Sabbaticals under 5 U.S.C. 3396;

(2) Academic degree training under 5 U.S.C. 4107;

(3) Expenses of training under 5 U.S.C. 4109;

(4) Expenses of attendance at meetings under 5 U.S.C. 4110; and

(5) Payment of expenses to obtain professional credentials under 5 U.S.C. 5757.

(f) In addition to any professional development and training under this section, a DHS–CS employee may be eligible to receive the training and professional development opportunities, payments, and reimbursements provided under 5 U.S.C. listed in paragraph (e) of this section.

(g) Professional development and training under this section for a DHS–CS advisory appointee is subject to additional requirements and restrictions in subpart J of this part.

§ 158.641 Student loan repayments.

(a) In alignment with the compensation strategy described in § 158.601, the Department may provide a student loan repayment to a DHS–CS employee under this section and in accordance with 5 U.S.C. 5379 and 5 CFR part 537, except that:

(1) The maximum payment amounts under 5 U.S.C. 5379 and 5 CFR part 537 do not apply, and the Department may provide and a DHS–CS employee may receive a student loan repayment under this section so long as such repayment does not exceed \$16,500 per employee per calendar year and a total of \$90,000 per employee;

(2) The minimum service period length of three years under 5 U.S.C.

5379 and 5 CFR part 537 does not apply, and instead the length of a minimum service period for a DHS–CS employee receiving a student loan repayment under this section is determined under CTMS policy and based on the amount of the repayment received by the employee; and

(3) Eligibility criteria related to time-limited appointments under 5 U.S.C. 5379 and 5 CFR part 537 do not apply, and a DHS–CS employee in a renewable appointment may receive a student loan payment under this section.

(b) In alignment with eligibility criteria under 5 U.S.C. 5379 and 5 CFR part 537:

(1) If the Department determines a DHS–CS employee’s performance is unacceptable, as defined in 5 U.S.C. 4301(3), or the employee receives an unacceptable rating of record under § 158.804, or the Department determines the employee has engaged in misconduct, the employee is ineligible to receive a student loan repayment under this section.

(2) A DHS–CS advisory appointee is ineligible to receive a student loan repayment under this section.

(c) CTMS policy implementing this section addresses:

(1) Eligibility criteria;

(2) Requirements for documenting the reason and basis for a student loan repayment provided to a DHS–CS employee;

(3) Appropriate levels of review and approval for providing a student loan repayment;

(4) Service agreement requirements, including minimum service periods;

(5) Any additional limitations on student loan repayments; and

(6) Processes for evaluating the effectiveness of student loan repayments in supporting the purpose of CTMS described in § 158.101, the purpose of the DHS–CS described in § 158.202, and the operationalization of the compensation strategy described in § 158.601.

(d) Any student loan repayment provided under this section is excluded from the aggregate compensation limit described in § 158.604.

(e) Any student loan repayment provided under this section is not salary

under this part and is not basic pay for any purpose under 5 U.S.C. or 5 CFR.

§ 158.642 Special working conditions payment program.

(a) In alignment with the compensation strategy described in § 158.601, the Department may establish a program to provide payments to DHS-CS employees to address special working conditions that are otherwise unaccounted for or the Department determines are accounted for insufficiently in DHS-CS employees' other types of additional compensation and salary.

(b) Special working conditions include circumstances in which a supervisor or other appropriate official requires a DHS-CS employee to perform DHS-CS cybersecurity work that involves, as determined by the Department:

- (1) Unusual physical or mental hardship;
- (2) Performing work at atypical locations, at unexpected times, or for an uncommon duration of time exceeding the expectation described in § 158.601(c) about working unusual hours and extended hours; or
- (3) A combination of the conditions described in paragraphs (b)(1) and (2) of this section.

(c) A payment for special working conditions is a payment of up to 25 percent of the receiving DHS-CS employee's salary as computed for a work period, defined in § 158.705(b), or a series of work periods.

(d) The Department determines whether to establish, adjust, or cancel a program under this section based on information from:

- (1) The work scheduling system described in § 158.705; and
- (2) Strategic talent planning described in § 158.401(c), including information about current compensation practices of other cybersecurity employers analyzed under the talent market analysis described in § 158.403.

(e) The Department determines eligibility for a payment for special working conditions under this section and CTMS policy implementing this section.

(1) A DHS-CS employee who receives a payment for special working conditions under a program established

under this section is not automatically eligible or entitled to receive any additional such payments.

(2) A DHS-CS employee receiving a salary equal to or greater than EX-IV is ineligible to receive a payment under this section.

(3) A DHS-CS advisory appointee is ineligible to receive a payment for special working conditions under this section.

(f) CTMS policy implementing this section addresses:

- (1) Eligibility criteria;
- (2) Requirements for documenting the reason and basis for payments for special working conditions provided to a DHS-CS employee;
- (3) Appropriate levels of review and approval for providing payments for special working conditions;
- (4) Any limitations on payments for special working conditions;
- (5) Requirements for determining whether a payment for special working conditions is a lump sum payment, paid in installments, or a recurring payment; and
- (6) Processes for evaluating the effectiveness of any special working conditions payment program in supporting the purpose of CTMS described in § 158.101, the purpose of the DHS-CS described in § 158.202, and the operationalization of the compensation strategy described in § 158.601.

(g) Any payment under this section is subject to and may be limited by the aggregate compensation limit described in § 158.604.

(h) Any payment under this section is not salary under this part and is not basic pay for any purpose under Title 5 U.S.C. or 5 CFR.

(i) A payment for special working conditions under this section is based on the following types of payments provided under 5 U.S.C.:

- (1) Night, standby and hazardous duty differential under 5 U.S.C. 5545;
- (2) Pay for Sunday and holiday work under 5 U.S.C. 5546; and
- (3) Extended assignment incentives under 5 U.S.C. 5757.

(j) A payment for special working conditions under this section is in lieu of the types of payment provided under 5 U.S.C. listed in paragraph (g) of this

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section, and a DHS–CS employee is ineligible to receive any such payments under 5 U.S.C.

§ 158.643 Allowance in nonforeign areas.

(a) A DHS–CS employee is eligible for and may receive an allowance under 5 U.S.C. 5941 and implementing regulations in 5 CFR part 591, subpart B, on the same basis and to the same extent as if the employee is an employee covered by those authorities.

(b) The Department provides an allowance described in paragraph (a) of this section to any DHS–CS employee who is eligible, as described in paragraph (a), for such allowance.

(c) Any allowance provided under this section is excluded from the aggregate compensation limit described in § 158.604.

(d) Any allowance provided under this section is not salary under this part and is not basic pay for any purpose under 5 U.S.C. or 5 CFR.

(e) Any allowance under this section for a DHS–CS advisory appointee is subject to additional requirements and restrictions in subpart J of this part.

OTHER COMPENSATION PROVIDED IN ACCORDANCE WITH RELEVANT PROVISIONS OF OTHER LAWS

§ 158.650 Holidays.

In alignment with salary administration under § 158.622 and work scheduling under § 158.705, the Department provides holidays to a DHS–CS employee under this section and in accordance with 5 U.S.C. 6103–6104 and 5 CFR part 610, subpart B.

§ 158.651 Leave.

(a) *Leave.* In alignment with salary administration under § 158.622 and work scheduling under § 158.705, the Department provides leave to a DHS–CS employee under this section and in accordance with 5 U.S.C. Chapter 63 and 5 CFR part 630, including:

(1) Annual leave, as described in 5 U.S.C. Chapter 63, Subchapter I;

(2) Sick leave, as described in 5 U.S.C. Chapter 63, Subchapter I;

(3) Other paid leave, as described in 5 U.S.C. Chapter 63, Subchapter II;

(4) Voluntary transfers of leave, as described in 5 U.S.C. Chapter 63, Subchapter III;

(5) Voluntary leave bank programs, as described in 5 U.S.C. Chapter 63, Subchapter IV;

(6) Family and medical leave, as described in 5 U.S.C. Chapter 63, Subchapter V; and

(7) Leave transfer in disasters and emergencies, as described in 5 U.S.C. Chapter 63, Subchapter VI.

(b) *Annual leave accrual.* A DHS–CS employee's annual leave accrual amount is determined under 5 U.S.C. 6303.

(c) *Annual leave accumulation.* A DHS–CS employee's annual leave accumulation amount is determined under 5 U.S.C. 6304, except that the Department may apply 5 U.S.C. 6304(f)(2)(A) to DHS–CS employees receiving a salary under this part that exceeds 120 percent of the minimum annual rate of basic pay for GS–15 under the General Schedule.

(d) *Leave credits.* The annual leave and sick leave accrued to the credit of a current Federal employee who is appointed to a qualified position under this part without a break in service of more than three calendar days is transferred to the employee's credit in accordance with 5 U.S.C. 6308.

(e) *Annual leave balance upon leaving the DHS–CS.* When a DHS–CS employee moves to a position outside of the DHS–CS, any leave balance for the employee is addressed in accordance with 5 CFR 630.209 and 630.501.

(f) *Leave administration.* The Department administers leave under this section as described in this section and in § 158.655, and in accordance with the relevant provisions of other laws referenced in this section and CTMS policy.

§ 158.652 Compensatory time-off for religious observance.

In alignment with salary administration under § 158.622 of this part and work scheduling under § 158.705, the Department provides compensatory time-off for religious observance to a DHS–CS employee under this section and in accordance with 5 U.S.C. 5550a and 5 CFR 550, subpart J.

§ 158.653 Other benefits.

(a) In alignment with salary administration under § 158.622, leave administration under § 158.651, and work scheduling under § 158.705, the Department provides benefits, including retirement, health benefits, and insurance programs, to a DHS-CS employee under this section and in accordance with 5 U.S.C. Chapters 81–90 and 5 CFR parts 831 and 838–894.

(b) The Department administers the benefits of an annuitant appointed to a qualified position in accordance with 5 U.S.C. 8344, 5 U.S.C. 8468, 5 CFR 553.203, or 5 CFR part 837, as applicable.

(c) The Department provides a transportation subsidy to a DHS-CS employee under this section and in accordance with 5 U.S.C. 7905.

§ 158.654 Other payments.

(a) The Department provides the following other types of payments to a DHS-CS employee under this section and in accordance with the relevant provisions of law referenced in this section:

(1) Severance pay under this section, and the Department provides any severance pay in accordance with 5 U.S.C. 5595 and 5 CFR part 550, subpart G, except that separation from the DHS-CS because of a lapse or nonrenewal of a DHS-CS employee's appointment under this part or because of a DHS-CS employee's refusal to accept a directed subsequent assignment, described in § 158.708, is not an involuntary separation, and the former DHS-CS employee is not entitled to severance pay.

(2) Lump-sum leave payouts under this section, and the Department provides any lump-sum leave payouts in accordance with 5 U.S.C. 5551 and 5552 and 5 CFR part 550, subpart L.

(3) Voluntary separation incentive payments under this section, and the Department provides any such payments in accordance with 5 U.S.C. 3521–3525 and 5 CFR part 576.

(4) Reservist differential under this section, and the Department provides any such differential in accordance with 5 U.S.C. 5538.

(5) Quarters allowances under this section, and the Department provides any such allowances in accordance with 5 U.S.C. Chapter 59, Subchapter II,

the Department of State Standardized Regulations and any implementing supplements issued by the Department of State, and 5 CFR part 591, subpart C.

(6) Overseas differentials and allowances under this section, and the Department provides any such differentials and allowances in accordance with 5 U.S.C. Chapter 59, Subchapter III, the Department of State Standardized Regulations and any implementing supplements issued by the Department of State, and 5 CFR part 591, subpart C.

(7) Remote worksite allowances, foreign currency allowances, and hostile fire pay under this section, and the Department provides any such allowances and pay in accordance with 5 U.S.C. Chapter 59, Subchapter IV.

(8) Other similar payments described in CTMS policy as being authorized under this part and provided in accordance with relevant provisions of other laws.

(b) A payment for any quarter allowances, overseas differentials and allowances, and remote worksite allowances, foreign currency allowances, and hostile fire pay under paragraphs (a)(5) through (7) of this section is subject to and may be limited by the aggregate compensation limit described in § 158.604. A payment for any severance pay, lump-sum leave payout, voluntary separation incentive payment, and reservist differential under paragraphs (a)(1) through (4) of this section is not subject to the aggregate compensation limit described in § 158.604. A payment under paragraph (a)(8) of this section may be subject to and limited by the aggregate compensation limit described in § 158.604, as described in CTMS policy.

(c) Any payment under this section is not salary under this part and is not basic pay for any purpose under Title 5 U.S.C. or 5 CFR.

§ 158.655 Administering compensation in accordance with relevant provisions of other laws.

(a) For purposes of administering compensation authorized under §§ 158.650 through 158.654 in accordance with relevant provisions of other laws:

(1) The Department may convert a DHS-CS employee's salary into an hourly rate, biweekly rate, or other

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rate, and administer compensation based on consideration of the DHS-CS employee's work schedule under the work scheduling system described in § 158.705;

(2) A DHS-CS employee's hours of work and related computations are determined under the relevant provisions of law referenced in §§ 158.650 through 158.654 and CTMS policy implementing this section;

(3) A DHS-CS employee on a part-time schedule described in § 158.705 is treated as if the employee is serving "part-time career employment" defined in 5 CFR 340.101; and

(4) A DHS-CS employee on a contingent schedule described in § 158.705 is treated as if the employee is serving "intermittent employment" defined in 5 CFR 340.401.

(b) If, in administering compensation under §§ 158.650 through 158.654, the Department determines it is necessary to clarify the relationship between those sections and the relevant provisions of law referenced in those sections and any other relevant provisions of other laws, the Department will address the issue in new or revised CTMS policy.

Subpart G—Deploying Talent

§ 158.701 Deployment program.

(a) *Deployment program.* The Secretary or designee establishes and administers a deployment program to:

(1) Guide when the Department uses CTMS to recruit and retain individuals possessing CTMS qualifications; and

(2) Operationalize aspects of the work valuation system, the talent acquisition system and the compensation system, described in §§ 158.404, 158.501, and 158.602 respectively.

(b) Under the deployment program, the Department:

(1) Designates qualified positions as described in § 158.702;

(2) Designates and staffs assignments as described in § 158.703;

(3) Determines and documents a DHS-CS employee's official worksite as described in § 158.704;

(4) Administers a work scheduling system as described in § 158.705; and

(5) Performs necessary recordkeeping as described in § 158.706.

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§ 158.702 Designating qualified positions.

(a) When a DHS organization requires individuals possessing CTMS qualifications to ensure the most effective execution of the DHS cybersecurity mission and the recruitment and retention of such individuals would likely be enhanced by using CTMS, the Secretary or designee designates qualified positions.

(b) CTMS policy implementing this section addresses:

(1) Procedures for DHS organizations to request using CTMS;

(2) Requirements for DHS organization using CTMS; and

(3) Information necessary to designate qualified positions.

(c) Designating qualified positions may result in:

(1) Establishing one or more qualified positions under the talent acquisition system, described in § 158.501; or

(2) Designating and staffing one or more assignments as described in § 158.703; or

(3) Both results described in paragraphs (c)(1) and (2) of this section.

(d) Designating qualified positions involves budget and fiscal considerations related to establishing one or more qualified positions under the talent acquisition system, described in § 158.501.

§ 158.703 Designating and staffing assignments.

(a) *Designating assignments.* The Department designates assignments by defining combinations of CTMS qualifications and DHS-CS cybersecurity work associable with qualified positions. CTMS policy implementing this section addresses procedures for DHS organizations to designate assignments, including as a result of designating qualified positions as described in § 158.702.

(b) *Staffing assignments.* The Department staffs assignments by:

(1) Matching assignments with DHS-CS employees as described in paragraph (d) of this section;

(2) Matching assignments with newly appointed individuals as described in paragraph (c) of this section; or

(3) Seeking to recruit individuals and establish new qualified positions under

the talent acquisition system described in §158.501 and then matching assignments with newly appointed individuals as described in paragraph (c) of this section.

(c) *Initial assignment.* Upon appointment of an individual to a qualified position, the Department matches the individual with an assignment based on the alignment of the individual's CTMS qualifications, determined under the assessment program described in §158.520, to the CTMS qualifications of an assignment. In matching an individual with an initial assignment, the Department may also consider:

- (1) Input from the individual;
- (2) Input from DHS organizations;
- (3) Mission-related requirements; and
- (4) Strategic talent priorities.

(d) *Subsequent assignments.* The Department matches DHS-CS employees with assignments subsequent to employees' initial assignments, as necessary.

(1) The Department matches a DHS-CS employee with a subsequent assignment based on the alignment of the employee's CTMS qualifications with the CTMS qualifications of an assignment. In matching a DHS-CS employee with a subsequent assignment, the Department may also consider:

- (i) Input from the employee;
- (ii) Input from DHS organizations, especially the primary DHS organization of the employee's current assignment;
- (iii) Information about the employee from the performance management program described in §158.802 and the career development program described in §158.803;
- (iv) Mission-related requirements; and
- (v) Strategic talent priorities.

(2) A DHS-CS employee may have multiple assignments throughout the employee's service in a qualified position, but may only have one assignment at a time. A DHS-CS employee's subsequent assignments may have assignment information, described in §158.706(e), that is different than the assignment information of the employee's initial assignment, including primary DHS organization.

(3) In alignment with the career development program described in

§158.803 and based on information from development reviews described in §158.806 the Department communicates with DHS-CS employees on an ongoing basis about subsequent assignment opportunities;

§ 158.704 Official worksite.

(a) *Definition.* A DHS-CS employee's official worksite is the geographic location where the employee regularly performs DHS-CS cybersecurity work or where the employee's DHS-CS cybersecurity work is based, as determined and documented by the Department under this section.

(b) *Determination.* The Department determines a DHS-CS employee's official work site for purposes of administering compensation under this part, especially eligibility for any compensation described in §§158.612 and 158.643. The Department's determination of a DHS-CS employee's official worksite includes consideration of any of the following for the employee: Telework, variation in location where the employee performs DHS-CS cybersecurity work, and temporary situations affecting the location where the employee performs DHS-CS cybersecurity work.

(c) *Documentation.* Upon appointment of an individual to a qualified position, the Department documents the individual's official worksite as part of documenting the employee's appointment to a qualified position and the employee's assignment, as described in §158.706. The Department updates documentation of a DHS-CS employee's official worksite, if the geographic location where the DHS-CS employee regularly performs DHS-CS cybersecurity work changes and such change impacts the determination of the DHS-CS employee's official worksite under paragraph (a) of this section and such change is expected to last, or does last, for six months or more.

§ 158.705 Work scheduling.

(a) *Work scheduling system.* The Secretary or designee establishes and administers a work scheduling system for DHS-CS employees to ensure:

(1) Agility for the Department in scheduling DHS-CS cybersecurity work to execute the DHS cybersecurity mission;

(2) Availability of DHS–CS employees to perform the DHS–CS cybersecurity work of their assignments;

(3) Clear expectations for DHS–CS employees about when they are expected to perform DHS–CS cybersecurity work associated with their assignments;

(4) Flexibility for DHS–CS employees in scheduling and performing DHS–CS cybersecurity work associated with their assignments; and

(5) Recording of, accounting for, and monitoring of hours worked by DHS–CS employees.

(b) *Definitions.* For purposes of this section—

(1) *Work period* means a two-week period of 14 consecutive days that begins on a Sunday and ends on a Saturday, and is the equivalent of a *biweekly pay period* defined in 5 U.S.C. 5504 and 5 CFR part 550, subpart F.

(2) *Minimum hours of work* means the minimum number of hours that a DHS–CS employee is required to work, or account for with time-off, during a work period, and is the equivalent to the term *basic work requirement* defined in 5 U.S.C. 6121.

(3) *Time-off* means leave under § 158.651, time-off under § 158.652, and recognition time-off under § 158.633, or other time-off of duty available for DHS–CS employees.

(4) *Full-time schedule* means 80 hours per work period.

(5) *Part-time schedule* means a specified number of hours less than 80 hours per work period. When DHS–CS cybersecurity work associated with a DHS–CS employee's assignment regularly requires the DHS–CS employee to exceed that employee's specified number of hours per work period, the Department considers, with input from the employee and the employee's supervisor, whether to change the employee's work schedule from part-time to full-time to ensure appropriate compensation under this part, including accrual of leave under § 158.651 and the DHS–CS employee's share of health benefits premiums provided under § 158.653.

(6) *Contingent schedule* means an irregular number of hours up to 80 hours per work period. A contingent schedule is appropriate only when the DHS–CS

cybersecurity work associated with a DHS–CS employee's assignment is sporadic and cannot be regularly scheduled in advance. When DHS–CS cybersecurity work associated with a DHS–CS employee's assignment is able to be scheduled in advance on a regular basis, the Department changes the employee's work schedule from contingent to part-time or full-time, as appropriate, to ensure appropriate compensation under this part, including accrual of leave under § 158.651 and the DHS–CS employee's share of health benefits premiums provided under § 158.653.

(c) *Employee work schedules.* (1) A DHS–CS employee's work schedule, and any minimum hours of work associated with the employee's schedule, is determined at the time of appointment and recorded as part of documenting the employee's appointment to a qualified position under § 158.706. A DHS–CS employee on a contingent schedule does not have a minimum number of hours of work but has a maximum number of total hours for the employee's appointment that is determined at the time of appointment and recorded as part of documenting the employee's appointment to a qualified position under § 158.706.

(2) A DHS–CS employee's work schedule, and any minimum hours of work, may change during the employee's service in a qualified position and the Department records any such changes in the documentation associated with the employee's qualified position under § 158.706.

(d) *Work schedule requirements.* (1) DHS–CS employees are expected to perform DHS–CS cybersecurity work associated with their assignments to execute the DHS cybersecurity mission, especially in response to exigent circumstances and emergencies, including cybersecurity incidents defined in 6 U.S.C. 659, without entitlement to more compensation than the employee's salary described in § 158.603. Hours worked by a DHS–CS employee that exceed the employee's minimum hours of work do not affect the employee's salary or result in any automatic compensation, including a type of additional compensation.

(2) A DHS-CS employee on a full-time schedule is expected to work at least 80 hours per work period.

(3) A DHS-CS employee on a part-time schedule is expected to work at least the employee's specified number of hours of work per work period.

(4) A DHS-CS employee on a contingent schedule is expected to work as necessary to perform the DHS-CS cybersecurity work associated with the employee's assignment, not to exceed the maximum number of total hours for the employee's appointment.

(5) DHS-CS employees must report hours worked by the employee. The Department monitors such hours for purposes of managing the DHS-CS, including considering any changes to DHS-CS employees' schedules, and administering compensation, including assisting in consideration of any additional compensation for DHS-CS employees under § 158.642.

(6) A DHS-CS employee on a full-time schedule or a part-time schedule must account for minimum hours of work by the conclusion of the last day of the work period. If the hours worked by the employee are less than the employee's minimum hours of work, the employee must use time-off approved by the employee's supervisor, or must be placed in an appropriate non-pay status for the purposes described in paragraphs (a)(1) and (2) of this section, to account for the difference between hours actually worked by the employee and the employee's minimum hours of work.

(7) A DHS-CS employee on a full-time schedule or a part-time schedule, in coordination with the employee's supervisor, may adjust when work hours are completed in a given work period, to ensure time-off for religious observance, while also completing minimum hours of work. A DHS-CS employee on a contingent schedule, in coordination with the employee's supervisor, may adjust when work hours are completed to ensure time-off for religious observance.

(e) *Hours worked and compensation.* The Department uses the work scheduling system described in this section in administering compensation under this part, especially salary administration described in § 158.622 and the com-

pensation described in §§ 158.642, 158.650, 158.651, and 158.652. In alignment with the compensation strategy, described in § 158.601, the work scheduling system:

(1) Acknowledges the unpredictable nature of cybersecurity work and the expectation described in § 158.601(c) about working unusual hours and extended hours as needed; and

(2) Reflects an understanding of the cybersecurity talent market, especially current work expectations and arrangements.

(f) *Policy.* CTMS policy implementing this section addresses:

(1) Procedures for determining, recording, and updating as necessary, DHS-CS employees' work schedules;

(2) Procedures for selecting and communicating anticipated work hours in advance and communicating variances from those work hours;

(3) Requirements regarding reporting and monitoring hours worked;

(4) Procedures for accounting for minimum hours of work; and

(5) Other work scheduling requirements for DHS-CS employees, including DHS-CS employees supporting specific DHS organizations. Such requirements may include designated days, hours, core hours, or limits on the number of work hours per day;

§ 158.706 Recordkeeping.

(a) *Generally.* The Department documents an individual's appointment to a qualified position and creates records of a DHS-CS employee's employment in the DHS-CS in compliance with 5 U.S.C. 2951 and 5 CFR subchapter A, part 9, and subchapter B, parts 293 and 297.

(b) *Documenting a qualified position.* The Department documents a qualified position established under this part by documenting an individual's appointment to a qualified position. Such documentation includes a description of the individual's:

(1) CTMS qualifications and the DHS-CS cybersecurity work that can be performed through application of those qualifications;

(2) Applicable work and career structures established under the work valuation system described in § 158.404;

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(3) Salary under the compensation system described in § 158.602;

(3) Assignment information described in paragraph (e) of this section;

(4) Official worksite described in § 158.704; and

(5) Work schedule described in § 158.705.

(c) *Updating qualified position documentation.* The Department updates the documentation associated with a DHS–CS employee’s qualified position, described in paragraph (a) of this section, to reflect changes affecting the employee’s qualified position, including any changes to the description of information listed in paragraph (a), such as enhancements to the employee’s CTMS qualifications. Except as necessary for purposes of recordkeeping under this section, any update to the documentation associated with a DHS–CS employee’s qualified position is not a promotion, transfer, or reassignment for any other purpose under 5 U.S.C. or 5 CFR.

(d) *Documenting an assignment.* The Department documents a DHS–CS employee’s initial assignment as part of documenting the employee’s qualified position under this section. The Department updates the documentation associated with a DHS–CS employee’s qualified position for each of the employee’s subsequent assignments described in § 158.703.

(e) *Assignment information.* Documentation of each assignment under this section includes the following operational information:

(1) Statement of cybersecurity work activities;

(2) Timeframe, such as anticipated duration;

(3) Primary DHS organization;

(4) Personnel security requirements;

(5) Location, such as official worksite determined under § 158.704;

(6) Information related to work scheduling under § 158.705; and

(7) Information related to the performance management program, including information relevant to appraisal reviews, mission impact reviews, and development reviews, described in subpart H of this part.

(f) *Integrating with existing processes.* For purposes of recordkeeping for DHS–CS employees, including docu-

menting positions and assignments under this section, the Department uses existing Federal personnel recordkeeping processes, standards, requirements, and systems of record. CTMS policy implementing this section addresses integration of the approach to talent management under this part, including definitions used in this part, with existing Federal personnel recordkeeping processes, standards, requirements, and systems of record, as necessary.

§ 158.707 Details and opportunities outside DHS.

(a) DHS–CS employees serving in renewable appointments or continuing appointments may be detailed to:

(1) A position in the excepted service in another agency under 31 U.S.C. 1535;

(2) A position in the SES in another agency under 5 CFR 317.903;

(3) A position in the competitive service in another agency under 31 U.S.C. 1535 and 5 CFR 300.301, if approved by the Director of the Office of Personnel Management;

(4) Certain offices of the White House under 3 U.S.C. 112;

(5) The Congress under 2 U.S.C. 4301(f);

(6) An international organization under 5 U.S.C. 3343; or

(7) Another detail opportunity under other provisions of applicable law.

(b) Individuals from outside the DHS–CS may not be detailed to a qualified position.

(c) DHS–CS employees serving in continuing appointments may be assigned to eligible non-Federal organizations under the Intergovernmental Personnel Act in accordance with 5 U.S.C. 3371–3375 and 5 CFR part 334.

§ 158.708 Directed assignments.

(a) Occasionally, the Department may direct a subsequent assignment of a DHS–CS employee, and such a directed subsequent assignment may require a change in the employee’s official worksite, determined under § 158.704. For such directed subsequent assignments of a DHS–CS employee, the Department pays or reimburses expenses or allowances under and in accordance with the Federal Travel Regulations at 41 CFR chapters 301 and 302,

and for such directed assignments that are not temporary, DHS provides notice to and consultation with the employee as described in this paragraph.

(b) Directed subsequent assignments expected to last less than six months are considered temporary, and for purposes under the Federal Travel Regulations at 41 CFR chapters 301 and 302, are temporary duty.

(c) For such directed subsequent assignments expected to last six months or more and with an official worksite in a DHS-CS employee's current commuting area, defined in 5 CFR 550.703, the Department provides the employee written notice at least 30 calendar days before the effective date of the subsequent assignment. This notice requirement may be waived only when the employee consents in writing.

(d) For such directed subsequent assignments expected to last six months or more and with an official worksite outside of a DHS-CS employee's current commuting area, defined in 5 CFR 550.703, DHS consults with the employee on the reasons for, and the employee's preferences regarding, the proposed change in assignment. Following such consultation, the Department provides the employee written notice at least 90 calendar days before the effective date of the assignment. This notice requirement may be waived only when the employee consents in writing.

§ 158.709 Exemption from other laws regarding deployment.

The provisions of laws, among other similar laws, listed in §§ 158.405, 158.502, and 158.605 do not apply under CTMS, to the DHS-CS, or to talent management involving the individuals described in § 158.103.

Subpart H—Developing Talent

AUTHORITY: 5 U.S.C. Chapters 41 and 43; 5 CFR parts 410 and 430.

§ 158.801 Definitions.

As used in this subpart:

Appraisal has the same meaning as that term in 5 CFR 430.203.

Appraisal period has the same meaning as that term in 5 CFR 430.203.

Appraisal program has the same meaning as that term in 5 CFR 430.203.

Appraisal system and *performance appraisal system* have the same meanings as those terms in 5 CFR 430.203.

Mission impact has the same meaning as defined in § 158.104.

Performance has the same meaning as that term in 5 CFR 430.203.

Performance rating has the same meaning as that term in 5 CFR 430.203.

Progress review has the same meaning as that term in 5 CFR 430.203.

Rating of record has the same meaning as that term in 5 CFR 430.203.

§ 158.802 Performance management program.

(a) In alignment with the DHS-CS's core values described in § 158.305 and the compensation strategy described in § 158.601, the Secretary or designee establishes and administers a systematic performance management program to:

(1) Establish and maintain individual accountability among DHS-CS employees;

(2) Manage, recognize, and develop the performance of each DHS-CS employee; and

(3) Improve effectiveness of DHS-CS employees in executing the DHS cybersecurity mission.

(b) The performance management program comprises the following ongoing reviews:

(1) Appraisal reviews described in § 158.804;

(2) Mission impact reviews described in § 158.805; and

(3) Development reviews described in § 158.806.

(c) To complete appraisal reviews, mission impact reviews, and development reviews for a DHS-CS employee, the Department may collect, on a periodic or ongoing basis, information and input from:

(1) The DHS-CS employee;

(2) Other DHS-CS employees;

(3) The employee's supervisor; and

(4) Other appropriate officials.

§ 158.803 Career development program.

(a) *Career development program*. In alignment with the DHS-CS's core values described in § 158.305 and the compensation strategy described in

§ 158.804

§ 158.601, the Secretary or designee establishes and administers a career development program to:

- (1) Guide the career progression of each DHS-CS employee;
- (2) Ensure development of the collective expertise of DHS-CS employees through continual learning; and
- (3) Ensure continued alignment between the qualifications of DHS-CS employees and CTMS qualifications.

(b) *Career progression.* Career progression in the DHS-CS is based on enhancement of CTMS qualifications and salary progression resulting from recognition adjustments under § 158.631. Career progression in the DHS-CS is not based on length of service in the DHS-CS or the Federal Government. The Department guides the career progression of DHS-CS employees using development strategies based on:

- (1) Information from development reviews, described in § 158.806;
- (2) Mission-related requirements; and
- (3) Strategic talent priorities.

(c) *Commitment to continual learning.* The Department establishes, maintains, and communicates criteria for continual learning. Such criteria include recommended and required learning activities, including completion of specific courses of study, completion of mission-related training defined in 5 CFR 410.101, performance of certain DHS-CS cybersecurity work as part of assignments, and participation in opportunities for professional development and training described in § 158.640. The Department aims to utilize all available opportunities for DHS-CS employee development, including opportunities under this part and under or based on authorities in 5 U.S.C. and 5 CFR relating to continual learning, professional development, and training, as appropriate.

(d) *Verification of qualifications enhancements.* The Department verifies DHS-CS employees' enhancement of CTMS qualifications, which may include review by the CTMB or assessment using standardized instruments and procedures designed to measure the extent to which a DHS-CS employee has enhanced the employee's qualifications. Verification of enhancement to CTMS qualifications may require updating the documentation as-

sociated with the employee's qualified position, as described in § 158.706.

§ 158.804 Appraisal reviews.

(a) Under 5 U.S.C. Chapter 43 and 5 CFR part 430, the Department establishes an appraisal program to review and evaluate the performance of DHS-CS employees to ensure DHS-CS employees' individual accountability.

(b) The appraisal program for DHS-CS employees includes one or more progress reviews, as defined in 5 CFR 430.203, and an appraisal of an employee's performance that results in a rating of record, as defined in 5 CFR 430.203.

(c) The Department addresses unacceptable performance, as defined in 5 U.S.C. 4301(3), under the provisions of 5 CFR part 432 or part 752. The CTMB may assist with any decision, or action, or both, made under the authority in this section and 5 CFR part 430 and 5 CFR part 432 or 752.

(d) If the Department determines a DHS-CS employee's performance is unacceptable or the employee receives an unacceptable rating of record, the employee is ineligible to receive recognition under §§ 158.630 through 158.634 and the employee may be excluded from mission impact reviews under § 158.805.

§ 158.805 Mission impact reviews.

(a) The Department reviews a DHS-CS employee's mission impact throughout the employee's service in the DHS-CS and generates a mission impact summary at least annually. The Department may conduct mission impact reviews concurrently with development reviews.

(b) In reviewing a DHS-CS employee's mission impact, individually or as part of a group of DHS-CS employees, or both, the Department considers factors such as:

- (1) Superior application of CTMS qualifications to perform DHS-CS cybersecurity work;
- (2) Significant enhancements to CTMS qualifications;
- (3) Special contributions to cybersecurity technologies, techniques, tactics, or procedures; and
- (4) Notable improvements to execution of the DHS cybersecurity mission.

(c) The Department uses mission impact summary information to make distinctions among DHS-CS employees, such as comparing, categorizing, and ranking DHS-CS employees on the basis of mission impact to support decisions related to recognition for DHS-CS employees under §§ 158.630 through 158.634.

§ 158.806 Development reviews.

(a) The Department reviews a DHS-CS employee's career progression, as described in § 158.803(b) throughout the employee's service in the DHS-CS. The Department generates a development summary, at least annually, which may include plans for a DHS-CS employee's continual learning in alignment with the criteria for continual learning under the career development program described in § 158.803.

(b) As part of development reviews, the Department may compare, categorize, and rank DHS-CS employees to support decisions related to professional development and training under § 158.640. The Department may also use information from development reviews in matching subsequent assignments under § 158.703. The Department may conduct development reviews concurrently with mission impact reviews.

Subpart I—Employee Rights, Requirements, and Input

§ 158.901 Federal employee rights and processes.

(a) *Adverse actions*: Nothing in this part affects the rights of CS employees under 5 U.S.C. Chapter 75, 5 U.S.C. 4303, and 5 CFR parts 432 and 752.

(b) *Reductions in force*. The provisions of 5 U.S.C. Chapter 35, Subchapter I and 5 CFR part 351 regarding reductions in force apply to talent management actions taken under this part.

(c) *Redress with third parties*. Nothing in this part affects the rights, as provided by law, of a DHS-CS employee to seek review before a third party of a talent management action taken under this part involving that employee, including seeking review before the:

(1) Equal Employment Opportunity Commission, regarding discrimination under Federal anti-discrimination laws;

(2) Merit Systems Protection Board, regarding matters such as adverse actions under 5 U.S.C. Chapter 75 or Chapter 43 and individual rights of action under 5 U.S.C. Chapter 12;

(3) Office of Special Counsel, regarding matters such as whistleblower retaliation and other prohibited personnel practices under 5 U.S.C. 2302 and the Hatch Act (5 U.S.C. 7321 *et seq.*); and

(4) Department of Labor, regarding matters covered by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 *et seq.*).

(d) *Back pay*. Back pay remains available under 5 U.S.C. 5596 and 5 CFR part 550, subpart H, for unjustified or unwarranted talent management actions.

§ 158.902 Ethics requirements.

(a) DHS-CS employees, including such employees providing uncompensated service and DHS-CS advisory appointees, are employees covered by the Ethics in Government Act section 101(f)(3), and are subject to the criminal conflict of interest rules as well as government ethics requirements applicable to Federal employees, including:

(1) Criminal conflict of interest provisions in 18 U.S.C. 201–209;

(2) Ethics in Government Act, as amended, and implementing regulations in 5 CFR, Chapter XVI, Subchapter B, including financial disclosure reporting in 5 CFR part 2634 and the Standards of Ethical Conduct for Employees of the Executive Branch in 5 CFR part 2635;

(3) Supplemental Standards of Ethical Conduct for Employees of the Department of Homeland Security in 5 CFR part 4601; and

(4) Department policy.

(b) Under the ethics requirements described in paragraph (a) of this section, DHS-CS employees must seek approval for certain outside activities, comply with ethics program requirements, and other applicable laws, including post-government employment restrictions.

§ 158.903 Employee input program.

(a) *Program*. The Department establishes and administers a program for

§ 158.1001

DHS-CS employees to express employment-related concerns and recommendations for enhancing CTMS administration and DHS-CS management. Under such a program, a DHS-CS employee may request review of certain talent management actions related to the employee's employment in the DHS-CS or related to the processes, systems, and programs established under this part, or both. The Cybersecurity Talent Management Board may use information from this program for the periodic evaluation of CTMS described in §158.302.

(b) *Policy.* CTMS policy implementing this section addresses:

(1) Talent management actions covered by the employee input program;

(2) The process for DHS-CS employees to express input; and

(3) The interaction of the employee input program with relevant processes for redress with third parties of employment-related actions, including those described in §158.901.

Subpart J—Advisory Appointments

§158.1001 Advisory appointments and advisory appointees.

(a) An advisory appointment is an appointment to a qualified position that:

(1) The Secretary determines is of a policy-determining, policy-making, or policy-advocating character or involves a close and confidential working relationship with the Secretary or other key appointed officials;

(2) Does not have a salary set by statute; and

(3) Is not required to be filled by an appointment by the President.

(b) An advisory appointment to a qualified position is treated as a Schedule C position under 5 CFR 213.3301 except regarding appointment and compensation. Talent management for a DHS-CS advisory appointee is in accordance with the provisions of 5 CFR applicable to Schedule C appointees, except that appointment and compensation for a DHS-CS advisory appointee is governed by this part.

(c) Employment restrictions such as those concerning the criminal conflict of interest statutes, standards of ethical conduct, partisan political activity, and contained in laws such as Ex-

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ecutive Orders, government-wide ethics regulations and the Hatch Act (5 U.S.C. 7321 *et seq.*), apply to a DHS-CS advisory appointee as if the employee were a Schedule C appointee.

(d) The Department tracks and coordinates advisory appointments with the Executive Office of the President and the Office of Personnel Management (OPM), as appropriate.

§158.1002 Appointment of advisory appointees.

(a) Appointment of an individual, including a former DHS-CS employee, to an advisory appointment is governed by this subpart J and subpart E of this part.

(b) An individual for appointment to an advisory appointment must participate in the assessment program described in §158.520. The Secretary or designee must approve the appointment of an individual to an advisory appointment by name, and an individual appointed to an advisory appointment serves at the will of the Secretary.

(c) A DHS-CS advisory appointee may be removed at any time. In accordance with 5 U.S.C. 7511(b), the provisions of 5 U.S.C. Chapter 75, subchapter II do not apply to talent management actions taken under this part for a DHS advisory appointee.

(d) An advisory appointment terminates no later than the end of the term of the U.S. President under which the advisory appointee was appointed.

(e) The Secretary or designee establishes a limit on the number of advisory appointments under this subpart J, and the total number of advisory appointments under this subpart may not exceed that limit at any time.

(f) The Department may not change an advisory appointment to a renewable appointment or continuing appointment.

(g) The Department may not use an advisory appointment solely or primarily for the purpose of detailing any individual to the White House.

§158.1003 Compensation for advisory appointees.

(a) *General.* Compensation for a DHS-CS advisory appointee is governed by this subpart J and subpart F of this

part. A DHS-CS advisory appointee may provide uncompensated service and any such service is gratuitous service.

(b) *Compensation.* As compensation for service in the DHS-CS, a DHS-CS advisory appointee receives a salary as described in paragraph (c) this section, unless the appointee is providing uncompensated service. A DHS-CS advisory appointee, except such an employee providing uncompensated service, may also receive additional compensation as described in paragraph (d) of this paragraph.

(c) *Salary.* A DHS-CS advisory appointee receives a salary under the salary system described in § 158.610.

(1) *Setting salary.* The Department determines the salary for an individual accepting an advisory appointment to a qualified position under § 158.620.

(2) *Adjusting salary.* The Department determines any adjustments to salary of a DHS-CS advisory appointee under § 158.621.

(3) *Extended range.* A DHS-CS advisory appointee is ineligible for a salary in the extended range.

(4) *Local cybersecurity talent market supplement.* The Department may provide a DHS-CS advisory appointee a local cybersecurity talent market supplement under § 158.612.

(d) *Additional compensation.* In alignment with the compensation strategy in § 158.601, the Department may provide the following types of additional compensation to a DHS-CS advisory appointee for the purposes of each such type as described under this part and subject to the requirements of this section. An individual appointed to an advisory appointment is ineligible to receive any type of additional compensation under this part as part of an offer of employment in the DHS-CS.

(1) *Types.* Additional compensation under CTMS for a DHS-CS advisory appointee is:

(i) Recognition adjustments under § 158.631, except the Secretary or designee must approve any such recognition for a DHS-CS advisory appointee;

(ii) Recognition payments under § 158.632, except the Secretary or designee must approve any such recognition for a DHS-CS advisory appointee;

(iii) Recognition time-off under § 158.633, except the Secretary or designee must approve any such recognition for a DHS-CS advisory appointee;

(iv) Honorary recognition under § 158.634;

(v) Professional development and training under § 158.640, so long as a professional development and training program described in § 158.640 explicitly covers DHS-CS advisory appointee and prohibits such employees from receiving any payment or reimbursement for costs of academic degree training or expenses to obtain professional credentials, including examinations to obtain such credentials;

(vi) Allowances in nonforeign areas under § 158.643; and

(vii) Other types of compensation, including leave and benefits, authorized under §§ 158.650 through 158.655 and provided in accordance with relevant provisions of other laws.

(2) *Combining types.* A DHS-CS advisory appointee may receive any type of additional compensation described in paragraph (c)(1) of this section in combination with any other such type subject to the requirements of subpart F of this part and the requirements and restrictions of this section.

(3) *Restrictions.* Additional compensation described in paragraph (d)(1) of this section is subject to, and may be limited by:

(i) The aggregate compensation limit described in § 158.604;

(ii) Prohibitions in 5 U.S.C. 4508, guidance from the Office of Management and Budget and Office of Personnel Management, and any other provisions of law governing compensation for political appointees; and

(iii) Other requirements and restrictions in CTMS policy.

(e) *Compensation administration.* For purposes of administering compensation under this part for a DHS-CS advisory appointee, the Department administers salary and other compensation, including leave, based on consideration of the employee's work schedule under the work scheduling system described in § 158.705, and may convert the appointee's salary into an hourly rate, bi-weekly rate, or other rate.

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