guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae.

Unlike the exclusion provided by Rule 3a–7, the exclusion provided by Section 3(c)(5) is not subject to any conditions specifically addressing the Investment Company Act-related concerns presented by asset-backed issuers.[121] Whether an asset-backed issuer has the option of relying on Section 3(c)(5) as an alternative to Rule 3a–7 generally depends on whether the issuer is primarily engaged in purchasing or otherwise acquiring a particular type of financial assets.[122] Rule 3a–7, in contrast, was generally designed to encompass any asset-backed issuer that meets the rule's conditions, regardless of the type of financial assets that it holds.

When first considering Rule 3a–7 in 1992, the Commission noted that, absent a statutory amendment precluding asset-backed issuers from relying on Section 3(c)(5), asset-backed issuers that rely on that section and those that rely on Rule 3a–7 would be subject to somewhat disparate treatment based solely on the type of the financial assets that they held. Accordingly, when the Commission proposed Rule 3a–7 in 1992, it also requested comment on, among other things, whether it should seek statutory amendments to Section 3(c)(5) that would preclude asset-backed issuers from continuing to rely on the Section.[123] Most commenters then argued that it would be inappropriate to narrow the scope of Section 3(c)(5), at least until both the market and the Commission gained experience with Rule 3a–7.[124] In response to commenters' concerns, the Commission decided not to pursue any regulatory changes with respect to Section 3(c)(5) at that time.[125]

Now that the market and the Commission have gained almost twenty years of experience with Rule 3a–7, we believe that it is appropriate to revisit this issue as part of our review of the rule. We also believe that revisiting the ability of asset-backed issuers to rely on the exclusion provided by Section 3(c)(5) is appropriate in the aftermath of the recent financial crisis and the role that issuers of mortgage-backed securities have played in that crisis.[126] Accordingly, the Commission once again is seeking comment on whether Section 3(c)(5) should be amended to limit the ability of asset-backed issuers to rely on Section 3(c)(5).[127] The Commission also requests comment on whether it should engage in any rulemaking, consistent with Section 3(c)(5), that would define terms used in that section so as to limit its availability to those companies that are intended to be encompassed by the statutory exclusion. We also seek comment on whether there are any structural or operational reasons that make it necessary for certain asset-backed issuers to rely on Section 3(c)(5) rather than Rule 3a–7.

- If there are such structural or operational reasons, what are they?
- What types of asset-backed issuers rely on Section 3(c)(5)?
- What would be the effect on asset-backed issuers, the securitization market and on capital formation if asset-backed issuers could no longer rely on Section 3(c)(5)?
- Are there revisions to Rule 3a–7 that could be made to better facilitate asset-backed issuers' reliance on the rule rather than on Section 3(c)(5) and what would be the economic impact of such revisions?

Commenters also are requested to provide any other observations, suggestions and data on the interplay between Rule 3a–7 and Section 3(c)(5) today and as the asset-backed securities markets may develop in the future.

IV. General Request for Comment

In addition to the issues raised in this release, the Commission requests and encourages all interested persons to submit their views on any issues relating to the treatment of asset-backed issuers under the Investment Company Act. This release is not intended in any way to limit the scope of comments, views, issues or approaches to be considered. The Commission particularly welcomes statistical, empirical, and other data from commenters that may support their views and/or support or refute the views or issues raised in this release.

Dated: August 31, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22772 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

[121] *See supra* section III.A. *See also supra* note 115.

[122] *See supra* note 115.

[123] Proposing Release, *supra* note 15 at section II.B.

[124] Adopting Release, *supra* note 4 at n.88 and accompanying text.

[125] *Id.* at text following n.89.

[126] *See generally* 2010 ABS Proposing Release, *supra* note 10.

[127] *See also* Section 3(c)(5)(C) Concept Release, *supra* note 30; 2011 ABS Re-proposal, *supra* note 13 at n.110 and accompanying text (requesting comment on whether compliance with Rule 3a–7 should be one of the shelf eligibility requirements).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket Nos. FDA–2011–C–0344 and FDA–2011–C–0463]

CooperVision, Inc.; Filing of Color Additive Petitions

Correction

In proposed rule document C1–2011–16089 appearing on page 49707 in the issue of Thursday, August 11, 2011, make the following correction:

On page 49707, in the first column, in the nineteenth line, ''methacryloxyethyl)phenlyamino]'' should read ''methacryloxyethyl)phenylamino]''.

[FR Doc. C2–2011–16089 Filed 9–6–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–137125–08]

RIN 1545–BI65

Certain Employee Remuneration in Excess of $1,000,000 Under Internal Revenue Code Section 162(m); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG–137125–08) relating to the deduction limitation for certain employee remuneration in excess of $1,000,000 under the Internal Revenue Code. The document was published in the **Federal Register** on Friday, June 24, 2011 (76 FR 37034).

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Ilya Enkishev at (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 162 of the Internal Revenue Code.

Need for Correction

As published, a notice of proposed rulemaking (REG–137125–08) contains

an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of a notice of proposed rulemaking (REG–137125–08), which was the subject of FR Doc. 2011–15653, is corrected as follows:

On page 37036, column 2, in the preamble, under the paragraph heading ''Proposed Effective/Applicability Date'', the language ''These regulations under section 162(m) are proposed to apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**.'' is removed and is replaced with the new language ''These proposed regulations will be effective upon publication in the **Federal Register** of a Treasury decision adopting these rules as final regulations.''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration)

[FR Doc. 2011–22734 Filed 9–6–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–128224–06]

RIN 1545–BF80

Section 67 Limitations on Estates or Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking; notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document withdraws the notice of proposed rulemaking that was published in the **Federal Register** on July 27, 2007, providing guidance on which costs incurred by estates or trusts other than grantor trusts (non-grantor trusts) are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a). This document contains proposed regulations that provide guidance on which costs incurred by estates or trusts other than grantor trusts (non-grantor trusts) are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a). The regulations affect estates and non-grantor trusts. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by December 6, 2011. Outlines of topics to be discussed at the public hearing scheduled for December 19, 2011 must be received by December 7, 2011.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–128224–06), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–128224–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS REG–128224–06). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jennifer N. Keeney, (202) 622–3060; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Richard A. Hurst, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending 26 CFR part 1 under section 67 of the Internal Revenue Code (Code) by adding § 1.67–4 regarding which costs incurred by an estate or a non-grantor trust are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a).

Section 67(a) of the Code provides that, for an individual taxpayer, miscellaneous itemized deductions are allowed only to the extent that the aggregate of those deductions exceeds 2 percent of adjusted gross income. Section 67(b) excludes certain itemized deductions from the definition of ''miscellaneous itemized deductions.'' Section 67(e) provides that, for purposes of section 67, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual. However, section 67(e)(1) provides that the deductions for costs paid or incurred in connection with the administration of the estate or trust that would not have been incurred if the property were not held in such estate or trust shall be treated as allowable in arriving at adjusted gross income. Therefore, deductions described in section 67(e)(1) are not subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a).

A notice of proposed rulemaking (REG–128224–06, 2007–36 IRB 551) was published in the **Federal Register** (72 FR 41243) on July 27, 2007. The proposed regulations provide that a cost is fully deductible to the extent that the cost is unique to an estate or trust. If a cost is not unique to an estate or trust, such that an individual could have incurred the expense, then that cost is subject to the 2-percent floor. For this purpose, the proposed regulations clarify that it is the type of product or service provided to the estate or trust in exchange for the cost, rather than the description of the cost of that product or service, that is tested to determine the uniqueness of the cost. The proposed regulations also address costs subject to the 2-percent floor that are included as part of a comprehensive commission or fee paid to the trustee or executor (''Bundled Fiduciary Fee'').

Written comments were received in response to the notice of proposed rulemaking. A public hearing was held on November 14, 2007, at which several commentators offered comments on the notice of proposed rulemaking.

On January 16, 2008, the Supreme Court of the United States issued its decision in *Michael J. Knight, Trustee of the William L. Rudkin Testamentary Trust* v. *Commissioner,* 552 U.S. 181, 128 S. Ct. 782 (2008), holding that fees paid to an investment advisor by a non-grantor trust or estate generally are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a). The Court reached this decision on a reading of section 67(e) that differed from that in the proposed regulations. The Court held that the proper reading of the language in section 67(e), which asks whether the expense ''would not have been incurred if the property were not held in such trust or estate,'' requires an inquiry into whether a hypothetical individual who held the same property outside of a trust ''customarily'' or ''commonly'' would incur such expenses. Expenses that are ''customarily'' or ''commonly'' incurred by individuals are subject to the 2-percent floor.

Following the Supreme Court's decision in *Knight,* the Internal Revenue Service (IRS) and the Treasury Department issued Notice 2008–32 (2008–12 IRB 593) (March 24, 2008) to provide interim guidance on the treatment of Bundled Fiduciary Fees. The Notice provided that taxpayers will not be required to determine the portion of a Bundled Fiduciary Fee that is subject to the 2-percent floor under