

CC-2019-006

September 17, 2019

Subject: Policy Statement on the Tax
Regulatory Process

Cancel Date: Upon incorporation into
the CCDM

Purpose

This Notice advises Chief Counsel attorneys about the Policy Statement on the Tax Regulatory Process issued by the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) on March 5, 2019.

Background

The policy statement addresses certain rulemaking requirements under the Administrative Procedure Act and the issuance of subregulatory guidance. The full text of the policy statement can be found [here](#). In the policy statement, Treasury and the IRS clarify and affirm their commitment to sound regulatory practices. First, the policy statement provides that Treasury and the IRS will continue to adhere to their longstanding practice of using the notice-and-comment process for interpretative tax rules published in the Code of Federal Regulations. Second, the policy statement provides that future temporary regulations under the Internal Revenue Code will include a statement of good cause in the preamble, will expire within three years of issuance, and will be issued simultaneously with proposed regulations. Third, the policy statement affirms that subregulatory¹ guidance does not have the force and effect of law and provides that Treasury and the IRS will not argue in the United States Tax Court for judicial deference under *Auer v. Robbins*, 519 U.S. 452 (1997), or *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), to interpretations set forth only in subregulatory guidance. Fourth, the policy statement provides that each future notice of intent to issue proposed tax regulations will state that if no proposed regulations or other guidance is released within 18 months after publication of such notice, taxpayers may continue to rely on the notice but, until additional guidance is issued, Treasury and the IRS will not assert a position adverse to the taxpayer based on the notice.

¹ Subregulatory guidance includes publications in the Internal Revenue Bulletin such as Revenue Rulings, Revenue Procedures, Announcements, and Notices.

Distribute to:	Tax Litigation staff	Tax Litigation staff & Support personnel
	X All Personnel	X Electronic Reading Room

Filename: CC-2019-006 File copy in: CC:FM:PFD

