(2) To create serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency;

(3) To alter materially the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) To raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

(b) The term significant guidance document does not include the categories of documents excluded by § 120.2 or any other category of guidance documents exempted in writing by OPM in consultation with OIRA.

§ 120.6 Procedure for guidance documents identified as "significant."

(a) OPM will make an initial, preliminary determination about a guidance document's significance. Thereafter, OPM must submit the guidance document to OIRA for its determination whether guidance is significant guidance, unless the guidance is otherwise exempted from such a determination by the Administrator of OIRA.

(b) Significant guidance documents, as determined by the Administrator of OIRA, must be reviewed by OIRA under E.O. 12866 before issuance; and must demonstrate compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in E.O. 12866, E.O. 13563, E.O. 13609, E.O. 13771, and E.O. 13777.

(c) Significant guidance documents must be signed by the Director of OPM.

§ 120.7 Notice-and-comment procedures.

(a) Except as provided in paragraph (b) of this section, all proposed OPM guidance documents determined to be a ''significant guidance document'' within the meaning of § 120.5 shall be subject to the following informal notice-and-comment procedures. OPM shall publish notification in the **Federal Register** announcing that a draft of the proposed guidance document is publicly available, shall post a link to the **Federal Register** notice and the draft guidance document on its guidance portal, shall invite public comment on the draft document for a minimum of 30 days, and shall prepare and post a public response to major concerns raised in the comments, as appropriate, on its guidance Web portal, either before or when the guidance document is finalized and issued.

(b) The requirements of paragraph (a) of this section will not apply to any significant guidance document or categories of significant guidance documents for which OPM finds good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest (and incorporates the finding of good cause and a brief statement of reasons therefore in the guidance issued).

(c) Where appropriate, the originating office may recommend to the Director of OPM that a particular guidance document that is otherwise of importance to OPM's interests shall also be subject to the informal notice-and-comment procedures described in paragraph (a) of this section.

§ 120.8 Petitions to withdraw or modify guidance.

(a) Any person may petition OPM to withdraw or modify a particular guidance document as specified by § 120.4(b)(5).

(b) Any person may submit a petition to OPM requesting withdrawal or modification of any effective guidance document by writing to OPM Office of the Executive Secretariat at: *OPMExecSec@opm.gov,* or U.S. Office of Personnel Management Attn: Executive Secretariat 1900 E Street NW, Washington, DC 20415.

(c) OPM will respond to all requests in a timely manner, but no later than 90 days after receipt of the request.

§ 120.9 Rescinded guidance.

(a) In the absence of a petition, OPM may rescind a guidance document on grounds that it is no longer accurate or necessary.

(b) If OPM rescinds a guidance document, the hyperlink to the guidance document will be removed. The name, title, unique identifier, and date of rescission will be listed on the guidance portal for at least one year after rescission.

(c) No employee of OPM may cite, use, or rely on rescinded guidance documents, except to establish historical facts, unless OMB makes an exception for particular guidance documents or categories of guidance documents.

§ 120.10 Exceptional circumstances.

(a) A guidance document may be exempted from the requirements of section 120.6(b) or 120.7(a) by agreement of OPM and OIRA for reasons of exigency, safety, health, or other compelling cause.

(b) In emergency situations or when OPM is required by statutory deadline or court order to act more quickly than normal review procedures allow, OPM will notify OIRA as soon as possible and, to the extent practicable, shall comply with the requirements of this part at the earliest opportunity. Wherever practicable, OPM should schedule its proceedings to permit sufficient time to comply with the procedures set forth in this part.

§ 120.11 Reports to Congress and GAO.

When OPM adopts final guidance constituting a ''rule'' under 5 U.S.C. 804, OPM will submit the reports to Congress and GAO and comply with the procedures specified by 5 U.S.C. 801 (commonly known as the Congressional Review Act).

§ 120.12 No judicial review or enforceable rights.

This part is intended to improve the internal management of OPM. As such, it is for the use of OPM personnel only and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies or other entities, its officers or employees, or any other person.

[FR Doc. 2020–21393 Filed 10–15–20; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Chapter I

Ratification of Department Actions

AGENCY: Department of Homeland Security (DHS).

ACTION: Ratification.

SUMMARY: The Department of Homeland Security, through its Acting Secretary, is publishing a notice of the ratification of a number of previous actions by the Department. The ratification provides the public with certainty, by resolving any potential defect in the validity of those actions.

DATES: The ratification was signed on October 7, 2020, and relates back to the original date of each action that it ratifies.

FOR FURTHER INFORMATION CONTACT: Leo (Chip) Boucher, Assistant General Counsel, Administrative Law, Office of the General Counsel, Department of Homeland Security Washington, DC 20528, (202) 282–9822.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security, through its Acting Secretary, is ratifying a number of previous actions by former Acting Secretary Kevin K. McAleenan and one previous action by U.S. Citizenship and Immigration Services Deputy Director for Policy Joseph

Edlow. The Department continues to maintain that the prior succession order designating Kevin K. McAleenan as Acting Secretary was valid and that Acting Secretary McAleenan had the authority to take the actions being ratified in the appendix. The Department issued this ratification and is now publishing it in the **Federal Register** out of an abundance of caution. Neither the ratification nor the publication is a statement that the ratified actions would be invalid absent the ratification.

Ian Brekke,

Deputy General Counsel, U.S. Department of Homeland Security.

APPENDIX

BILLING CODE 9112–FP–P

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

Ratification of Certain Actions Taken by Former Acting Secretary Kevin McAleenan and One Action Taken by U.S. Citizenship and Immigration Services Deputy Director for Policy Joseph Edlow

I am affirming and ratifying certain delegable actions taken by Acting Secretary McAleenan, *see* 5 U.S.C. § 3348(a)(2), (d)(2), and one delegable action taken by U.S. Citizenship and Immigration Services (USCIS) Deputy Director for Policy, Edlow, as listed below, out of an abundance of caution because of a recent Government Accountability Office (GAO) opinion, *see* B-331650 (Comp. Gen., Aug. 14, 2020), and recent actions filed in federal court alleging that the November 8, 2019, order of succession issued by former Acting Secretary Kevin McAleenan was not valid. *See, e.g., Guedes v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 920 F.3d 1, 13 (D.C. Cir. 2019) ("We have repeatedly held that a properly appointed official's ratification of an allegedly improper official's prior action . . . resolves the claim on the merits by remedy[ing] the defect (if any) from the initial appointment.") (internal quotation marks and citation omitted).

When former Acting Secretary McAleenan resigned on November 13, 2019, I began serving as Acting Secretary in accordance with the order of succession former Acting Secretary McAleenan had designated on November 8, 2019, under the Homeland Security Act (HSA), 6 U.S.C. § 113(g)(2) (enacted on Dec. 23, 2016, Pub. L. 114–328, div. A, title XIX, § 1903(a), 130 Stat. 2672). That designation of the order of succession followed former Secretary Kirstjen Nielsen's April 9, 2019, designation of the order of succession, also pursuant to § 113(g)(2), which resulted in Mr. McAleenan's serving as Acting Secretary when former Secretary Nielsen resigned.

The Secretary of Homeland Security's authority to designate the order of succession under § 113(g)(2) is an alternative means to the authority of the Federal Vacancies Reform Act (FVRA) to designate an Acting Secretary of Homeland Security. Section 113(g)(2) provides that it applies "notwithstanding" the FVRA; thus, when there is an operative § 113(g)(2) order of succession, it alone governs which official shall serve as Acting Secretary. Accordingly, I properly began serving as Acting Secretary on November 13, 2019. Because § 113(g)(2) authorizes the designation of an Acting Secretary "notwithstanding chapter 33 of title 5" in its entirety, § 113(g)(2) orders addressing the line of succession for the Secretary of Homeland Security are subject to neither the FVRA provisions governing which officials may serve in an acting position, *see* 5 U.S.C. § 3345, nor FVRA time constraints, *see id.* § 3346.

On September 10, 2020, President Donald J. Trump nominated me to serve as Secretary of Homeland Security. Because I have been serving as the Acting Secretary pursuant to a § 113(g)(2) order of succession, the FVRA's prohibition on a nominee's acting service while his or her nomination is pending does not apply, and I remain the Acting Secretary notwithstanding my nomination. *Compare* 6 U.S.C. § 113(a)(1)(A) (cross-referencing the FVRA without the "notwithstanding" caveat), *with id.* § 113(g)(1)–(2) (noting the FVRA provisions and specifying,

in contrast, that § 113(g) provides for acting secretary service "notwithstanding" those provisions); *see also* 5 U.S.C. § 3345(b)(1)(B) (restricting acting officer service under § 3345(a) by an official whose nomination has been submitted to the Senate for permanent service in that position).

That said, there have been recent challenges that my service is invalid, resting on the erroneous contentions that the orders of succession issued by former Secretary Nielsen and former Acting Secretary McAleenan were invalid. If those contentions were legally correct—meaning that neither former Secretary Nielsen nor former Acting Secretary McAleenan issued a valid § 113(g)(2) order of succession—then the FVRA would have applied and Executive Order 13753 (published on December 14, 2016, under the FVRA) would have governed the order of succession for the Secretary of Homeland Security from the date of Nielsen's resignation.

The FVRA provides an alternative basis for an official to exercise the functions and duties of the Secretary temporarily in an acting capacity. In that alternate scenario, under the authority of the FVRA, 5 U.S.C. § 3345(a)(2), when the President submitted my nomination, Peter Gaynor, the Administrator of the Federal Emergency Management Agency (FEMA), would have become eligible to exercise the functions and duties of the Secretary temporarily in an acting capacity. This is because Executive Order 13753 pre-established the President's succession order for the Department when the FVRA applies,[1] Mr. Gaynor would have been the most senior official eligible to exercise the functions and duties of the Secretary under that succession order, and my nomination would have restarted the FVRA's time limits, 5 U.S.C. § 3346(a)(2).

Out of an abundance of caution and to minimize any disruption to the Department of Homeland Security and to the Administration's Homeland Security mission, on September 10, 2020, Mr. Gaynor exercised any authority of the position of Acting Secretary that he had to designate an order of succession under 6 U.S.C. § 113(g)(2) (the "Gaynor Order"). Mr. Gaynor re-issued the order of succession established by former Acting Secretary McAleenan on November 8, 2019, and placed the Under Secretary for Strategy, Policy, and Plans above the FEMA Administrator in the order of succession. Once the Gaynor Order was executed, it superseded any authority Mr. Gaynor may have had under the FVRA and confirmed my authority to continue to serve as the Acting Secretary. Thus, in addition to the authority I possess pursuant to the November 8, 2019, order of succession effectuated by former Acting Secretary McAleenan, the Gaynor Order alternatively removes any doubt that I am currently serving as the Acting Secretary.

I have full knowledge of the following actions taken by former Acting Secretary McAleenan and USCIS Deputy Director for Policy Edlow, and believe that these actions were legally authorized and entirely proper:

[1] Executive Order 13753, Amending the Order of Succession in the Department of Homeland Security, 81 Fed. Reg. 90667 (Dec. 14, 2016).

1. Asylum Eligibility. Interim Final Rule. 84 Fed. Reg. 33,829 (July 16, 2019) issued by Former Acting Secretary McAleenan.
2. U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements. Notice of Proposed Rulemaking. 84 Fed. Reg. 62,280 (November 14, 2019) issued by Former Acting Secretary McAleenan.
3. Designating Aliens for Expedited Removal. Federal Register Notice. 84 Fed. Reg. 35,409 (July 23, 2019) issued by Former Acting Secretary McAleenan.
4. Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications. Notice of Proposed Rulemaking. 84 Fed. Reg. 47,148 (Sept. 9, 2019) issued by Former Acting Secretary McAleenan.
5. Asylum Application, Interview, and Employment Authorization for Applicants. Notice of Proposed Rulemaking. 84 Fed. Reg. 62,374 (Nov. 14, 2019) issued by Former Acting Secretary McAleenan.
6. Inadmissibility on Public Charge Grounds. Final Rule. 84 Fed. Reg. 41,292 (Aug. 14, 2019) issued by Former Acting Secretary McAleenan. Final rule correction. 84 Fed. Reg. 52,357 (Oct. 2, 2019) issued by Former Acting Secretary McAleenan.
7. Guatemala Refugee Protection. Former Acting Secretary McAleenan's October 16, 2019 determination issued by Former Acting Secretary McAleenan.
8. USCIS Deputy Director for Policy, Joseph Edlow's memorandum "Implementing Acting Secretary Chad Wolf's July 28, 2020 Memorandum" (August 21, 2020) issued by USCIS Deputy Director for Policy, Joseph Edlow.
9. Acting Secretary Kevin McAleenan's memorandum, "Information Regarding First Amendment Protected Activities" (May 17, 2019) issued by Former Acting Secretary McAleenan.

To avoid any possible uncertainty and out of an abundance of caution, pursuant to the Secretary of Homeland Security's authorities under, *inter alia*, the Homeland Security Act of 2002, Pub. L. No 207-296, as amended, and 5 U.S.C. §§ 301-302, I hereby make a detached and considered affirmation and ratification of the above noted actions originally taken and approved by former Acting Secretary McAleenan and USCIS Deputy Director for Policy Edlow.

Chad F. Wolf
Acting Secretary

10/7/2020
Date

[FR Doc. 2020–23067 Filed 10–14–20; 4:15 pm]
BILLING CODE 9112–FP–C

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2020–0125]

RIN 3150–AK48

Miscellaneous Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to make miscellaneous corrections. These changes include redesignating footnotes, correcting references, typographical errors, nomenclature, titles, email addresses, and contact information. This document is necessary to inform the public of these non-substantive amendments to the NRC's regulations.

DATES: This final rule is effective on November 16, 2020.