

Final Rule for H-1B Cap Published – Effective April 1, 2019

February 1, 2019

On January 30, 2019, the United States Department of Homeland Security (DHS) announced a final rule to amend the H-1B lottery process. The rule creates an electronic registration process for the H-1B Cap lottery and changes the sequence that cases are selected for the "regular" and "US Masters" caps. This rule was published in the Federal Register yesterday – January 31, 2019. Although the rule is effective on April 1, 2019, the process of entering H-1B petitions into the lottery for FY 2020 (filing April 1, 2019 to April 5, 2019 for a start date of October 1, 2019) remains the same. What will change in this year's lottery is how the U.S. Citizenship and Immigration Service (USCIS) will select H-1B petitions.

There are 65,000 H-1Bs available each fiscal year for "regular" H-1B cases and an additional 20,000 available for individuals with an advanced degree from an accredited US institution ("US Masters" cap). In years past, USCIS ran the "regular" lottery first and those H-1B petitions eligible for the "US Masters" cap would have a second chance for selection in the lottery. In an effort to implement President Trump's Executive Order, "Buy American, Hire American," USCIS is reversing the order of the lottery drawings. This will likely result in an increased number of H-1B petitions being awarded to individuals with an advanced degree from a US institution.

The final rule creates a new process for entering the H-1B Cap lottery. In lieu of submitting the entire H-1B petition with filing fees to USCIS, Petitioners will complete an online registration. USCIS will designate a specific registration period and then select which registrants are eligible to file H-1B cap subject petitions. The electronic registration requirement is suspended for FY 2020 (petitions filed April 1, 2019 – April 5, 2019 for an October 1, 2019 start date) and will go into effect for petitions filed for the next fiscal year. USCIS expects this electronic registration to reduce costs for employers as well as increase government efficiency.

For a detailed review of the rule, please see our [prior alert](#).

The process of preparing and filing petitions this year (FY 2020) remains the same. Proskauer will work with clients to ensure all H-1B cap cases meet the 5-day filing period deadline (April 1, 2019 – April 5, 2019) this year and will continue to apprise clients of changes with future H-1B cap processes.